

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

**In the Matter of the Accusation Against:**

**SENIOR CARE PHARMACY SERVICES, INC., KIM BANERJEE AND  
ALPESH PATEL, OWNERS,  
Sterile Compounding Permit No. LSC 99060, and  
Pharmacy Permit No. PHY 46000; and**

**SAMINTENDU BANERJEE,  
Pharmacist License No. RPH 45184; and**

**ALPESH PATEL,  
Pharmacist License No. RPH 48866; and**

**PO-AN LU,  
Pharmacist License No. RPH 69811; and**

**KENNY TRAN,  
Pharmacy Technician License No. TCH 57643,**

**Respondents**

**Case No. 6175,**

**In the Matter of the Statement of Issues Against:**

**DECISION AND ORDER AS TO SENIOR CARE PHARMACY SERVICES, INC., SENIOR CARE PHARMACY SERVICES HB,  
INC., SENIOR CARE PHARMACY SERVICES FAIRFIELD INC., AND SAMITENDU BANERJEE ONLY  
(CASE NOS. 6175, 6156, 6409, 6161)**

**SENIOR CARE PHARMACY SERVICES, INC.,  
Applicant for Renewal of Sterile Compounding License,  
Respondent**

**Case No. 6409,**

**In the Matter of the Statement of Issues Against:**

**SENIOR CARE PHARMACY SERVICES HB, INC.,  
Applicant for Pharmacy Permit and Sterile Compounding License,  
Respondent**

**Case No. 6156**

**OAH No. 2019120088,**

**SENIOR CARE PHARMACY SERVICES FAIRFIELD, INC., KIM E.  
BANERJEE, SAMITENDU BANERJEE, ANTONY P. THEKKEK, and  
PREMA P. THEKKEK, OWNERS AND OFFICERS  
Pharmacy Permit No. PHY 50619,**

**SAMINTENDU BANERJEE,  
Pharmacist License No. RPH 45184,**

**VAN THAO MY NGUYEN,  
Pharmacist License No. RPH 66472,**

**KALI WONG,  
Pharmacist License No. RPH 73152,**

**Respondents**

**Case No. 6161**

**OAH No. 2020110031**

**DECISION AND ORDER**

The attached Stipulated Surrender of License and 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 November 5, 2021.

It is so ORDERED on October 6, 2021.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh".

Seung W. Oh, Pharm.D.  
Board President

1 ROB BONTA  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
4 DESIREE I. KELLOGG  
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12 **BEFORE THE**  
13 **BOARD OF PHARMACY**  
14 **DEPARTMENT OF CONSUMER AFFAIRS**  
15 **STATE OF CALIFORNIA**

16 In the Matter of the Accusation Against:  
17 **SENIOR CARE PHARMACY SERVICES,**  
18 **INC., KIM BANERJEE AND ALPESH**  
19 **PATEL, OWNERS,**  
20 **SAMITENDU BANERJEE,**  
21 **ALPESH PATEL,**  
22 **PO-AN LU,**  
23 **KENNY TRAN,**  
Respondents.

Case No. 6175  
OAH No. 2019120088  
**STIPULATED SURRENDER OF**  
**LICENSES AND ORDER AS TO SENIOR**  
**CARE PHARMACY SERVICES, INC.,**  
**SENIOR CARE PHARMACY SERVICES**  
**HB, INC, SENIOR CARE PHARMACY**  
**SERVICES FAIRFIELD INC., AND**  
**SAMITENDU BANERJEE, ONLY**

24 In the Matter of the Statement of Issues  
25 Against:  
26 **SENIOR CARE PHARMACY SERVICES,**  
27 **INC.,**  
28 Respondent.

Case No. 6409

In the Matter of the Statement of Issues  
Against:

Case No. 6156

**SENIOR CARE PHARMACY SERVICES  
HB, INC.,**

Respondent.

In the Matter of the Accusation Against:

Case No. 6161

**SENIOR CARE PHARMACY SERVICES  
FAIRFIELD INC., KIM E. BANERJEE,  
SAMITENDU BANERJEE, ANTONY P.  
THEKKEK, and PREMA P. THEKKEK,  
OWNERS AND OFFICERS,**

OAH No. 2020110031

**SAMITENDU BANERJEE,**

**VAN THAO MY NGUYEN,**

**KALI WONG,**

Respondents.

The following stipulation is agreed to by and resolves administrative cases and civil matters pending as to Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, only. It does not apply to or alter the administrative cases pending or resolved against Respondents Alpesh Patel, Po-An Lu, Kenny Tran, Van Thao My Nguyen, or Kali Wong.

IT IS HEREBY STIPULATED AND AGREED by and between the above-named parties to the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Desiree I. Kellogg and Kristen T. Dalessio, Deputy Attorneys General, in Case Nos. 6175, 6409 and 6156, and by Michael B. Franklin, Deputy Attorney General, in Case No. 6161.

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1           2.     Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., and  
2 Senior Care Pharmacy Services Fairfield Inc., are acting in this proceeding through Samitendu  
3 Banerjee, officer and director of Senior Care Pharmacy Services, Inc. and shareholder, officer and  
4 director of Senior Care Pharmacy Services HB, Inc. and Senior Care Pharmacy Services Fairfield  
5 Inc., who has been designated and authorized to enter into this agreement on their behalf.

6           3.     Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc.,  
7 Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, are represented in this  
8 proceeding by attorney Rachel L Fiset of Zweiback, Fiset & Coleman, LLP, whose address is:  
9 523 W. 6<sup>th</sup> Street, Suite 450, Los Angeles, CA 90014.

10          4.     On or about July 25, 2002, the Board issued Pharmacy Permit No. PHY 46000 to  
11 Senior Care Pharmacy Services, Inc., Kim Banerjee and Daniel Zilafro, Shareholders. The  
12 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in  
13 Second Amended Accusation No. 6175 and Second Amended Statement of Issues Nos. 6409 and  
14 6156, and will expire on July 1, 2022, unless renewed.

15          5.     On or about July 1, 2003, the Board issued Sterile Compounding License No. LSC  
16 99060 to Senior Care Pharmacy Services, Inc. The Sterile Compounding License was in full  
17 force and effect at all times relevant to the charges brought in Second Amended Accusation No.  
18 6175 and Second Amended Statement of Issues No. 6409. On or about June 9, 2017, the Board  
19 informed Senior Care Pharmacy Services, Inc. that its Sterile Compounding License would not be  
20 renewed. It expired on July 1, 2017.

21          6.     On or about January 23, 2017, the Board received an application for a pharmacy  
22 permit and sterile compounding license from Senior Care Pharmacy Services HB, Inc., Samitendu  
23 Banerjee, Daniel Zilafro, and Kim Banerjee, Shareholders. On March 13, 2017, the Board denied  
24 the application and subsequently filed Second Amended Statement of Issues No. 6156.

25          7.     On or about April 28, 2011, the Board issued Pharmacy Permit No. PHY 50619 to  
26 Senior Care Pharmacy Services Fairfield Inc., Kim and Samitendu Banerjee, Shareholders. The  
27 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in First  
28 Amended Accusation No. 6161, and will expire on April 1, 2022, unless renewed.

8. On or about August 14, 1996, the Board issued Pharmacist License No. RPH 45184 to Samitendu Banerjee. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Second Amended Accusation No. 6175 and First Amended Accusation No. 6161, and will expire on January 31, 2022, unless renewed.

## JURISDICTION

9. Second Amended Accusation No. 6175 was filed before the Board, and is currently pending against Senior Care Pharmacy Services, Inc. and Samitendu Banerjee. Second Amended Statement of Issues No. 6409 was filed before the Board, and is currently pending against Senior Care Pharmacy Services, Inc. Second Amended Statement of Issues No. 6156 was filed before the Board, and is currently pending against Senior Care Pharmacy Services HB, Inc. Second Amended Accusation No. 6175, Second Amended Statement of Issues No. 6409, and Second Amended Statement of Issues No. 6156, and all other statutorily required documents, were properly served on Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., and Samitendu Banerjee, on April 14, 2020. Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., and Samitendu Banerjee, timely filed Notices of Defense or requests for hearing as to Case Nos. 6175, 6409, and 6156. Copies of Second Amended Accusation No. 6175 and Second Amended Statement of Issues Nos. 6409 and 6156 are attached as Exhibit A and incorporated by reference.

10. First Amended Accusation No. 6161 was filed before the Board, and is currently pending against Senior Care Pharmacy Services Fairfield Inc. and Samitendu Banerjee. First Amended Accusation No. 6161 and all statutorily required documents were properly served on Senior Care Pharmacy Services Fairfield Inc. and Samitendu Banerjee on April 14, 2020. Senior Care Pharmacy Services Fairfield Inc. and Samitendu Banerjee timely filed Notices of Defense as to First Amended Accusation No. 6161. A copy of First Amended Accusation No. 6161 is attached as Exhibit B and incorporated herein by reference.

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1 **PENDING CIVIL PROCEEDINGS**

2 11. There is also now-pending civil litigation between all of the above-named  
3 Respondents, except for Senior Care Pharmacy Services HB, Inc. and Senior Care Pharmacy  
4 Services Fairfield Inc. and the Board.

5 12. Respondents, except for Senior Care Pharmacy Services HB, Inc. and Senior Care  
6 Pharmacy Services Fairfield Inc., and other plaintiffs filed suit against the Board and other  
7 defendants in *Senior Care Pharmacy Services, Inc. et al. v. California Board of Pharmacy, et al.*,  
8 Case No. 30-2020-01140931-CU-PO-CXC in Orange County Superior Court. That case was  
9 decided on the Board's Anti-SLAPP motion, resulting in an award of attorneys' fees and costs of  
10 \$75,643.95 payable by plaintiffs to the Board by order of the Superior Court dated February 26,  
11 2021. Additional proceedings in that case, including debtor examinations and other enforcement  
12 proceedings, are still pending.

13 13. Respondents, except for Senior Care Pharmacy Services HB, Inc. and Senior Care  
14 Pharmacy Services Fairfield Inc., and other plaintiffs appealed that decision to the California  
15 Court of Appeal (Fourth District). That appeal, *Senior Care Pharmacy Services, Inc. et al. v.*  
16 *California Board of Pharmacy, et al.*, Case No. G059651, is partially briefed and still pending  
17 before the California Court of Appeal.

18 **ADVISEMENT AND WAIVERS**

19 14. Respondents have carefully read, fully discussed with counsel, and understand the  
20 charges and allegations in Second Amended Accusation No. 6175, Second Amended Statement  
21 of Issues Nos. 6409 and 6156, and First Amended Accusation No. 6161. Respondents have also  
22 carefully read, fully discussed with counsel, and understand this Stipulated Surrender of Licenses  
23 and Order.

24 15. Respondents are fully aware of their legal rights in this matter, including the right to a  
25 hearing on the charges and allegations in the Second Amended Accusation, Second Amended  
26 Statements of Issues, and the First Amended Accusation; the right to confront and cross-examine  
27 the witnesses against them; the right to present evidence and to testify on their own behalf; the  
28 right to the issuance of subpoenas to compel the attendance of witnesses and the production of



documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

16. Respondents are also fully aware of their legal rights in the pending civil matters, including to pursue their appeal in Court of Appeal Case No. G059651, and any remaining rights in Orange County Superior Court Case No. 30-2020-01140931-CU-PO-CXC, or otherwise.

17. Respondents hereby voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

#### **SATISFACTION AND DISMISSAL OF PENDING CIVIL PROCEEDINGS**

18. Respondents acknowledge and accept their obligation to pay to the Board the award of attorneys' fees and costs of \$75,643.95 ordered in Orange County Superior Court Case No. 30-2020-01140931-CU-PO-CXC. In partial consideration for this agreement, the Board agrees to the following discount for early payment: if the entire debt is paid within ninety (90) days of the effective date of the Decision and Order issued by the Board in this matter, the Board will accept \$71,861.75 (a 5% reduction) in full satisfaction of this obligation. Failure to make full payment within that time period will cause the obligation to revert to the full amount of \$75,643.95.

19. Respondents agree that, within five (5) days of the effective date of a decision in this case, they will cause to be filed papers necessary to waive and abandon all rights they may have to contest or appeal that award or otherwise continue litigating. This will include the filing of a Request for Dismissal (Form CIV-110), with prejudice, in Orange County Superior Court Case No. 30-2020-01140931-CU-PO-CXC, and the filing of a Stipulated Request for Dismissal, also with prejudice, in California Court of Appeal Case No. G059651. The filing of the dismissals will not excuse Respondents from the obligation to pay the award of attorneys' fees and costs of \$75,643.95 to the Board as ordered by the Superior Court on February 26, 2021, or the reduced amount of \$71,861.75 if full payment is made within ninety (90) days. The Board may enforce the full award in any appropriate court, in addition to any other rights the Board may have.

#### **CULPABILITY**

20. Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services Fairfield, Inc., and Samitendu Banerjee hereby understand and agree that the charges and

1 allegations in Second Amended Accusation No. 6175 and First Amended Accusation No. 6161, if  
2 proven at a hearing, constitute cause for imposing discipline upon their respective Pharmacy  
3 Permits and Pharmacist License. Respondents Senior Care Pharmacy Services, Inc. and Senior  
4 Care Pharmacy Services HB, Inc., hereby understand and agree that the charges and allegations in  
5 Second Amended Statement of Issues Nos. 6409 and 6156, if proven at a hearing, constitute  
6 cause for denial of their applications for Sterile Compounding Licenses and a Pharmacy Permit.

7 21. For the purpose of resolving these cases without the expense and uncertainty of  
8 further proceedings, Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy  
9 Services HB, Inc., Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, hereby  
10 agree that, at a hearing, Complainant could establish a factual basis for the charges and  
11 allegations in Second Amended Accusation No. 6175, Second Amended Statement of Issues Nos.  
12 6409 and 6156, and First Amended Accusation No. 6161, that those charges constitute cause for  
13 discipline or denial, and that Respondents hereby give up their right to contest those charges.

14 22. Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services  
15 HB, Inc., Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, understand that  
16 by signing this stipulation, they enable the Board to issue an order accepting the surrender of their  
17 Pharmacy Permits and Pharmacist License, and affirming license denials, without further process.

### 18 CONTINGENCY

19 23. This stipulation shall be subject to approval by the Board. Respondents understand  
20 and agree that counsel for Complainant and the staff of the Board may communicate directly with  
21 the Board regarding this stipulation and surrender, without notice to or participation by  
22 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that  
23 they may not withdraw their agreement or seek to rescind the stipulation prior to the time the  
24 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
25 Order, this Stipulated Surrender of Licenses and Order shall be of no force or effect, except for  
26 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
27 not be disqualified from further action by having considered this matter.

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24. This Stipulated Surrender of Licenses 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 Licenses 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.

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

26. 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

## AS TO THE SENIOR CARE PHARMACY RESPONDENTS

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 46000, issued to Respondent Senior Care Pharmacy Services, Inc., and Pharmacy Permit No. PHY 50619, issued to Senior Care Pharmacy Services Fairfield Inc., are surrendered and accepted by the Board. However, the surrenders will be stayed for a period of six (6) months from the effective date of the Order adopting this Stipulated Surrender, by which time those pharmacies shall be sold or closed. In addition, for the purposes of ensuring appropriate oversight during the six months that is afforded for sale or closure, Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy Services Fairfield Inc. shall each, within five (5) days of the effective date of this decision: (a) designate a Pharmacist-in-Charge who is not a Respondent in these proceeding; and (b) retain an independent consultant approved in advance by the Board or its designee, at Respondents' expense, who shall be responsible for conducting inspections to review the operations of the pharmacies on a monthly basis for compliance with state and federal pharmacy and drug laws.

1. In the event that Respondent Senior Care Pharmacy Services, Inc. or Respondent Senior Care Pharmacy Services Fairfield Inc. is not sold within six months from the effective date of this decision, any unsold pharmacy shall, within ten (10) days of the lapse of six months from

1 the effective date, arrange for the destruction of, the transfer to, sale of, or storage in a facility  
2 licensed and approved by the Board, all controlled substances and dangerous drugs and/or  
3 dangerous devices. The pharmacy shall further arrange for the transfer of all records of  
4 acquisition and disposition of dangerous drugs to premises licensed and approved by the Board.  
5 The pharmacy shall further provide written proof of such disposition and submit a completed  
6 Discontinuance of Business form according to Board guidelines.

7       2. In the event that Respondent Senior Care Pharmacy Services, Inc. or Respondent  
8 Senior Care Pharmacy Services Fairfield Inc. is not sold within six months from the effective date  
9 of this decision, any unsold pharmacy shall also, within ten (10) days of the lapse of six months  
10 from the effective date, arrange for the continuation of care for ongoing patients of the pharmacy  
11 by, at minimum, providing a written notice to ongoing patients that specifies the anticipated  
12 closing date of the pharmacy and that identifies one or more area pharmacies capable of taking up  
13 the patients' care, and by cooperating as may be necessary in the transfer of records or  
14 prescriptions for ongoing patients. Within five (5) days of its provision to ongoing patients, the  
15 pharmacy shall provide a copy of the written notice to the Board. "Ongoing patients" means those  
16 patients for whom the pharmacy has on file a prescription with one or more refills outstanding, or  
17 for whom the pharmacy has filled a prescription within the prior ninety days.

18       3. The surrender of Respondent Senior Care Pharmacy Services, Inc.'s and Respondent  
19 Senior Care Pharmacy Services Fairfield Inc.'s Pharmacy Licenses and the acceptance of the  
20 surrendered licenses by the Board shall constitute the imposition of discipline against  
21 Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy Services Fairfield  
22 Inc. This stipulation constitutes a record of the discipline and shall become a part of Respondent  
23 Senior Care Pharmacy Services, Inc.'s and Respondent Senior Care Pharmacy Services Fairfield  
24 Inc.'s license history with the Board of Pharmacy.

25       4. Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
26 Services Fairfield Inc. shall lose all rights and privileges as pharmacies in California as of the  
27 effective date of the Board's Decision and Order.

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1           5.     Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
2 Services Fairfield Inc. are jointly and severally liable with all other Respondents in these matters,  
3 for the costs of investigation and prosecution in case numbers 6175 and 6161. Neither shall be  
4 issued a new or reinstated license until the Board has received payment of its costs of  
5 investigation and enforcement in the amount of \$640,267.25.

6           6.     Pursuant to Business and Professions Code section 4307, the following shall be  
7 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,  
8 or partner of any entity licensed by the Board until Respondent Senior Care Pharmacy Services,  
9 Inc. and Respondent Senior Care Pharmacy Services Fairfield Inc.'s pharmacy licenses are  
10 reissued or reinstated: Respondent Senior Care Pharmacy Services, Inc.; Respondent Senior Care  
11 Pharmacy Services Fairfield Inc.; owners and/or officers Kim Banerjee and Samitendu Banerjee.

12           7.     Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
13 Services Fairfield Inc. understand and agree that if they ever file an application for licensure of a  
14 licensed premises or a petition for reinstatement in the State of California, the Board shall treat  
15 the application or petition as a new application for licensure.

16           8.     Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
17 Services Fairfield Inc. may not reapply for any license from the Board for three (3) years from the  
18 effective date of this decision. They stipulate that should they apply for any license from the  
19 Board on or after the effective date of this decision, all allegations set forth in Second Amended  
20 Accusation No. 6175 and First Amended Accusation No. 6161 shall be deemed to be true, correct  
21 and admitted by the applicant when the Board determines whether to grant or deny an application.

22           9.     If either Respondent Senior Care Pharmacy Services, Inc. or Respondent Senior Care  
23 Pharmacy Services Fairfield Inc. applies for any license from the Board, it shall satisfy all  
24 requirements applicable to that license as of the date the application is submitted to the Board.

25           10.    If either Respondent Senior Care Pharmacy Services, Inc. or Respondent Senior Care  
26 Pharmacy Services Fairfield Inc. ever applies or reapplies for a license or certification by any  
27 other health care licensing agency in the State of California, all of the charges and allegations  
28 contained in Second Amended Accusation No. 6175 and First Amended Accusation No. 6161

1 shall be deemed to be true, correct, and admitted by them for the purpose of any Statement of  
2 Issues or any other proceeding seeking to deny or restrict licensure.

3 11. Respondents Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
4 Services Fairfield Inc. shall relinquish their respective pharmacy permits, and any indicia of  
5 licensure issued by the Board, including but not limited to wall and renewal license certificates,  
6 within five (5) days of the lapse of six months from the effective date of this decision.

7 IT IS FURTHER HEREBY ORDERED THAT the denials of the applications for renewal  
8 of Sterile Compounding License No. 99060 by Respondent Senior Care Pharmacy Services, Inc.,  
9 and for a pharmacy permit and sterile compounding license by Respondent Senior Care Pharmacy  
10 Services HB, Inc., are hereby affirmed and made final, as of the effective date of this decision,  
11 and this will finally resolve Statement of Issues Case Nos. 6409 and 6156.

12 **AS TO RESPONDENT SAMITENDU BANERJEE**

13 IT IS FURTHER HEREBY ORDERED that Pharmacist License No. RPH 45184, issued to  
14 Respondent Samitendu Banerjee, is surrendered and accepted by the Board.

15 1. The surrender of the Pharmacist License, and the acceptance of the surrendered  
16 license by the Board, shall constitute the imposition of discipline against Respondent Samitendu  
17 Banerjee. This stipulation constitutes a record of the discipline and shall become a part of  
18 Respondent Samitendu Banerjee's license history with the Board.

19 2. Respondent Samitendu Banerjee shall lose all rights and privileges as a Pharmacist in  
20 California as of the effective date of the Board's Decision and Order. Respondent shall cause to  
21 be delivered to the Board his Pharmacist pocket licenses and, if one was issued, his wall  
22 certificate, on or before the effective date of the Decision and Order.

23 3. Respondent Samitendu Banerjee is jointly and severally liable with all other  
24 Respondents in these matters for the costs of investigation and prosecution in case numbers 6175  
25 and 6161. He shall not be issued a new or reinstated license until the Board has received payment  
26 of its costs of investigation and enforcement in the amount of \$640,267.25.

27 4. Respondent Samitendu Banerjee may not apply for any license, permit, or registration  
28 from the Board for a period of three (3) years from the effective date of the Decision and Order.

1 If he ever applies for licensure or petitions for reinstatement in the State of California, the Board  
2 shall treat it as a new application for licensure. Respondent must comply with all the laws,  
3 regulations and procedures for licensure in effect at the time the application or petition is filed,  
4 and all of the charges and allegations contained in Second Amended Accusation No. 6175 and  
5 First Amended Accusation No. 6161 shall be deemed to be true, correct and admitted by  
6 Respondent when the Board determines whether to grant or deny the application or petition.

7 5. If Respondent Samitendu Banerjee should ever apply or reapply for a license or  
8 certification by any other health care licensing agency in the State of California, all of the charges  
9 and allegations contained in Second Amended Accusation No. 6175 and First Amended  
10 Accusation No. 6161 shall be deemed to be true, correct and admitted by Respondent when the  
11 agency determines whether to grant or deny the application.

#### 12 **ACCEPTANCE**

13 I, Samitendu Banerjee, officer, director and/or shareholder of Senior Care Pharmacy  
14 Services, Inc., Senior Care Pharmacy Services HB, Inc., and Senior Care Pharmacy Services  
15 Fairfield Inc., am acting on those entities' behalf and in my individual capacity. I have carefully  
16 read the above Stipulated Surrender of Licenses and Order and have fully discussed it with my  
17 counsel, Rachel L. Fiset. I understand the stipulation and the effect it will have on my Pharmacist  
18 License, on the Permits issued to Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
19 Services Fairfield Inc., and on the applications filed by Senior Care Pharmacy Services, Inc. and  
20 Senior Care Pharmacy Services HB, Inc. On behalf of myself and on behalf of the above-listed  
21 entities as their authorized representative, I enter into this Stipulated Surrender of Licenses and  
22 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
23 of the Board of Pharmacy.

24 DATED: \_\_\_\_\_

25 SAMITENDU BANERJEE, for himself and  
26 for SENIOR CARE PHARMACY  
27 SERVICES, INC., SENIOR CARE  
28 PHARMACY SERVICES HB, INC., and  
SENIOR CARE PHARMACY SERVICES  
FAIRFIELD INC.

*Respondents*

1 If he ever applies for licensure or petitions for reinstatement in the State of California, the Board  
2 shall treat it as a new application for licensure. Respondent must comply with all the laws,  
3 regulations and procedures for licensure in effect at the time the application or petition is filed,  
4 and all of the charges and allegations contained in Second Amended Accusation No. 6175 and  
5 First Amended Accusation No. 6161 shall be deemed to be true, correct and admitted by  
6 Respondent when the Board determines whether to grant or deny the application or petition.

7 5. If Respondent Samitendu Banerjee should ever apply or reapply for a license or  
8 certification by any other health care licensing agency in the State of California, all of the charges  
9 and allegations contained in Second Amended Accusation No. 6175 and First Amended  
10 Accusation No. 6161 shall be deemed to be true, correct and admitted by Respondent when the  
11 agency determines whether to grant or deny the application.

12 **ACCEPTANCE**

13 I, Samitendu Banerjee, officer, director and/or shareholder of Senior Care Pharmacy  
14 Services, Inc., Senior Care Pharmacy Services HB, Inc., and Senior Care Pharmacy Services  
15 Fairfield Inc., am acting on those entities' behalf and in my individual capacity. I have carefully  
16 read the above Stipulated Surrender of Licenses and Order and have fully discussed it with my  
17 counsel, Rachel L. Fiset. I understand the stipulation and the effect it will have on my Pharmacist  
18 License, on the Permits issued to Senior Care Pharmacy Services, Inc. and Senior Care Pharmacy  
19 Services Fairfield Inc., and on the applications filed by Senior Care Pharmacy Services, Inc. and  
20 Senior Care Pharmacy Services HB, Inc. On behalf of myself and on behalf of the above-listed  
21 entities as their authorized representative, I enter into this Stipulated Surrender of Licenses and  
22 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
23 of the Board of Pharmacy.

24 DATED: August 19th, 2021

Samit Banerjee

25 SAMITENDU BANERJEE, for himself and  
26 for SENIOR CARE PHARMACY  
27 SERVICES, INC., SENIOR CARE  
28 PHARMACY SERVICES HB, INC., and  
SENIOR CARE PHARMACY SERVICES  
FAIRFIELD INC.

*Respondents*



I have read and fully discussed with Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, the terms and conditions and other matters contained in this Stipulated Surrender of Licenses and Order. I approve its form and content.

DATED: \_\_\_\_\_

\_\_\_\_\_  
RACHEL L. Fiset  
*Attorney for Respondents*

**ENDORSEMENT**

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

DATED: \_\_\_\_\_

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
GREGORY J. SALUTE  
Supervising Deputy Attorney General

DESIREE I. KELLOGG  
Deputy Attorney General  
*Attorneys for Complainant*

DATED: \_\_\_\_\_

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
JOSHUA A. ROOM  
Supervising Deputy Attorney General

MICHAEL B. FRANKLIN  
Deputy Attorney General  
*Attorneys for Complainant*

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I have read and fully discussed with Respondents Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services HB, Inc., Senior Care Pharmacy Services Fairfield Inc., and Samitendu Banerjee, the terms and conditions and other matters contained in this Stipulated Surrender of Licenses and Order. I approve its form and content.

DATED: 8/20/2021

*Rachel L. Fiset*

RACHEL L. Fiset

*Attorney for Respondents*

**ENDORSEMENT**

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

DATED: *8/20/21*

Respectfully submitted,

ROB BONTA

*Attorney General of California*

GREGORY J. SALUTE

*Supervising Deputy Attorney General*

DESIREE I. KELLOGG

*Deputy Attorney General*

*Attorneys for Complainant*

DATED: 8/20/2021

Respectfully submitted,

ROB BONTA

*Attorney General of California*

JOSHUA A. ROOM

*Supervising Deputy Attorney General*

*Michael B. Franklin*

MICHAEL B. FRANKLIN

*Deputy Attorney General*

*Attorneys for Complainant*

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## **Exhibit A**

**Second Amended Accusation No. 6175 and  
Second Amended Statement of Issues Nos. 6409 and 6156**

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

9  
10 **BEFORE THE**  
**BOARD OF PHARMACY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 6175

14 **SENIOR CARE PHARMACY SERVICES,**  
15 **INC., KIM BANERJEE AND ALPESH**  
**PATEL OWNERS**  
16 **12600-12601 Hoover Street**  
**Garden Grove, CA 92841**

**SECOND AMENDED ACCUSATION**

17 **Sterile Compounding License No. LSC**  
18 **99060**

19 **Pharmacy Permit No. PHY 46000**

20 **SAMITENDU BANERJEE**  
**P.O. Box 27638**  
21 **Anaheim, CA 92809**

22 **Pharmacist License No. RPH 45184**

23 **ALPESH PATEL**  
**8224 E. Marblehead Way**  
24 **Anaheim, CA 92808**

25 **Pharmacist License No. RPH 48866**

26 **PO-AN LU**  
**17053 Glenford Dr.**  
27 **Hacienda Heights, CA 91745**

28 **Pharmacist License No. RPH 69811**

**KENNY TRAN**  
**12600 Hoover Street**  
**Garden Grove, CA 92841**

**Pharmacy Technician License No.**  
**TCH 57643**

Respondents.

In the Matter of the Statement of Issues  
Against:

**SENIOR CARE PHARMACY SERVICES,**  
**INC.**

**Applicant for Renewal of Sterile**  
**Compounding License**

Respondent.

In the Matter of the Statement of Issues  
Against:

**SENIOR CARE PHARMACY SERVICES**  
**HB, INC.**

**Applicant for Pharmacy Permit and Sterile**  
**Compounding License**

Respondent.

Case No. 6409

**SECOND AMENDED STATEMENT OF**  
**ISSUES**

Case No. 6156

**SECOND AMENDED STATEMENT OF**  
**ISSUES**

Complainant alleges:

### **PARTIES**

1. Anne Sodergren (Complainant) brings this Second Amended Accusation and these Second Amended Statements of Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about July 25, 2002, the Board of Pharmacy issued Pharmacy Permit Number PHY 46000 to Senior Care Pharmacy Services, Inc., with Alpesh Patel designated as the Pharmacist-in-Charge from July 25, 2002 to February 15, 2006, and November 22, 2010, through January 1, 2015, Samitendu Banerjee designated as the Pharmacist-in-Charge from February 15,

1 2006 to November 22, 2010, and from March 1, 2015, to June 1, 2017, Po-An Lu designated as  
2 the Pharmacist-in-Charge from June 1, 2017 to the present. From July 25, 2002, through August  
3 19, 2002, Kim Banerjee was the one hundred percent owner. From August 19, 2002, through the  
4 present, Kim Banerjee was designated as the President and the owner of fifty-five percent of the  
5 outstanding shares, Alpesh Patel as the Chief Operating Officer and owner of thirty-five percent  
6 of the outstanding shares and Daniel Zilafro as the owner of ten percent of outstanding shares  
7 (Senior Care Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to  
8 the charges brought herein and will expire on July 1, 2020, unless renewed.

9 3. On or about July 1, 2003, the Board of Pharmacy issued Sterile Compounding  
10 License Number LSC 99060 to Senior Care Pharmacy. The Sterile Compounding License was in  
11 full force and effect at all times relevant to the charges brought herein and expired on July 1,  
12 2017. On or about June 9, 2017, the Board informed Senior Care Pharmacy that its Sterile  
13 Compounding License would not be renewed. The License was subsequently cancelled.

14 4. On or about January 23, 2017, the Board received an application for a pharmacy  
15 permit and sterile compounding license from Senior Care Pharmacy Services HB, Inc. with Kim  
16 Banerjee, Samitendu Banerjee and Daniel Zilafro identified as the owners of the outstanding  
17 shares (Senior Care Pharmacy Huntington Beach). On or about January 19, 2017, Kim and  
18 Samitendu Banerjee, on behalf of Senior Care Pharmacy Huntington Beach certified under  
19 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
20 application. On or about March 13, 2017, the Board denied Senior Care Pharmacy Huntington  
21 Beach's application.

22 5. On or about March 12, 1992, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 45184 to Samitendu Banerjee (Samitendu Banerjee). The Pharmacist License was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on  
25 January 31, 2022, unless renewed.

26 6. On or about August 14, 1996, the Board of Pharmacy issued Pharmacist License  
27 Number RPH 48866 to Alpesh Patel (Alpesh Patel). The Pharmacist License was in full force  
28

1 and effect at all times relevant to the charges brought herein and will expire on May 31, 2020,  
2 unless renewed.

3 7. On or about September 30, 2013, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 69811 to Po-An Lu (Andy Lu). The Pharmacist License was in full force and  
5 effect at all times relevant to the charges brought herein and will expire on March 31, 2021,  
6 unless renewed.

7 8. On or about July 20, 2004, the Board of Pharmacy issued Pharmacy Technician  
8 Registration Number TCH 57643 to Kenny Tran (Kenny Tran). The Pharmacy Technician  
9 Registration was in full force and effect at all times relevant to the charges brought herein and  
10 will expire on March 31, 2020, unless renewed.

### 11 JURISDICTION

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

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

19 11. Section 4300, subdivision (a), of the Code provides that every license issued by the  
20 Board may be suspended or revoked.

21 12. Section 4300, subdivision (c), of the Code states:

22 The board may refuse a license to any applicant guilty of unprofessional  
23 conduct. The board may, in its sole discretion, issue a probationary license to any  
24 applicant for a license who is guilty of unprofessional conduct and who has met all  
other requirements for licensure. . .

25 ///

26 ///

27 ///

28 ///

13. Section 4300.1, of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

## **STATUTORY AND REGULATORY PROVISIONS**

14. Section 480, subdivision (a)(2) and (3)(A) of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another or substantially injure another.

...

(3)(A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

...

15. Section 4024, subdivision (a) of the Code states:

Except as provided in subdivision (b), 'dispense' means the furnishing of drugs or devices upon a prescription from a physician, dentist, optometrist, podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

16. Section 4037, subdivision (a) of the Code states:

"Pharmacy" means an area, place or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold or dispensed at retail.

17. Section 4081, subdivisions (a), (b) and (d) of the Code states in pertinent part:

(a) All records of manufacture and of sale, acquisition, or disposition of dangerous 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 three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,



dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

...

(d) Pharmacies that dispense nonprescription diabetes test devices pursuant to prescriptions shall retain records of acquisition and sale of those nonprescription diabetes test devices for at least three years from the date of making. The records shall be at all times during business hours open to inspection by authorized officers of the law.

18. Section 4105, subdivisions (a) and (b) of the Code state:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved if the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

19. Section 4110, subdivision (a) of the Code states:

No person shall conduct a pharmacy in the state of California unless he or she has obtained a license from the board. A license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board, may by regulation, determine the circumstances under which a license may be transferred.

20. Section 4113, subdivision (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.

///

///

///

1           21.   Section 4169 subdivisions (a)(2)-(5), of the Code state:

2                   (a) A person or entity shall not do any of the following:

3                   ...

4                   (2) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices that  
5                   the person knew or reasonably should have known were adulterated, as set forth in  
6                   Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104  
7                   of the Health and Safety Code.

8                   (3) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices that  
9                   the person knew or reasonably should have known were misbranded, as defined in  
10                  Section 111335 of the Health and Safety Code.

11                  (4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after  
12                  the beyond use date on the label.

13                  (5) Fail to maintain records of acquisition or disposition of dangerous drugs or  
14                  dangerous devices for at least three years.

15                  ...

16           22.   Section 4300, subdivision (c) of the Code states, in pertinent part:

17                   The board may refuse a license to any applicant guilty of unprofessional  
18                   conduct. The board may, in its sole discretion, issue a probationary license to any  
19                   applicant for a license who is guilty of unprofessional conduct and who has met all  
20                   other requirements for licensure.

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

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

25                   ...

26                   (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
27                   deceit, or corruption, whether the act is committed in the course of relations as a  
28                   licensee or otherwise, and whether the act is a felony or misdemeanor or not.

29                   ...

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

32                   ...

33    ///

34    ///

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

5 ...

6 (q) Engaging in any conduct that subverts or attempts to subvert an  
7 investigation of the board.

8 ...

9 (t) The acquisition of a nonprescription diabetes test device from a person that  
10 the licensee knew or should have known was not the nonprescription diabetes test  
11 device's manufacturer or the manufacturer's authorized distributors as identified in  
12 Section 4160.5.

13 (u) The submission of a reimbursement claim for a nonprescription diabetes test  
14 device to a pharmaceutical benefit manager, health insurer, government agency, or  
15 other third-party payor when the licensee knew or reasonably should have known that  
16 the diabetes test device was not purchased either directly from the manufacturer or  
17 from the nonprescription diabetes test device manufacturer's authorized distributors  
as identified in section 4160.5.

18 24. Section 4302 of the Code states:

19 The board may deny, suspend, or revoke any license where conditions exist in  
20 relation to any person holding 10 percent or more of the ownership interest or where  
21 conditions exist in relation to any officer, director, or other person with management  
22 or control of the license that would constitute grounds for disciplinary action against a  
23 licensee.

24 25. Section 4306.5, subdivision (a) of the Code states, in pertinent part:

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

26 Acts or omissions that involve, in whole or in part, the inappropriate exercise of  
27 his or her education, training, or experience as a pharmacist, whether or not the act or  
28 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  
the board.

29 ...

30 26. Section 4307, subdivision (a) of the Code states that:

31 Any person who has been denied a license or whose license has been revoked  
32 or is under suspension, or who has failed to renew his or her license while it was  
33 under suspension, or who has been a manager, administrator, owner member, officer,  
34 director, associate, or partner of any partnership, corporation, firm, or association  
35 whose application for a license has been denied or revoked, is under suspension or  
36 has been placed on probation, and while acting as the manger, administrator, owner,  
37 member, officer, director, associate, or partner had knowledge or knowingly

1 participated in any conduct for which the license was denied, revoked, suspended, or  
2 placed on probation, shall be prohibited from serving as a manger, administrator,  
owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

6 27. Section 4342, subdivision (a) of the Code states that:

7 The board may institute any action or actions as may be provided by law and  
8 that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations  
9 and drugs that do not conform to the standard and tests as to quality and strength,  
10 provided in the latest edition of the United States Pharmacopoeia or the National  
Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic  
Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and  
Safety Code).

11 28. Health and Safety Code section 111255 states:

12 Any drug or device is adulterated if it has been produced, prepared, packed, or  
13 held under conditions whereby it may have been contaminated with filth, or whereby  
it may have been rendered injurious to health.

14 29. Health and Safety Code section 111295 states:

15 It is unlawful for any person to manufacture, sell, deliver, hold or offer for sale any drug or  
16 device that is adulterated.

17 30. Health and Safety Code section 111330 states:

18 Any drug or device is misbranded if its labeling is false or misleading in any  
19 particular.

20 31. Health and Safety Code section 111335 states:

21 Any drug or device is misbranded if its labeling or packaging does not conform  
22 with the requirements of Chapter 4.

23 32. Health and Safety Code section 111395, subdivision (c) states:

24 Any drug is misbranded in any of the following cases:

25 ...

26 (c) The contents of the original package have been, wholly or partly, removed  
27 and replaced with other material in the package.

28 ///

1 33. Health and Safety Code section 111440 states:

2 It is unlawful for any person to manufacture, sell deliver, hold or offer for sale  
3 any drug or device that is misbranded.

4 34. Section 1707.4 of title 16, California Code of Regulations states:

5 (a) A pharmacy licensed by the board may process a request for refill of a  
6 prescription received by a pharmacy within this state, provided:

7 (1) The pharmacy that is to refill the prescription either has a contract with the  
8 pharmacy which received the prescription or has the same owner as the other  
9 pharmacy.

(2) The prescription container:

10 (A) is clearly labeled with all information required by Section 4076 of the  
11 Business and Professions Code; and

12 (B) clearly shows the name and address of the pharmacy refilling the  
13 prescription and/or the name and address of the pharmacy which receives the refilled  
14 prescription for dispensing to the patient.

15 (3) The patient is provided with written information, either on the prescription  
16 label or with the prescription container, that describes which pharmacy to contact if  
17 the patient has any questions about the prescription or medication.

18 (4) Both pharmacies maintain complete and accurate records of the refill,  
19 including:

(A) the name of the pharmacist who refilled the prescription;

(B) the name of the pharmacy refilling the prescription; and

(C) the name of the pharmacy that received the refill request.

20 (5) The pharmacy which refills the prescription and the pharmacy to which the  
21 refilled prescription is provided for dispensing to the patient shall each be responsible  
22 for ensuring the order has been properly filled.

23 (6) The originating pharmacy is responsible for compliance with the  
24 requirements set forth in Section 1707.1, 1707.2 and 1707.3 of the California Code of  
25 Regulations.

26 (b) Nothing in this section shall be construed as barring a pharmacy from also  
27 filling new prescriptions presented by a patient or patient's agent or transmitted to it  
28 by a prescriber.

///

///

///

1           35. Section 1704 of title 16, California Code of Regulations states:

2           Each person holding a certificate, license, permit, registration or exemption to  
3           practice or engage in any activity in the State of California under any and all laws  
4           administered by the Board shall file a proper and current residence address with the  
5           Board at its office in Sacramento and shall within 30 days notify the Board at its said  
6           office of any and all changes of residence address, giving both the old and new  
7           address.

8           36. Section 1714, subdivisions (b) and (d) of title 16, California Code of Regulations  
9           state:

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

14           ...

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

20           37. Section 1715 of title 16, California Code of Regulations states:

21           (a) The pharmacist-in-charge of each pharmacy as defined under section 4029  
22           or section 4037 of the Business and Professions Code shall complete a self-  
23           assessment of the pharmacy's compliance with federal and state pharmacy law. The  
24           assessment shall be performed before July 1 of every odd-numbered year. The  
25           primary purpose of the self-assessment is to promote compliance through self-  
26           examination and education.

27           (b) In addition to the self-assessment required in subdivision (a) of this section,  
28           the pharmacist-in-charge shall complete a self-assessment within 30 days whenever:

- 29           (1) A new pharmacy permit has been issued, or
- 30           (2) There is a change in the pharmacist-in-charge, and he or she becomes the  
31           new pharmacist-in-charge of a pharmacy.
- 32           (3) There is a change in the licensed location of a pharmacy to a new address.

33           (c) The components of this assessment shall be on Form 17M-13 (Rev. 10/14)  
34           entitled "Community Pharmacy Self-Assessment Hospital Outpatient Pharmacy Self-  
35           Assessment" or and on Form 17M-14 (Rev. 10/14) entitled "Hospital Pharmacy Self-  
36           Assessment" which are hereby incorporated by reference to evaluate compliance with  
37           federal and state laws and regulations.

38           (d) Each self-assessment shall be kept on file in the pharmacy for three years  
39           after it is performed.

1           38. Section 1717.1, subdivisions (a), (b) and (d) of title 16, California Code of  
2 Regulations states:

3           (a) For dangerous drugs other than controlled substances: Two or more  
4 pharmacies may establish and use a common electronic file to maintain required  
5 dispensing information. Pharmacies using such a common file are not required to  
transfer prescriptions or information for dispensing purposes between or among  
pharmacies participating in the same common prescription file.

6           (b) For controlled substances: To the extent permitted by Federal law, two or  
7 more pharmacies may establish and use a common electronic file of prescriptions and  
dispensing information.

8           ...

9           (d) Common electronic files as authorized by this section shall not permit  
10 disclosure of confidential medical information except as authorized by the  
Confidentiality of Medical Information Act (Civil Code 56 et seq.).

11          39. Section 1718 of title 16, California Code of Regulations states:

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

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

16          40. Section 1735.1, subdivision (af), of title 16, California Code of Regulations states:

17           “Segregated sterile compounding area” means a designated space for sterile-to-  
18 sterile compounding where a PEC is located within either a demarcated area (at least  
three foot perimeter) or in a separate room. Such area or room shall not contain and  
19 shall be void of activities and materials that are extraneous to sterile compounding.  
The segregated sterile compounding area shall not be in a location that has unsealed  
20 windows or doors that connect to the outdoors, in a location with high traffic flow, or  
in a location that is adjacent to construction sites, warehouses, or food preparation.  
21 The segregated sterile compounding area shall not have a sink, other than an  
emergency eye-washing station, located within three feet of a PEC. The segregated  
22 sterile compounding area shall be restricted to preparation of sterile-to-sterile  
compounded preparations.

23           (1) The BUD of a sterile drug preparation made in a segregated sterile  
24 compounding area is limited to 12 hours or less as defined by section 1751.8(d).

25           (2) When the PEC in the segregated sterile compounding area is a CAI or a  
CACI and the documentation provided by the manufacturer shows it meets the  
26 requirements listed in section 1751.4(f)(1)-(3), the assigned BUD shall comply with  
section 1751.8(a-b) or (d).

27          ///

1           41. Section 1735.2, subdivision (e)(2)(3)(4)(8) of title 16, California Code of Regulations  
2 states:

3           (e) A drug preparation shall not be compounded until the pharmacy has first  
4 prepared a written master formula document that includes at least the following  
elements:

5           (2) Equipment to be used.

6           (3) The maximum allowable beyond use date for the preparation, and the  
7 rationale or reference source justifying its determination.

8           (4) Inactive ingredients to be used.

9           (8) Instructions for storage and handling of the compounded drug preparation.

10          42. Section 1735.2, subdivision (k) of title 16, California Code of Regulations states:

11           Prior to allowing any drug product preparation to be compounded in a  
12 pharmacy, the pharmacist-in-charge shall complete a self-assessment for  
13 compounding pharmacies developed by the board (Incorporated by reference is  
14 “Community Pharmacy & Hospital Outpatient Pharmacy Compounding Self-  
15 Assessment” Form 17M-39 Rev. 02/12.) as required by Section 1715 of Title 16,  
16 Division 17, of the California Code of Regulations. That form contains a first section  
17 applicable to all compounding, and a second section applicable to sterile injectable  
18 compounding. The first section must be completed by the pharmacist-in-charge  
before any compounding is performed in the pharmacy. The second section must be  
completed by the pharmacist-in-charge before any sterile compounding is performed  
in the pharmacy. The applicable sections of the self-assessment shall subsequently be  
completed before July 1 of each odd-numbered year, within 30 days of the start date  
of a new pharmacist-in-charge or change of location, and within 30 days of the  
issuance of a new pharmacy license. The primary purpose of the self-assessment is to  
promote compliance through self-examination and education.

19          43. Section 1735.3, subdivision (a)(2)(E)(F) of title 16, California Code of Regulations in  
20 pertinent parts states:

21           (a) For each compounded drug preparation, pharmacy records shall include:

22           ...

23           (2) A compounding log consisting of a single document containing all of the  
24 following:

25           ...

26           (E) The quantity of each ingredient used in compounding the drug preparation.

27       ///

28       ///



1 (F) The manufacturer, expiration date and lot number of each component. If  
2 the manufacturer name is demonstrably unavailable, the name of the supplier may be  
3 substituted. If the manufacturer does not supply an expiration date for any  
4 component, the records shall include the date of receipt of the component in the  
5 pharmacy, and the limitations of section 1735.2, subdivision (1) shall apply.

6 44. Section 1735.5, subdivision (c)(10) of title 16, California Code of Regulations states:

7 The policies and procedures shall include at least the following:

8 ...

9 Policies and procedures regarding ensuring appropriate functioning of  
10 refrigeration devices, monitoring refrigeration device temperatures, and actions to  
11 take regarding any out of range temperature variations within the pharmacy.

12 45. Section 1751.3, subdivision (a)(5) of title 16, California Code of Regulations states:

13 (a) Any pharmacy engaged in compounding sterile drug preparations shall  
14 maintain written policies and procedures for compounding. Any material failure to  
15 follow the pharmacy's written policies and procedures shall constitute a basis for  
16 disciplinary action. In addition to the elements required by section 1735.5, there shall  
17 be written policies and procedures regarding the following:

18 ...

19 (5) Compounded sterile drug preparation stability and beyond use dating.

20 46. Section 1751.4, subdivisions (d) and (j), of title 16, California Code of Regulations  
21 states:

22 (d) Cleaning shall be done using a germicidal detergent and sterile water. The  
23 use of a sporicidal agent is required to be used at least monthly.

24 (1) All ISO Class 5 surfaces, work table surfaces, carts, counters, and the  
25 cleanroom floor shall be cleaned at least daily. After each cleaning, disinfection using  
26 a suitable sterile agent shall occur on all ISO Class 5 surfaces, work table surfaces,  
27 carts, and counters.

28 (2) Walls, ceilings, storage shelving, tables, stools, and all other items in the  
ISO Class 7 or ISO Class 8 environment shall be cleaned at least monthly.

(3) Cleaning shall also occur after any unanticipated event that could increase  
the risk of contamination.

(4) All cleaning materials, such as wipers, sponges, and mops, shall be non-  
shedding and dedicated to use in the cleanroom, or ante-area, and segregated sterile  
compounding areas and shall not be removed from these areas except for disposal.

...

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///

(j) Viable surface sampling shall be done at least every six months for all sterile-to-sterile compounding and quarterly for all non-sterile-to-sterile compounding. Viable air sampling shall be done by volumetric air sampling procedures which test a sufficient volume of air (400 to 1,000 liters) at each location and shall be done at least once every six months. Viable surface and viable air sampling shall be performed by a qualified individual who is familiar with the methods and procedures for surface testing and air sampling. Viable air sampling is to be performed under dynamic conditions that simulate actual production. Viable surface sampling is to be performed under dynamic conditions of actual compounding. When the environmental monitoring action levels are exceeded, the pharmacy shall identify the CFUs at least to the genus level in addition to conducting an investigation pursuant to its policies and procedures. Remediation shall include, at minimum, an immediate investigation of cleaning and compounding operations and facility management.

47. Section 1751.7, subdivision (b)(1) of title 16, California Code of Regulations states:

The pharmacy and each individual involved in the compounding of sterile drug preparations must successfully demonstrate competency on aseptic technique and aseptic area practices before being allowed to prepare sterile drug preparations. The validation process shall be carried out in the same manner as normal production, except that an appropriate microbiological growth medium is used in place of the actual product used during sterile preparation. The validation process shall be representative of the types of manipulations, products and batch sizes the individual is expected to prepare and include a media-fill test. The validation process shall be as complicated as the most complex manipulations performed by staff and contain the same amount or greater amount of volume transferred during the compounding process. The same personnel, procedures, equipment, and materials must be used in the testing. Media used must have demonstrated the ability to support and promote growth. Completed medium samples must be incubated in a manner consistent with the manufacturer's recommendations. If microbial growth is detected, then each individual's sterile preparation process must be evaluated, corrective action taken and documented, and the validation process repeated.

48. Section 1751.8, subdivision (d) of title 16, California Code of Regulations states:

(d) The beyond use date shall specify that storage and exposure periods cannot exceed 12 hours where the sterile compounded drug preparation is compounded solely with aseptic manipulations and all of the following apply:

(1) The preparation was compounded entirely within an ISO Class 5 PEC that is located in a segregated sterile compounding area and restricted to sterile compounding activities, using only sterile ingredients, components, and devices, by personnel properly cleansed and garbed; and

(2) The compounding process involves simple transfer of not more than three commercially manufactured packages of sterile nonhazardous preparations or diagnostic radiopharmaceutical preparations from the manufacturer's original containers; and

(3) The compounding process involves not more than two entries into any one container or package (e.g., bag, vial) of sterile infusion solution or administration container/device.

1           49.   Section 1304.11, subdivisions (a) and (c) of title 21, Code of Federal Regulations  
2 state:

3           (a) General requirements. Each inventory shall contain a complete and accurate  
4 record of all controlled substances on hand on the date the inventory is taken, and  
5 shall be maintained in written, typewritten, or printed form at the registered location.  
6 An inventory taken by use of an oral recording device must be promptly transcribed.  
7 Controlled substances shall be deemed to be “on hand” if they are in the possession of  
8 or under the control of the registrant, including substances returned by a customer,  
9 ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the  
10 registrant, and substances in the possession of employees of the registrant and  
11 intended for distribution as complimentary samples. A separate inventory shall be  
12 made for each registered location and each independent activity registered, except as  
13 provided in paragraph (e)(4) of this section. In the event controlled substances in the  
14 possession or under the control of the registrant are stored at a location for which  
15 he/she is not registered, the substances shall be included in the inventory of the  
16 registered location to which they are subject to control or to which the person  
17 possessing the substance is responsible. The inventory may be taken either as of  
18 opening of business or as of the close of business on the inventory date and it shall be  
19 indicated on the inventory.

20           (c) Biennial inventory date. After the initial inventory is taken, the registrant  
21 shall take a new inventory of all stocks of controlled substances on hand at least every  
22 two years. The biennial inventory may be taken on any date which is within two  
23 years of the previous biennial inventory date.

24           50.   Section 1317.40, subdivision (a) of title 21, Code of Federal Regulations states:

25           Manufacturers, distributors, reverse distributors, narcotic treatment programs,  
26 hospitals/clinics with an on-site pharmacy, and retail pharmacies that desire to be  
27 collectors shall modify their registration to obtain authorization to be a collector in  
28 accordance with §1301.52(f) of this chapter. Authorization to be a collector is subject  
to renewal. If a registrant that is authorized to collect ceases activities as a collector,  
such registrant shall notify the Administration in accordance with §1301.52(f) of this  
chapter.

### **COST RECOVERY**

51.   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.

### **FACTUAL ALLEGATIONS**

52.   At all times relevant herein, Alpesh Patel, Samitendu Banerjee and Andy Lu were the  
Pharmacists-in-Charge of Senior Care Pharmacy, Kenny Tran was the Operations Manager of

1 Senior Care Pharmacy, and Alpesh Patel, Daniel Zilafro and Kim Banerjee were the owners of  
2 the majority of outstanding shares of Senior Care Pharmacy.

3 53. Senior Care Pharmacy was a closed door pharmacy which dispensed dangerous  
4 drugs, including controlled substances to patients who resided in assisted living and skilled  
5 nursing facilities.

6 54. Senior Care Pharmacy also compounded and dispensed sterile injectable drug  
7 products to patients who resided in assisted living and skilled nursing facilities.

8 55. On or about January 23, 2017, Senior Care Pharmacy Huntington Beach filed an  
9 application for a pharmacy permit and sterile compounding license. The outstanding shares of  
10 Senior Care Pharmacy Huntington Beach were owned by Kim and Samitendu Banerjee.

11 **Using Unlicensed Entity to Dispense Drugs**

12 56. Novasys Health Systems Private Limited (Novasys) is located in Hyderabad, India  
13 and is not licensed with the Board. From at least 2011 to July 2018, Senior Care Pharmacy  
14 utilized Novasys to dispense dangerous drugs to patients. It provided Novasys with access to  
15 confidential patient medical information in Senior Care Pharmacy's computer software systems  
16 (QS1) and its patient profiles which contained patients' medical, contact and insurance  
17 information, including patient prescription history. Novasys accessed common electronic files  
18 shared with Senior Care Pharmacy to update information relevant to the dispensing of dangerous  
19 drugs.

20 57. With Senior Care Pharmacy's knowledge and consent, Novasys processed new  
21 prescriptions to be dispensed when Senior Care Pharmacy was short-staffed. With Senior Care's  
22 knowledge and consent, Novasys also initiated the process of re-filling prescriptions for  
23 dangerous drugs.

24 58. On May 2, 2018, the Board issued a "cease and desist" order requiring Novasys to  
25 cease and desist practicing any activity under Pharmacy Law which requires licensure, including  
26 initiating the dispensing process for new prescriptions and prescription refills and the sharing of  
27 common electronic files in "QS1" and other electronic files. On May 22, 2018, the Board issued  
28 an order upholding the cease and desist order.

1           59. However, after the issuance of the order upholding the cease and desist order, Senior  
2 Care continued to use Novasys to dispense prescription refills and to share common electronic  
3 files, including in QS1. During a follow-up inspection by the Board in July 2018, Respondents  
4 Lu and Tran falsely represented to Board inspectors that all prescription refills were processed by  
5 employees of Senior Care, but did admit that Novays had access to confidential information of  
6 patients at assisted living or skilled nursing facilities in California.

7           **Dispensing Recycled Drugs**

8           60. From as early as 2012 through at least 2017, Senior Care Pharmacy accepted returns  
9 of dangerous drugs, including controlled substances from skilled nursing and/or assisted living  
10 facilities. It recycled or repackaged the returned dangerous drugs and re-dispensed them. In the  
11 dispensing area of Senior Care Pharmacy, Senior Care Pharmacy maintained plastic containers of  
12 dangerous drugs packaged in “bubble packs or cards,” organized alphabetically by the name of  
13 the drug contained within the bubble card. Some of the bubble cards had tablets missing from  
14 them and some of the bubble cards were marked as returns from skilled nursing or assisted living  
15 facilities. Other bubble packs or cards of dangerous drugs were labeled with the names of other  
16 pharmacies. In the dispensing area and/or the Operations Manager’s Office, Senior Care  
17 Pharmacy also maintained plastic totes of drugs containing prescription drug vials. Trash bags  
18 with “punched out”<sup>1</sup> bubble cards or packs were also found in the back-storage area. There were  
19 also plastic totes that were filled with manufacturer drug bottles (both empty and filled with  
20 drugs) in the dispensing area. Expired drugs were also maintained in the back-storage area.

21           61. Manufacturer drug bottles were overfilled or contained a larger quantity of tablets  
22 than was indicated on the labels of the manufacturing bottles. Insurance billing charges for  
23 dangerous drugs returned from skilled nursing and assisted living facilities were not reversed.

24           62. During the investigation, Kim Banerjee falsely represented to Board inspectors that  
25 while Senior Care Pharmacy accepted returns of drugs from skilled nursing and assisted living  
26 facilities for destruction, Senior Care Pharmacy would not re-dispense them to patients. In

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27           <sup>1</sup> “Punched out” refers to the activity of pharmacy personnel taking drugs out of the  
28 bubble cards or packs. This is a common practice for pharmacies who reuse returned medications  
from skilled nursing and assisted living facilities.

1 contrast, Samitendu Banerjee and pharmacy technicians admitted to Board inspectors that when  
2 drugs were returned from skilled nursing and assisted living facilities, those drugs would be taken  
3 out of their packaging, placed in prescription vials and would go back into active drug stock.

4 63. Senior Care Pharmacy stored the drugs returned from skilled nursing and assisted  
5 living facilities in an area with a temperature of 83 degrees Fahrenheit even though both drug  
6 manufacturers and the United States Pharmacopeia recommend that dangerous drugs be stored at  
7 60 to 77 degrees Fahrenheit. Senior Care Pharmacy continued to store drugs in an area with a  
8 temperature above 77 degrees Fahrenheit even after being informed by the Board inspectors to  
9 cease that practice.

10 64. Controlled substances were not labeled with the name of the medication, strength, lot  
11 number, expiration dates and the initials of the verifying pharmacists in Senior Care Pharmacy's  
12 records. In 2017, drugs in bubble cards were labeled with two separate expiration dates on the  
13 front and back label.

14 65. From January 1, 2015 through June 15, 2017, more dangerous drugs, gabapentin  
15 300mg, risperidone 1mg and metformin 500mg were dispensed than purchased. Again, there  
16 were overages in the inventory of such dangerous drugs as 10,695 capsules of gabapentin 300mg,  
17 4,002 tablets of risperidone 1mg and 7,933.5 tablets of metformin 500mg. There were no records  
18 of acquisition and disposition for the overages of those drugs.

19 66. From September 2014 through 2017, Senior Care Pharmacy was not registered as a  
20 collector of controlled substances with the Drug Enforcement Administration. However, Senior  
21 Care Pharmacy accepted returns of controlled substances.

22 **Failure to Retain Diabetes Test Device Records and Fraudulent Billing of Diabetes**  
23 **Test Devices**

24 67. From July 31, 2017 through December 6, 2017, Senior Care Pharmacy did not retain  
25 the records of acquisition and disposition for nonprescription diabetes test devices it dispensed  
26 pursuant to a prescription.

27 68. From July 31, 2017 through December 6, 2017, Senior Care Pharmacy billed more  
28 nonprescription diabetes test devices than it acquired. Namely, Senior Care Pharmacy billed

33,200 of these diabetes test devices to insurance carriers and/or government agencies more than it purchased.

**Unsafe Compounding of Sterile Injectable Drugs**

69. Between March 23, 2017, and May 15, 2017, Senior Care Pharmacy compounded “sterile to sterile”<sup>2</sup> drug preparations (low and medium risk compounding) for medically fragile patients in skilled nursing facilities and one assisted living facility.

70. Between March 23, 2017, and May 15, 2017, Senior Care Pharmacy dispensed at least 68 sterile drug preparations compounded in a laminar flow hood located in a segregated compounding area, labeled with beyond use dates greater than 12 hours and of those, at least 32 compounded sterile drug preparations where the compounding process involved more than two entries into any one container or package of sterile infusion solution or administration container/device.

71. Senior Care Pharmacy’s assigning of unsafe and illegal expiration dates or “beyond use dates” to their sterile-to-sterile compounds resulted in them compounding 194 compounded sterile preparation units of adulterated drugs on at least 98 occasions. Senior Care Pharmacy dispensed at least 68 units with unsafe beyond use dates over a two-month period (one without a beyond use date).

72. The drugs assigned dangerous beyond use dates were life-saving antibiotics intended to be administered intravenously in order to treat severe systemic bacterial infections and Total Parenteral Nutrition used to feed seriously ill and elderly patients. Patients requiring intravenous antibiotics are typically ill from rapidly progressing infections, have a weak compromised immune system or are not able to process or tolerate oral antibiotics. Administration of sub-potent antibiotic infusions are clinically correlated with treatment failure as well as development of antibiotic resistance. These were the drugs labeled with the improper beyond use date.

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<sup>2</sup> Sterile compounding is the preparation of a drug from chemical or bulk drug substances into a form that will be infused directly into the bloodstream or body tissue. Sterile-to-sterile compounding refers to a situation when a pharmacy uses a sterile “start” ingredient, and compounds it in order to make a sterile end-product.

1           73. Senior Care Pharmacy continued to compound sterile drug preparations after being  
2 told by a Board inspector to stop their practices and they promised under penalty of perjury to do  
3 so).

4           74. Senior Care Pharmacy did not possess written policies and procedures for  
5 compounded sterile preparation stability and beyond use dating and temperature variations.

6           75. Senior Care Pharmacy compounded sterile drug products (i.e., vancomycin  
7 750mg/NS 250ml and vancomycin 1gm/NS/NS 250ml) without first preparing master formulas  
8 which specified a laminar flow hood as equipment, an appropriate beyond use date, sterile water  
9 for injection as an active ingredient and instructions for storage and handling.

10          76. Senior Care Pharmacy compounded and dispensed vancomycin 750mg/NS 250ml  
11 and vancomycin 1gm/NS 250ml without documenting the quantity, manufacturer, expiration date  
12 and lot number of the sterile water for injection used as a component in a compounding log.

13          77. In April 2017, Senior Care Pharmacy did not use a germicidal detergent to clean the  
14 laminar flow hood in the compounding area.

15          78. Between January 1, 2017 and May 9, 2017, Senior Care Pharmacy did not perform  
16 viable air sampling by volumetric sampling procedures.

17          79. Between October 12, 2016 to March 10, 2017, Senior Care Pharmacy performed  
18 media fill validation by incubating for seven days rather than fourteen days.

19          80. On May 15, 2017, the Board issued a Cease and Desist Order to halt Senior Care  
20 Pharmacy's sterile compounding operations. Senior Care Pharmacy agreed to an extension of  
21 that cease and desist order until after the date of the expiration of its Sterile Compounding  
22 License. In June 2017, the Board informed Senior Care Pharmacy that the Board would not  
23 renew Senior Care Pharmacy's sterile compounding license.

24           **Lack of Drug Security and Reporting**

25          81. In 2016 through 2017, pharmacy technicians possessed keys to the areas where  
26 dangerous drugs were stored at Senior Care Pharmacy.

27          82. On February 8, 2016, Senior Care Pharmacy did not possess self-assessments for  
28 compounding and community pharmacies, completed prior to July 1, 2015.



83. In 2019, Senior Care Pharmacy did not possess on-site all of the records of acquisition and disposition for drugs from the last three years.

**Conduct During Investigations**

84. On December 6, 2017, Senior Care Pharmacy refused to allow Board inspectors to conduct an inspection of the entire premises licensed with the Board. Kenny Tran attempted to coerce Board inspectors to sign a statement conceding that Senior Care Pharmacy had not impeded the Board's investigation and waiving the Board's right to inspect drawers and cabinets in the entirety of the licensed premises.

85. On July 11, 2018, while Board inspectors were asking questions about Senior Care Pharmacy's common electronic dispensing files, QS1, Senior Care Pharmacy disconnected the QS1 server and prevented the Board inspectors from completing their inspection that day. Senior Care Pharmacy also altered the initials in QS1 of Novasys employees who processed refills, after the inspection on July 11, 2018.

86. On July 11, 2018, Kenny Tran refused to allow a pharmacy technician to complete and sign a written statement the pharmacy technician intended to provide Board inspectors.

87. On or about October 30, 2019, Po-An Lu refused to provide pharmacy records requested by Board inspectors in connection with the Board's investigation of Senior Care Pharmacy.

**Change in Location of Pharmacy**

88. In 2019, Senior Care Pharmacy changed locations from 12600-12601 Hoover Street to 12600 Hoover Street without filing an application for a change of permit with the Board.

**SECOND AMENDED ACCUSATION**

**FIRST CAUSE FOR DISCIPLINE**

**(Sold, Delivered, Held or Offered for Sale Adulterated Drugs Against All Respondents)**

89. Respondents are subject to disciplinary action under Code section 4301, subdivisions (j) and (o), for violating Health and Safety Code section 111295 and Code section 4169, subdivision (a)(2), in that they sold, delivered, held or offered for sale dangerous drugs (*i.e.*, re-dispensed dangerous drugs), that were adulterated within the meaning of Health and Safety Code

1 section 111255, as set forth in paragraphs 52 through 88, which are incorporated herein by  
2 reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Sale of Pharmaceutical Preparations and Drugs Not in Conformance with Standards and**  
5 **Tests as to Quality and Strength in USP Against All Respondents)**

6 90. Respondents are subject to disciplinary action under Code section 4301, subdivision  
7 (o), for violating Code section 4342, subdivision (a), in that they sold pharmaceutical preparations  
8 and drugs not in conformance with standards and tests as to quality and strength, provided in the  
9 latest edition of the United States Pharmacopoeia, as set forth in paragraphs 52 through 88, which  
10 are incorporated herein by reference.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Received Returns of Controlled Substances Without Proper Registration Against All**  
13 **Respondents)**

14 91. Respondents are subject to disciplinary action under Code section 4301, subdivision  
15 (j), for violating Code of Federal Regulations, title 21, sections 1317.40, subdivision (a), in that  
16 they received returns of controlled substances without being registered as a collector with the  
17 Drug Enforcement Administration, as set forth in paragraphs 52 through 88, which are  
18 incorporated herein by reference.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Sold, Delivered, Held or Offered for Sale Misbranded Drugs All Respondents)**

21 92. Respondents are subject to disciplinary action under Code sections 4301, subdivisions  
22 (j) and (o), for violating Health and Safety Code sections 111330 and 111440 and Code sections  
23 4169, subdivisions (a)(3) and (a)(4), in that they sold, delivered, held or offered for sale  
24 dangerous drugs (*i.e.*, re-dispensed dangerous drugs and/or compounded sterile drug preparations  
25 which were assigned improper beyond use dates), that were misbranded within the meaning of  
26 Health and Safety Code sections 111335 and 111395, subdivision (c), as set forth in paragraphs  
27 52 through 88, which are incorporated herein by reference.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Dishonesty, Fraud or Deceit Against All Respondents)**

3 93. Respondents are subject to disciplinary action under Code section 4301, subdivision  
4 (f), for committing acts involving dishonesty, fraud or deceit, as set forth in paragraphs 52  
5 through 88, which are incorporated herein by reference.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Aiding and Abetting Unlicensed Practice of Pharmacy Against All Respondents)**

8 94. Respondents are subject to disciplinary action under Code section 4301, subdivision  
9 (o), in that, Respondents directly or indirectly, assisted in or abetted the violation of, or conspired  
10 to violate, the laws governing pharmacy, when Respondents solicited, encouraged, assisted in,  
11 abetted, or conspired toward activities violating sections 4110, subdivision (a) and 4037,  
12 subdivision (a) of the Code, when Respondents used an unlicensed entity, Novasys to practice  
13 activities requiring licensure, namely, dispensing as defined by Code section 4024, subdivision  
14 (a), as set forth in paragraphs 52 through 88, which are incorporated herein by reference.

15 **SEVENTH CAUSE FOR DISCIPLINE**

16 **(Sharing Common Files with Unlicensed Entity Against All Respondents)**

17 95. Respondents are subject to disciplinary action under Code sections 4301, subdivision  
18 (o), for violating California Code of Regulations, title 16, section 1717.1, in that Respondents  
19 established and used a common electronic file to maintain required dispensing information with  
20 an unlicensed entity, Novasys and not a pharmacy as defined by section 4037, subdivision (a), as  
21 set forth in paragraphs 52 through 88, which are incorporated herein by reference.

22 **EIGHTH CAUSE FOR DISCIPLINE**

23 **(Processing Requests for Refill of Prescriptions Received by Unlicensed Entity**  
24 **Against All Respondents)**

25 96. Respondents are subject to disciplinary action under Code section 4301, subdivision  
26 (o), for violating California Code of Regulations, title 16, section 1707.4, in that Respondents  
27 processed requests for refills of prescriptions received by an unlicensed entity, Novasys and not a  
28

1 pharmacy as defined by section 4037, subdivision (a), as set forth in paragraphs 52 through 88,  
2 which are incorporated herein by reference.

3 **NINTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct Against All Respondents)**

5 97. Respondents are subject to disciplinary action under Code section 4301 for  
6 unprofessional conduct in that they engaged in the activities described in paragraphs 52 through  
7 88 above, which are incorporated herein by reference.

8 **TENTH CAUSE FOR DISCIPLINE**

9 **(Failure to Maintain Current Inventory and Records of Acquisition and Disposition of**  
10 **Dangerous Drugs and Controlled Substances against Senior Care Pharmacy, Patel, Lu and**  
11 **Banerjee)**

12 98. Respondents Senior Care Pharmacy, Alpesh Patel and Samitendu Banerjee are  
13 subject to disciplinary action under Code section 4301, subdivision (o), for violating Code  
14 sections 4081, subdivision (a) and 4105, subdivision (a) and title 16, California Code of  
15 Regulations, section 1718, in that they did not maintain a current inventory of dangerous drugs  
16 and/or records open for inspection or retained on the premises in a readily retrievable form, as set  
17 forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

18 **ELEVENTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Accurate Inventory of Controlled Substances against Senior Care**  
20 **Pharmacy, Patel and Banerjee)**

21 99. Respondents Senior Care Pharmacy, Alpesh Patel and Samitendu Banerjee are  
22 subject to disciplinary action under Code section 4301, subdivision (j), for violating Code of  
23 Federal Regulations, title 21, sections 1304.11, subdivisions (a) and (c), in that they failed to  
24 maintain a complete and accurate inventory of all controlled substances on hand, as set forth in  
25 paragraphs 52 through 88, which are incorporated herein by reference.

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1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Current Inventory of Dangerous Drugs against Senior Care**  
3 **Pharmacy, Patel and Banerjee)**

4 100. Respondents Senior Care Pharmacy, Alpesh Patel and Samitendu Banerjee are  
5 subject to disciplinary action under Code section 4301(o), for violating Code sections 4081,  
6 subdivision (a), 4169, subdivision (a)(5) and title 16, California Code of Regulations, section  
7 1718, in that they did not maintain a current inventory of gabapentin 300 mg, risperidone 1 mg  
8 and metformin, as set forth in paragraphs 52 through 88 above, which are incorporated herein by  
9 reference.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Security of Drugs against Senior Care Pharmacy, Patel and Banerjee)**

12 101. Respondents Senior Care Pharmacy, Alpesh Patel and Samitendu Banerjee are  
13 subject to disciplinary action under Code section 4301(o), for violating title 16, California Code  
14 of Regulations, section 1714, subdivision (b), in that there was from January 1, 2015 through June  
15 15, 2017 overages of 10,695 capsules of gabapentin 300 mg, 4,002 tablets of risperidone 1mg and  
16 11,933.5 tablets of metformin 500mg, as set forth in paragraphs 52 through 88 above, which are  
17 incorporated herein by reference.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**

19 **(Assignment of Improper Beyond Use Dates to Sterile Injectable Drugs Against Senior Care**  
20 **Pharmacy and Banerjee)**

21 102. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
22 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
23 Regulations, title 16, section 1751.8, subdivision (d) as defined in part by section 1735.1,  
24 subdivision (af) for assigning improper beyond use dates to sterile injectable drug products, as set  
25 forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

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1 **FIFTEENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Possess Policies and Procedures for Compounding Sterile Drug Preparations**  
3 **Against Senior Care Pharmacy and Banerjee)**

4 103. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
5 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
6 Regulations, title 16, sections 1751.3, subdivision (a)(5) and 1735.5, subdivision (c)(10) because  
7 they failed to have written policies and procedures for compounded sterile drug preparation  
8 stability and beyond use dating and for ensuring appropriate function of refrigeration devices,  
9 monitoring refrigeration device temperatures and actions to take regarding any out of range  
10 temperature variations within the pharmacy, as set forth in paragraphs 52 through 88 above,  
11 which are incorporated herein by reference.

12 **SIXTEENTH CAUSE FOR DISCIPLINE**

13 **(Compounded with Incomplete Master Formulas Against Senior Care Pharmacy and**  
14 **Banerjee)**

15 104. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
16 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
17 Regulations, title 16, section 1735.2, subdivision (e)(2)(3)(4)(8), in that they compounded sterile  
18 injectable drug preparations without a written master formula which included at least the  
19 equipment to be used, the maximum allowable beyond use date for the preparation and the  
20 rationale or reference source justifying the beyond use date determination, inactive ingredients to  
21 be used and instructions for storage and the handling of the sterile injectable drug preparations, as  
22 set forth in paragraphs 52 through 88, which are incorporated herein by reference.

23 **SEVENTEENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain Compounding Log Against Senior Care Pharmacy and Banerjee)**

25 105. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
26 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
27 Regulations, title 16, section 1735.3, subdivision (a)(2)(E)(F), in that they compounded sterile  
28 injectable drug preparations without a compounding log which contained the quantity,

1 manufacturer, expiration date and lot number of each component used to compound, as set forth  
2 in paragraphs 52 through 88, which are incorporated herein by reference.

3 **EIGHTEENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Properly Clean Compounding Facility and Equipment Against Senior Care  
5 Pharmacy and Banerjee)**

6 106. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
7 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
8 Regulations, title 16, section 1751.4, subdivision (d), in that they cleaned the laminar flow hood  
9 with 70% isopropyl alcohol and not a germicidal detergent and sterile water, as set forth in  
10 paragraphs 52 through 88, which are incorporated herein by reference.

11 **NINETEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Demonstrate Sterile Compounding Staff's Competency in Aseptic Technique  
13 and Area Practices Against Senior Care Pharmacy and Banerjee)**

14 107. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
15 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
16 Regulations, title 16, section 1751.7, subdivision (b)(1), in that the compounding staff lacked  
17 competency in aseptic technique when they performed media fill validation with an incubation  
18 period of 7 days rather than 14 days as required by the manufacturer, as set forth in paragraphs 52  
19 through 88, which are incorporated herein by reference.

20 **TWENTIETH CAUSE FOR DISCIPLINE**

21 **(Failure to Conduct Viable Air Sampling Against Senior Care Pharmacy and Banerjee)**

22 108. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to  
23 disciplinary action under Code section 4301, subdivision (o), for violating California Code of  
24 Regulations, title 16, section 1751.4, subdivision (j), in that they failed to conduct viable air  
25 sampling every six months for all sterile-to-sterile compounding by volumetric sampling  
26 procedures, as set forth in paragraphs 52 through 88, which are incorporated herein by reference.

27 ///

28 ///

**TWENTY-FIRST CAUSE FOR DISCIPLINE**

**(Failure to Complete Compounding Self-Assessment Against Senior Care Pharmacy and Banerjee)**

109. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to disciplinary action under Code section 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1735.2, subdivision (k), in that Samitendu Banerjee failed to complete a compounding self-assessment prior to July 1, 2015, as set forth in paragraphs 52 through 88, which are incorporated herein by reference.

**TWENTY-SECOND CAUSE FOR DISCIPLINE**

**(Failure to Complete Pharmacy Self-Assessment Against Senior Care Pharmacy and Banerjee)**

110. Respondents Senior Care Pharmacy and Samitendu Banerjee are subject to disciplinary action under Code section 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1715, in that Samitendu Banerjee failed to complete a pharmacy self-assessment prior to July 1, 2015, as set forth in paragraphs 52 through 88, which are incorporated herein by reference.

**TWENTY-THIRD CAUSE FOR DISCIPLINE**

**(Failure to Maintain Diabetes Test Device Records Against Senior Care Pharmacy and Lu)**

111. Respondents Senior Care Pharmacy and Po-An Lu are subject to disciplinary action under Code section 4301, subdivision (o), for violating Code section 4081, subdivision (d), in that Respondents Senior Care Pharmacy and Po-An Lu failed to maintain records for nonprescription diabetes test devices dispensed pursuant to prescriptions, as set forth in paragraphs 52 through 88, which are incorporated herein by reference.

**TWENTY-FOURTH CAUSE FOR DISCIPLINE**

**(Subverting Investigations Against Senior Care Pharmacy, Tran and Lu)**

112. Respondents Senior Care Pharmacy, Kenny Tran and Po-An Lu are subject to disciplinary action under Code section 4301, subdivision (q), for subverting an investigation of the Board when they refused to allow the Board to inspect the entirety of the premises in



December 2017 and July 2018, refused to allow employees to submit written statements during inspections, altered dispensing records, disconnected QS1 and refused to provide all requested records, as set forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

**TWENTY-FIFTH CAUSE FOR DISCIPLINE**

**(Possession of Key to Pharmacy by Pharmacy Technicians Against  
Senior Care Pharmacy, Tran and Lu)**

113. Respondents Senior Care Pharmacy, Kenny Tran and Po-An Lu are subject to disciplinary action under Code section 4301, subdivision (o), for violating California Code of Regulations, title 16, section 1714, subdivision (d) for allowing pharmacy technicians to possess keys to the pharmacy where dangerous drugs and controlled substances are stored, as set forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

**TWENTY-SIXTH CAUSE FOR DISCIPLINE**

**(Failure to Exercise or Implement Best Professional Judgment against  
Patel, Banerjee and Lu)**

114. Respondents Alpesh Patel, Samitendu Banerjee and Po-An Lu are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4306.5, subdivision (a), in that they failed to exercise or implement their best professional judgment when compounding and/or dispensing dangerous drugs, as set forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

**TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

**(Failure to Submit Change of Permit Application against Senior Care Pharmacy and Lu)**

115. Respondents Senior Care Pharmacy and Po-An Lu are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, section 1704, in that they failed to submit a change of permit application when Senior Care Pharmacy changed locations, as set forth in paragraphs 52 through 88 above, which are incorporated herein by reference.

///

1 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Requested Records against Senior Care Pharmacy and Lu)**

3 116. Respondents Senior Care Pharmacy and Po-An Lu are subject to disciplinary action  
4 under Code section 4301(o), for violating Business and Professions Code section 4105,  
5 subdivision (f), in that they failed to provide the Board with all requested records within three  
6 business days of the time the request was made, as set forth in paragraphs 52 through 88 above,  
7 which are incorporated herein by reference.

8 **OTHER MATTERS**

9 117. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY  
10 46000 issued to Senior Care Pharmacy Services, Inc., Senior Care Pharmacy Services, Inc. shall  
11 be prohibited from serving as a manager, administrator, owner, member, officer, director,  
12 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 46000 is placed  
13 on probation or until Pharmacy Permit Number PHY 46000 is reinstated if it is revoked.

14 118. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit  
15 Number PHY 46000 issued to Senior Care Pharmacy Services, Inc. while Kim Banerjee has been  
16 an officer and owner and had knowledge of or knowingly participated in any conduct for which  
17 the licensee was disciplined, Kim Banerjee shall be prohibited from serving as a manager,  
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years  
19 if Pharmacy Permit Number PHY 46000 is placed on probation or until Pharmacy Permit  
20 Number PHY 46000 is reinstated if it is revoked.

21 119. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY  
22 46000 issued to Senior Care Pharmacy Services, Inc. while Alpesh Patel has been an officer and  
23 owner and had knowledge of or knowingly participated in any conduct for which the licensee was  
24 disciplined, Alpesh Patel shall be prohibited from serving as a manager, administrator, owner,  
25 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
26 Number PHY 46000 is placed on probation or until Pharmacy Permit Number PHY 46000 is  
27 reinstated if it is revoked.

120. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 48866 issued to Alpesh Patel, Alpesh Patel shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 48866 is placed on probation or until Pharmacist License Number RPH 48866 is reinstated if it is revoked.

121. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 45184 issued to Samitendu Banerjee, Samitendu Banerjee shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 45184 is placed on probation or until Pharmacist License Number RPH 45184 is reinstated if it is revoked.

122. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 69811 issued to Po-An Lu, Po-An Lu shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 69811 is placed on probation or until Pharmacist License Number RPH 69811 is reinstated if it is revoked.

123. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Technician Registration No. TCH 57643 issued to Kenny Tran, Kenny Tran shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician Registration Number TCH 57643 is placed on probation or until Pharmacy Technician Registration Number TCH 57643 is reinstated if it is revoked.

## DISCIPLINARY CONSIDERATIONS

124. To determine the degree of discipline, if any, to be imposed on Alpesh Patel, Complainant alleges that on June 17, 2017, the Board issued Citation number CI 2014 65695 against Alpesh Patel for violating California Code of Regulations, section 1716 for deviating from the requirements of a prescription. The Board issued a fine which Alpesh Patel paid.

125. To determine the degree of discipline, if any to be imposed on Respondents, Complainant alleges that the Executive Office of the Board issued a Cease and Desist on May 2, 2018 that was upheld in the Decision After Hearing to Contest Cease and Desist Order, effective

May 22, 2018. On May 15, 2017, the Executive Officer of the Board also issued a Cease and Desist Order that was extended by stipulation.

**SECOND AMENDED STATEMENT OF ISSUES AGAINST:**

**SENIOR CARE PHARMACY HUNTINGTON BEACH**

**CAUSE FOR DENIAL**

**(Various)**

126. Respondent Senior Care Pharmacy Huntington Beach's applications are subject to denial under Code sections 480, subdivision (a)(2), 480, subdivision (a)(3)(A), 4300, subdivision (c), 4301, subdivisions (f), (j), (o), (q), (t) and (u) and 4302 for violating the statutes and regulations referenced in the Second Amended Accusation, which are incorporated herein by reference.

**SECOND AMENDED STATEMENT OF ISSUES AGAINST:**

**SENIOR CARE PHARMACY-**

**RENEWAL OF STERILE COMPOUNDING LICENSE**

**CAUSE FOR DENIAL**

**(Various)**

127. Respondent Senior Care Pharmacy's application to renew its sterile compounding license is subject to denial under Code sections 480, subdivision (a)(2), 480, subdivision (a)(3)(A), 4300, subdivision (c), 4301, subdivisions (f), (j), (o), (q), (t) and (u) and 4302 for violating the statutes and regulations referenced in the Second Amended Accusation, which are incorporated herein by reference.

**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 46000, issued to Senior Care Pharmacy Services, Inc.;

2. Revoking or suspending Sterile Compounding License Number LSC 99060, issued to Senior Care Pharmacy Services, Inc.;

1           3.     Prohibiting Senior Care Pharmacy Services, Inc., from serving as a manager,  
2 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
3 Pharmacy Permit Number PHY 46000 is placed on probation or until Pharmacy Permit Number  
4 PHY 46000 is reinstated if Pharmacy Permit Number PHY 46000 issued to Senior Care  
5 Pharmacy Services, Inc. is revoked;

6           4.     Prohibiting Kim Banerjee from serving as a manager, administrator, owner, member,  
7 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number  
8 PHY 46000 is placed on probation or until Pharmacy Permit Number PHY 46000 is reinstated if  
9 Pharmacy Permit Number 46000 issued to Senior Care Pharmacy Services, Inc. is revoked;

10          5.     Revoking or suspending Pharmacist License Number RPH 45184, issued to  
11 Samitendu Banerjee;

12          6.     Prohibiting Samitendu Banerjee 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 45184 is placed on probation or until Pharmacist License Number RPH 45184 is  
15 reinstated if Pharmacist License Number RPH 45111 issued to Samitendu Banerjee is revoked;

16          7.     Revoking or suspending Pharmacist License Number RPH 48866, issued to Alpesh  
17 Patel;

18          8.     Prohibiting Alpesh Patel from serving as a manager, administrator, owner, member,  
19 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number  
20 PHY 46000 is placed on probation or until Pharmacy Permit Number PHY 46000 is reinstated if  
21 Pharmacy Permit Number PHY 46000 issued to Senior Care Pharmacy Services, Inc. is revoked

22          9.     Prohibiting Alpesh Patel from serving as a manager, administrator, owner, member,  
23 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number  
24 RPH 48866 is placed on probation or until Pharmacist License Number RPH 48866 is reinstated  
25 if Pharmacist License Number RPH 48866 issued to Alpesh Patel is revoked;

26          10.    Revoking or suspending Pharmacist License Number RPH 69811, issued to Po-An  
27 Lu;  
28

11. Prohibiting Po-An Lu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 69811 is placed on probation or until Pharmacist License Number RPH 69811 is reinstated if Pharmacist License Number RPH 69811 issued to Po-An Lu is revoked;

12. Revoking or suspending Pharmacy Technician Registration Number TCH 57643, issued to Kenny Tran;

13. Prohibiting Kenny Tran from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Technician Registration Number TCH 57643 is placed on probation or until Pharmacy Technician Registration Number TCH 57643 is reinstated if Pharmacy Technician Registration Number TCH 57643 issued to Kenny Tran is revoked;

14. Ordering Senior Care Pharmacy Services, Inc., Samitendu Banerjee, Alpesh Patel, Po-An Lu and Kenny Tran to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

15. Denying the Application of Senior Care Pharmacy Services, Inc. for the renewal of Sterile Compounding License Number LSC 99060;

16. Denying the Applications of Senior Care Pharmacy Services HB, Inc. for a pharmacy permit and sterile compounding license; and,

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

DATED: April 14, 2020



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

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**Exhibit B**

**First Amended Accusation No. 6161**

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

In the Matter of the Accusation Against:

Case No. 6161

**SENIOR CARE PHARMACY SERVICES  
FAIRFIELD INC., KIM E. BANERJEE,  
SAMITENDU BANERJEE, ANTONY P.  
THEKKEK, and PREMA P. THEKKEK,  
OWNERS AND OFFICERS**  
4950 Fulton Avenue, Suites A & B  
Fairfield, CA 94534,

**FIRST AMENDED ACCUSATION**

**Pharmacy License No. PHY 50619,**

**SAMITENDU BANERJEE**  
P.O. Box 27638  
Anaheim, CA 92809,

**Pharmacist License No. RPH 45184,**

**VAN THAO MY NGUYEN**  
2044 Malden Avenue  
San Jose, CA 95122,

**Pharmacist License No. RPH 66472,**

**KALI WONG**  
3046 Bradshaw Drive  
San Jose, CA 95148,

**Pharmacist License No. RPH 73152,**

Respondents.<sup>1</sup>

<sup>1</sup> The Accusation in this matter named additional Respondents Xiao Zhao (RPH 78051), Jenny Dinh (RPH 69736), Jennifer Chan (RPH 67353), Rebecca Heran aka Rebecca Elaine Wild (RPH 73324), and Caroline Nguyen (RPH 71478). Those Respondents are hereby dismissed.



**PARTIES**

1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity as Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

2. On or about April 28, 2011, the Board issued Original Permit (Pharmacy License) Number PHY 50619 to Senior Care Pharmacy Services Fairfield Inc., Kim E. Banerjee, President and 50% shareholder, Samitendu Banerjee, Chief Executive Officer and 5% shareholder, Antony P. Thekkekk, Vice President and 22% shareholder, Prema P. Thekkekk, Vice President and 22% shareholder (Respondent SCPS Fairfield). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on April 1, 2021, unless renewed.

3. On or about March 12, 1992, the Board issued Pharmacist License Number RPH 45184 to Samitendu Banerjee (Respondent Banerjee). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2022, unless renewed. Between on or about April 28, 2011 and on or about March 1, 2015, Respondent Banerjee served as Pharmacist in Charge (PIC) for Respondent SCPS Fairfield.

4. On or about October 27, 2011, the Board issued Pharmacist License Number RPH 66472 to Van Thao My Nguyen (Respondent Van Nguyen). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2021, unless renewed. Between on or about March 1, 2015 and on or about July 28, 2016, Respondent Van Nguyen served as PIC for Respondent SCPS Fairfield.

5. On or about August 27, 2015, the Board issued Pharmacist License Number RPH 73152 to Kali Wong (Respondent Wong). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2020, unless renewed. Between on or about August 15, 2016 and on or about February 2, 2018, Respondent Wong served as PIC for Respondent SCPS Fairfield.

**JURISDICTION**

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

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

8. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

9. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a 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.

## STATUTORY PROVISIONS

10. Section 733, subdivision (a), of the Code states:

(a) A licentiate shall not obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

11. Section 4037, subdivision (a), of the Code states:

“Pharmacy” means an area, place or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded. “Pharmacy” includes, but is not limited to, any area, place or premises described in a license issued by the board wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances, dangerous drugs, or dangerous devices are furnished, sold or dispensed at retail.

12. Section 4076, subdivision (a)(2), of the Code states:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

• • •

(2) The directions for the use of the drug.

1           13. Section 4081, subdivisions (a), (b) and (d), of the Code state, in pertinent part:

2           (a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or  
3 dangerous devices shall be at all times during business hours open to inspection by authorized  
4 officers of the law, and shall be preserved for at least three years from the date of making. A  
5 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary  
6 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,  
7 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,  
8 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and  
9 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and  
10 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

14           ...

15           (d) Pharmacies that dispense nonprescription diabetes test devices pursuant to prescriptions  
16 shall retain records of acquisition and sale of those nonprescription diabetes test devices for at  
17 least three years from the date of making. The records shall be at all times during business hours  
18 open to inspection . . .

19           14. Section 4113, subdivision (c), of the Code states:

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

22           15. Section 4169, subdivisions (a)(2)-(a)(5), of the Code state:

23           (a) A person or entity shall not do any of the following:

24           ...

25           (2) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices that the person  
26 knew or reasonably should have known were adulterated, as set forth in Article 2 (commencing  
27 with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

28           ///

1 (3) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices that the person  
2 knew or reasonably should have known were misbranded, as defined in Section 111335 of the  
3 Health and Safety Code.

4 (4) Purchase, trade, sell, or transfer dangerous drugs or dangerous devices after the beyond  
5 use date on the label.

6 (5) Fail to maintain records of acquisition or disposition of dangerous drugs or dangerous  
7 devices for at least three years.

8 16. Section 4301 of the Code states, in pertinent part:

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

12 ...

13 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
14 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
15 whether the act is a felony or misdemeanor or not.

16 ...

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

19 ...

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

24 ...

25 (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the  
26 board.

27 ...

28 ///

1 (t) The acquisition of a nonprescription diabetes test device from a person that the licensee  
2 knew or should have known was not the nonprescription diabetes test device's manufacturer or  
3 the manufacturer's authorized distributors as identified in Section 4160.5.

4 (u) The submission of a reimbursement claim for a nonprescription diabetes test device to a  
5 pharmaceutical benefit manager, health insurer, government agency, or other third-party payor  
6 when the licensee knew or reasonably should have known that the diabetes test device was not  
7 purchased either directly from the manufacturer or from the nonprescription diabetes test device  
8 manufacturer's authorized distributors as identified in section 4160.5.

9 17. Section 4306.5, subdivisions (a) and (c), of the Code state:

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

11 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or  
12 her education, training, or experience as a pharmacist, whether or not the act or omission arises in  
13 the course of the practice of pharmacy or the ownership, management, administration, or  
14 operation of a pharmacy or other entity licensed by the board.

15 ...

16 (c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate  
17 patient, prescription, and other records pertaining to the performance of any pharmacy function.

18 18. Section 4307, subdivision (a), of the Code states:

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

28 ///

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

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

5 19. Section 4332 of the Code states:

6 Any person who fails, neglects, or refuses to maintain the records required by Section 4081  
7 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or  
8 refuses to produce or provide the records within a reasonable time, or who willfully produces or  
9 furnishes records that are false, is guilty of a misdemeanor.

10 20. Health and Safety Code section 111260 states:

11 Any drug or device is adulterated if the methods, facilities, or controls used for its  
12 manufacture, processing, packing, or holding do not conform to, or are not operated or  
13 administered in conformity with current good manufacturing practice to assure that the drug or  
14 device meets the requirements of this part as to safety and has the identity and strength, and meets  
15 the quality and purity characteristics that it purports or is represented to possess.

16 21. Health and Safety Code section 111295 states:

17 It is unlawful for any person to manufacture, sell, deliver, hold or offer for sale any drug or  
18 device that is adulterated.

19 22. Health and Safety Code section 111330 states:

20 Any drug or device is misbranded if its labeling is false or misleading in any particular.

21 23. Health and Safety Code section 111335 states:

22 Any drug or device is misbranded if its labeling or packaging does not conform with the  
23 requirements of Chapter 4.

24 24. Health and Safety Code section 111395, subdivision (c), states:

25 Any drug is misbranded in any of the following cases:

26 ...

27 (c) The contents of the original package have been, wholly or partly, removed and replaced  
28 with other material in the package.

25. Health and Safety Code section 111440 states:

It is unlawful for any person to manufacture, sell deliver, hold or offer for sale any drug or device that is misbranded.

26. 21 U.S.C. § 352, subdivision (g), states:

A drug or device shall be deemed to be misbranded –

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. The method of packing may be modified with the consent of the Secretary. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homoeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the Homoeopathic Pharmacopoeia of the United States, and not those of the United States Pharmacopoeia, except that in the event of inconsistency between the requirements of this paragraph and those of paragraph (e) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) shall prevail.

## REGULATORY PROVISIONS

27. California Code of Regulations, title 16, section 1707.4, states:

(a) A pharmacy licensed by the board may process a request for refill of a prescription received by a pharmacy within this state, provided:

(1) The pharmacy that is to refill the prescription either has a contract with the pharmacy which received the prescription or has the same owner as the other pharmacy.

(2) The prescription container:

(A) is clearly labeled with all information required by Section 4076 of the Business and Professions Code; and

(B) clearly shows the name and address of the pharmacy refilling the prescription and/or the name and address of the pharmacy which receives the refilled prescription for dispensing to the patient.

///

1 (3) The patient is provided with written information, either on the prescription label or with  
2 the prescription container, that describes which pharmacy to contact if the patient has any  
3 questions about the prescription or medication.

4 (4) Both pharmacies maintain complete and accurate records of the refill, including:

5 (A) the name of the pharmacist who refilled the prescription;

6 (B) the name of the pharmacy refilling the prescription; and

7 (C) the name of the pharmacy that received the refill request.

8 (5) The pharmacy which refills the prescription and the pharmacy to which the refilled  
9 prescription is provided for dispensing to the patient shall each be responsible for ensuring the  
10 order has been properly filled.

11 (6) The originating pharmacy is responsible for compliance with the requirements set forth  
12 in Section 1707.1, 1707.2 and 1707.3 of the California Code of Regulations.

13 (b) Nothing in this section shall be construed as barring a pharmacy from also filling new  
14 prescriptions presented by a patient or patient's agent or transmitted to it by a prescriber.

15 28. California Code of Regulations, title 16, section 1711, subdivision (e), states:

16 (e) The primary purpose of the quality assurance review shall be to advance error  
17 prevention by analyzing, individually and collectively, investigative and other pertinent data  
18 collected in response to a medication error to assess the cause and any contributing factors such  
19 as system or process failures. A record of the quality assurance review shall be immediately  
20 retrievable in the pharmacy. The record shall contain at least the following:

21 1. the date, location, and participants in the quality assurance review;

22 2. the pertinent data and other information relating to the medication error(s) reviewed and  
23 documentation of any patient contact required by subdivision (c);

24 3. the findings and determinations generated by the quality assurance review; and,

25 4. recommend changes to pharmacy policy, procedure, systems, or processes, if any.

26 29. California Code of Regulations, title 16, section 1714, subdivisions (b) and (d), state:

27 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
28 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.



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

3 . . .

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

8 30. California Code of Regulations, title 16, section 1716, states:

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

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

14 31. California Code of Regulations, title 16, section 1717.1, subdivision (a), states:

15 (a) For dangerous drugs other than controlled substances: Two or more pharmacies may  
16 establish and use a common electronic file to maintain required dispensing information.  
17 Pharmacies using such a common file are not required to transfer prescriptions or information for  
18 dispensing purposes between or among pharmacies participating in the same common  
19 prescription file.

20 32. California Code of Regulations, title 16, section 1718, states:

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

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

26 33. California Code of Regulations, title 16, section 1793.3, subdivision (a), states:

27 (a) In addition to employing a pharmacy technician to perform the tasks specified in section  
28 1793.2, a pharmacy may employ a non-licensed person to type a prescription label or otherwise

1 enter prescription information into a computer record system, but the responsibility for the  
2 accuracy of the prescription information and the prescription as dispensed lies with the registered  
3 pharmacist who initials the prescription or prescription record. At the direction of the registered  
4 pharmacist, a non-licensed person may also request and receive refill authorization.

5 34. California Code of Regulations, title 22, section 72353, subdivision (d), states:

6 (d) Arrangements shall be made to assure that pharmaceutical services are available to  
7 provide patients with prescribed drugs and biologicals.

8 35. California Code of Regulations, title 22, section 72355, subdivision (a)(1), states:

9 (a) Pharmaceutical service shall include, but is not limited to, the following:

10 (1) Obtaining necessary drugs including the availability of 24-hour prescription service on  
11 a prompt and timely basis . . .

12 36. 21 C.F.R. § 1301.75, subdivision (b), states:

13 (b) Controlled substances listed in Schedules II, III, IV, and V shall be stored in a securely  
14 locked, substantially constructed cabinet. However, pharmacies and institutional practitioners  
15 may disperse such substances throughout the stock of noncontrolled substances in such a manner  
16 as to obstruct the theft or diversion of the controlled substances.

### 17 **COST RECOVERY**

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

### 22 **FACTUAL ALLEGATIONS**

23 38. Respondent SCPS Fairfield is one of three pharmacies licensed with the Board which  
24 include the words “Senior Care” in their names, and which share some or all owners or officers.  
25 The other Senior Care pharmacies are located in Sun Valley, CA and Garden Grove, CA.

26 39. At all times relevant herein, Respondent SCPS Fairfield was a closed-door pharmacy  
27 that contracted to provide pharmacy services to long-term-care facilities including skilled nursing  
28 facilities (SNFs) and assisted living facilities (ALFs) in the San Francisco Bay Area. At least

1 some of these facilities were subject to regulations promulgated under Title 22 of the California  
2 Code of Regulations, relating to circumstances and timelines for provision of patient care, and by  
3 contracting to perform pharmacy services for these facilities, Respondent SCPS Fairfield shared  
4 the responsibility to comply with Title 22 regulations governing delivery of pharmacy services.

5 40. Between 2016 and 2018, Respondent SCPS Fairfield and its operations were the  
6 subjects of several inspections and investigations. These inspections and investigations found  
7 numerous violations of state and federal laws and regulations governing pharmacies. These  
8 violations are grouped by type under the following sub-headings. Under each sub-heading are the  
9 causes for discipline alleged on the basis of those alleged facts, and the alleged respondents.

10 **Using Unlicensed Entity to Dispense Drugs**

11 41. Novasys Health Systems Private Limited (Novasys) is located in Hyderabad, India  
12 and is not licensed with the Board. In or about May 2018, and for an unknown period of time  
13 prior to this date, Respondent SCPS Fairfield utilized Novasys to dispense dangerous drugs to  
14 patients. It provided Novasys with access to confidential patient medical information in  
15 Respondent SCPS Fairfield's computer software systems (QS1) and its patient profiles which  
16 contained patients' medical, contact and insurance information, including patient prescription  
17 history. Novasys accessed common electronic files shared with Respondent SCPS Fairfield to  
18 update information relevant to the dispensing of dangerous drugs.

19 42. With Respondent SCPS Fairfield's knowledge and consent, Novasys processed new  
20 prescriptions to be dispensed when Respondent SCPS Fairfield was short-staffed. With  
21 Respondent SCPS Fairfield's knowledge and consent, Novasys also initiated the process of re-  
22 filling prescriptions for dangerous drugs.

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Aiding and Abetting Unlicensed Practice of Pharmacy**  
25 **Against Respondents SCPS Fairfield and Banerjee)**

26 43. Respondents SCPS Fairfield and Banerjee are subject to disciplinary action under  
27 Code section 4301, subdivision (o), Code section 4037, subdivision (a), and/or California Code of  
28 Regulations, title 16, section 1707.4, subdivision (a), section 1717.1, subdivision (a), and/or

1 section 1793.3 subdivision (a), in that Respondents aided and abetted Novasys, an entity not  
2 licensed by the Board, to act as a pharmacy licensed by the Board, by allowing Novasys to access  
3 Respondent SCPS Fairfield's electronic files, to process prescription refills and to allow non-  
4 licensed individuals to enter prescription information as set forth above in paragraphs 41-42.

5  
6 **Inadequate Records of Diabetic Test Strips**

7 44. On or about December 6, 2017, Board Inspectors conducted an audit of all records of  
8 acquisition and disposition of all Respondent SCPS Fairfield's FreeStyle Lite diabetic test strips  
9 from April 1, 2015 to December 6, 2017. Records showed that Respondent SCPS Fairfield  
10 dispensed a total of 726,600 test strips, but only purchased a total of 4,750 test strips from  
11 wholesale dealers. This resulted in a negative variance of 721,850 test strips.

12 45. Between April 1, 2015 and July 28, 2016, when Respondent Van Nguyen was the  
13 PIC of Respondent SCPS Fairfield, the audit of all records of acquisition and disposition of all  
14 Respondent SCPS Fairfield's FreeStyle Lite diabetic test strips that Respondent SCPS Fairfield  
15 dispensed a total of 512,850, but only purchased a total of 750 test strip from wholesale dealers.  
16 A total of 750 test strips were returned during this time period. This resulted in a negative  
17 variance of 512,850 test strips.

18 46. Between August 15, 2016 and December 6, 2017, when Respondent Wong was the  
19 PIC of Respondent SCPS Fairfield, the audit of all records of acquisition and disposition of all  
20 Respondent SCPS Fairfield's FreeStyle Lite diabetic test strips showed that Respondent SCPS  
21 Fairfield dispensed a total of 197,450 but only purchased a total of 4,000 test strips from  
22 wholesale dealers. A total of 3,900 test strips were returned during this time period. This  
23 resulted in a negative variance of 197,400 test strips.

24 47. On July 17, 2017, an amendment of Code section 4081, subdivision (d), required  
25 pharmacies to retain records of acquisition and sale of nonprescription diabetes test devices and to  
26 have those records available at all times during business hours. Records reviewed by Board  
27 investigators established that from July 17, 2017 to December 6, 2017, Respondent SCPS  
28 Fairfield dispensed a total of 63,250 test strips and had an inventory of 50 test strips on December

6, 2017. Respondent SCPS Fairfield provided no records of purchasing any test strips from any wholesale dealer during this time period.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Failure to Maintain Diabetes Test Device Records**

#### **Against Respondents SCPS Fairfield and Wong)**

48. Respondents SCPS Fairfield and Wong are subject to disciplinary action under Code section 4301, subdivision (o), and/or Code section 4081, subdivision (d), in that Respondent SCPS Fairfield failed to maintain records for nonprescription diabetes test devices dispensed pursuant to prescriptions, as set forth above in paragraphs 44-47.

## **THIRD CAUSE FOR DISCIPLINE**

### **(Acts Involving Dishonesty, Fraud, Deceit, or Corruption**

#### **Against Respondents SCPS Fairfield, Van Nguyen, Wong and Banerjee)**

49. Respondents SCPS Fairfield, Van Nguyen, Wong and Banerjee are subject to disciplinary action under Code section 4301, subdivision (f), in that Respondents dispensed more diabetic test strips than were purchased from wholesale dealers. Respondents billed and dispensed test strips without inventory, as set forth above in paragraphs 44-47.

#### **Inconsistent Expiration Dates – Misbranded Products**

50. On December 6, 2017, Board Inspectors conducted an inspection of Respondent SCPS Fairfield. Inspectors observed prepacked medications ready to be dispensed and found:

a. Labeling for 29 packages of Proponol 10mg had two different expiration dates. The expiration date on the patient labels was June 3, 2018, but the pharmacy's own labels listed December 31, 2018 as the expiration date. Inclusion of two different expiration dates on each of the 29 packages could cause confusion for patients and could lead to the continued use of the medication longer than the appropriate expiration date.

b. Labeling for 68 packages of Clozapine ODT 100mg had two different expiration dates. The expiration date on the patient labels was June 5, 2019, but the pharmacy's own labels listed May 31, 2018 as the expiration date. Inclusion of two different expiration dates on each of the 68

1 packages could cause confusion for patients and could lead to the continued use of the medication  
2 longer than the appropriate expiration date.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Misbranded and/or Expired Products**

5 **Against Respondents SCPS Fairfield and Wong)**

6 51. Respondents SCPS Fairfield and Wong are subject to disciplinary action under Code  
7 section 4301, subdivision (j) and/or (o), Health and Safety Code section 111330 and/or 111440,  
8 and/or Code section 4169, subdivisions (a)(3) and/or (a)(4), in that they sold, delivered, held, or  
9 offered for sale dangerous drugs that were misbranded per Health and Safety Code sections  
10 111335 and 111395, subdivision (c), or expired, as set forth in paragraph 50 above.

11  
12 **Inaccurate Inventory - June 15, 2017 Inspection**

13 52. On June 15, 2017, Board Inspectors conducted an inspection of Respondent SCPS  
14 Fairfield to audit its inventory of gabapentin 300mg capsules, metformin 500mg tablets and  
15 risperidone 1mg tablets. A drug utilization report was requested for a time period of October 1,  
16 2014 to June 14, 2017. Based on the records obtained, an audit revealed the following negative  
17 variance, meaning that Respondent SCPS Fairfield dispensed a greater amount of medications  
18 than were purchased from wholesalers, for each of the three audited medications as follows:

19 a. Gabapentin 300mg, an overage of 48,874 capsules.

20 b. Metformin 500mg, an overage of 4,417.5 tablets.

21 c. Risperidone 1mg, an overage of 6,238.5 tablets.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Failure to Maintain Current Inventory and Records**

24 **Against Respondents SCPS Fairfield, Van Nguyen, Wong and Banerjee)**

25 53. Respondents SCPS Fairfield, Nguyen, Wong and Banerjee are subject to disciplinary  
26 action under Code section 4301, subdivision (j) and/or (o), Code section 4081, subdivision (a),  
27 and/or California Code of Regulations, title 16, section 1718, in that from October 1, 2014 to June  
28

1 14, 2017, overages of 48,874 capsules of gabapentin 300mg, 4,417.5 tablets of metformin 500mg  
2 and 6,238.5 tablets of risperidone 1mg as set forth in paragraph 52 above.

3  
4 **Security, Inventory, Misbranding, Insurance - February 3 and 11, 2016 Inspections**

5 54. During inspections on February 3, 2016, and again on February 11, 2016, Board  
6 Inspectors found cabinets that stored controlled medications, ranging from Schedule II to  
7 Schedule V. These cabinets had no locking mechanism to adequately secure the cabinets.

8 55. On February 3, 2016, Board Inspectors observed medication waste disposal bins,  
9 containing partially used and expired medications, located throughout the pharmacy, accessible to  
10 unlicensed personnel. Controlled and non-controlled drugs were commingled. No records were  
11 located or provided regarding any of the medications found in the waste containers.

12 56. During the inspections on February 3 and February 11, 2016, Board Inspectors found  
13 various medication tablets cut in half. Medications that were halved included: meloxicam 15mg;  
14 Uloric 80mg; Fanapt 10mg; Crestor 20mg; and Crestor 5mg. Cutting these tablets could alter the  
15 intended delivery system, and Inspectors observed uneven splitting of tablets, which would alter  
16 the intended doses of the medications.

17 57. During the inspections on February 3 and February 11, 2016, Board Inspectors  
18 observed multiple stock bottles which contained a greater quantity than indicated on the bottle.  
19 There were no records or documentation kept or provided that indicated lot numbers or expiration  
20 dates were checked prior to overfilling the bottles. Specific examples included:

- 21 a. Uloric 80mg, 2 containers, bottle indicated 30 each (60 total), total 84 tablets/capsules.  
22 b. Fanapt 10mg, 1 container, bottle indicated 60, total 109 tablets/capsules.  
23 c. Fanapt 8mg, 1 container, bottle indicated 60, total 90 tablets/capsules.  
24 d. Valproic Acid 250mg, 2 containers, bottle indicated 200 each (400 total), total 276 .  
25 e. Geodon 60mg, 1 container, bottle indicated 60, total 73.  
26 f. Geodon 20mg, bottle indicated 60, total 121.  
27 g. Toviaz 8mg, bottle indicated 30, total 84.  
28 h. Viread 300mg, bottle indicated 30, total 35.

- i. Crestor 20mg, bottle indicated 90, total 122.
- j. Crestor 10mg, 2 containers, bottle indicated 90 each (180 total), total 227.
- k. Crestor, 5mg, bottle indicated 90, 95 tablets/capsules found.

58. Based on records obtained and observations from the inspections on February 3 and February 11, 2016, Board Inspectors performed an audit of five drugs: Fanapt 8mg; Fanapt 10mg; Valproic Acid 250mg; Geodone 20mg; and Geodone 60mg. Based on the records obtained, an audit revealed the following negative variance, meaning that Respondent SCPS Fairfield dispensed a greater amount of each medication than was purchased from wholesalers:

- a. Fanapt 8mg, an overage of 42 tablets.
- b. Fanapt 10mg, an overage of 125 tablets.
- c. Valproic Acid 250mg, an overage of 3,408 tablets.
- d. Geodone 20mg, an overage of 231 tablets.
- e. Geodone 60mg, an overage of 62 tablets.

59. Based on records obtained and observations from the inspections on February 3 and February 11, 2016, Board Inspectors sampled four patients to determine if insurance claims were reversed when medications were refused at the time of delivery. Records indicated that the medications for the four patients listed below were refused upon delivery and never accepted by the health care facility. Accordingly, the insurance claims should have been reversed. Instead, the following insurance claims had been paid and not subsequently reversed.

- a. Patient HK, Rx # 26172666, Risperidone 0.5mg, filled 8/19/15.
- b. Patient NO, Rx # 26150913, Divalproex 50mg, filled 5/11/15.
- c. Patient KR, Rx # 26172418, Benzotropine 1mg, filled 5/8/15.
- d. Patient LM, Rx # 26176280, Medroxyprogesterone 10mg, filled 4/30/15.

#### **SIXTH CAUSE FOR DISCIPLINE**

##### **(Failure to Maintain Adequate Security**

##### **Against Respondents SCPS Fairfield and Van Nguyen)**

60. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), California Code of Regulations, title 16, section



1 1714, subdivision (b) and/or (d), and/or 21 C.F.R. § 1301.75(b), in that, as set forth in paragraphs  
2 54-55 above, cabinets and bins used to store / dispose of controlled substances were not secured.

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Current Inventory and Records**

5 **Against Respondents SCPS Fairfield and Van Nguyen)**

6 61. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under  
7 Code section 4301, subdivision (j) and/or (o), Code section 4081, subdivision (a), and/or  
8 California Code of Regulations, title 16, section 1718, in that multiple waste bins were observed  
9 without records of the disposed medications, as set forth in paragraph 55 above.

10 **EIGHTH CAUSE FOR DISCIPLINE**

11 **(Adulterated and/or Misbranded Drugs**

12 **Against Respondents SCPS Fairfield and Van Nguyen)**

13 62. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under  
14 Code section 4301, subdivisions (j) and (o), Health and Safety Code sections 111260, 111295,  
15 111330, and/or 111440, and/or Code section 4169, subdivision (a)(2) and/or (a)(3), in that they  
16 sold, delivered, held or offered for sale dangerous drugs that were not intended to be halved that  
17 were cut in half. Medications identified include: meloxicam 15mg; Uloric 80mg; Fanapt 10mg;  
18 Crestor 20mg; and Crestor 5mg, as set forth in paragraph 56 above.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Adulterated and/or Misbranded Drugs**

21 **Against Respondents SCPS Fairfield and Van Nguyen)**

22 63. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under  
23 Code section 4301, subdivisions (j) and (o), Health and Safety Code sections 111260, 111295,  
24 111330, and/or 111440, and/or Code section 4169, subdivision (a)(2) and/or (a)(3), in that they  
25 sold, delivered, held or offered for sale dangerous drugs that were adulterated and/or misbranded  
26 when medication stock bottles were found with a greater amount of medication than was  
27 indicated on the manufacturer labels, as set forth in paragraph 57 above.

28 ///

1 **TENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Current Inventory and Records**

3 **Against Respondents SCPS Fairfield and Van Nguyen)**

4 64. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under  
5 Code section 4301, subdivision (j) and/or (o), Code section 4081, subdivision (a), and/or  
6 California Code of Regulations, title 16, section 1718, in that, as set forth in paragraph 58 above,  
7 between January 15, 2015 and February 11, 2016, an audit revealed inventory overages of 42  
8 tablets of Fanapt 8mg, 125 tablets of Fanapt 10mg, 3408 tablets of Valproic Acid 250mg, 231  
9 tablets of Geodone 20mg, and 62 tablets of Geodone 60mg.

10 **ELEVENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Reverse Insurance Claims for Medications Refused Upon Delivery**

12 **Against Respondents SCPS Fairfield, Van Nguyen and Banerjee)**

13 65. Respondents SCPS Fairfield, Van Nguyen and Banerjee are subject to disciplinary  
14 action under Code section 4301, subdivision (f), for acts involving dishonesty, fraud, deceit, or  
15 corruption, in that Respondents failed to reverse insurance claims for medications refused upon  
16 delivery and returned to the pharmacy, as set forth in paragraph 59 above.

17  
18 **Medication Error and Quality Assurance**

19 66. The Board received a complaint that Respondent SCPS Fairfield had filled a  
20 prescription that was supposed to be valproic acid 250mg/5 ml syrup with metoclopramide 5mg/5  
21 ml syrup. Evidence obtained established that on June 9, 2016, prescription Rx#26241298 for  
22 patient LF<sup>2</sup> was entered into the pharmacy system correctly as valproic acid 250mg/5ml syrup but  
23 was incorrectly dispensed with metoclopramide 5mg/5ml syrup on June 14, 2016.

24 67. During the course of the investigation, the Board Inspector requested a quality  
25 assurance report pertaining to the acknowledged medication error on October 12, October 20,  
26 October 28 and November 4, 2016. Respondent SCPS Fairfield finally provided the quality  
27 assurance report on November 8, 2016, 27 days after it was first requested.

28 <sup>2</sup> Full names will be revealed to Respondents, if requested, during discovery.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Variation from a Prescription**

3 **Against Respondent SCPS Fairfield)**

4 68. Respondent SCPS Fairfield is subject to disciplinary action under Code section 4301,  
5 subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1716, in that on  
6 or about June 9, 2016, a prescription was entered into the pharmacy system as valproic acid  
7 250mg/5ml syrup but was incorrectly dispensed with metoclopramide 5mg/5ml syrup on June 14,  
8 2016, as set forth in paragraph 66 above.

9 **THIRTEENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Comply with Quality Assurance Requirements**

11 **Against Respondent SCPS Fairfield)**

12 69. Respondent SCPS Fairfield is subject to disciplinary action under Code section 4301,  
13 subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1711,  
14 subdivision (e), in that, as set forth in paragraph 67 above, Respondent failed to maintain an  
15 immediately retrievable quality assurance report in the pharmacy, as required.

16  
17 **Medication Errors; Delays in Delivery; and Withholding Narcotic Medications**

18 70. Between January 25, 2016 and July 20, 2016, the Board received several complaints  
19 against Respondent SCPS Fairfield regarding providing the wrong medications and/or the wrong  
20 dosages, delays in the delivery of medications, and withholding narcotic medications. Following  
21 an investigation of all complaint items, the Board Inspectors found the following.

22 71. On or about June 30, 2015, zolpidem 5mg was ordered for patient MC. Respondent  
23 SCPS Fairfield incorrectly filled with zolpidem 10mg (RX#24018142). MC ingested eight (8)  
24 days of the wrong dose.

25 72. On or about August 15, 2015, Respondent SCPS Fairfield dispensed Depakote DR  
26 [divalproex] 500mg tablets without prescriber authorization for patient SSa. On July 8, 2015, SSa  
27 was prescribed Depakote DR 500mg tablets, which were properly filled by Respondent SCPS  
28 Fairfield. On July 22, 2015, SSa was admitted to a hospital, then discharged back to Creekside

1 Behavioral Health on August 6, 2015, with new orders, but no new orders for Depakote DR  
2 500mg tablets. The orders from the previous stay at Creekside should have been removed when  
3 the new orders were entered. In addition, the blister packs for divalproex dispensed October 4,  
4 2015, October 29, 2015 and November 24, 2015, were each misbranded with an incorrect  
5 expiration date. The expiration date for repackaged bubble cards should either be one year from  
6 the date of fill or the actual expiration date of the stock bottle, whichever is less. For the  
7 divalproex dispensed October 4, 2015, the expiration date was December 31, 2017. For the  
8 divalproex dispensed October 29, 2015, the expiration date was January 31, 2018. For the  
9 divalproex dispensed November 24, 2015, the expiration date was December 31, 2017.

10 73. On or about December 23, 2015, Respondent SCPS Fairfield received a refill request  
11 for Ativan 2mg for patient SSm at Creekside. Respondent SCPS Fairfield did not deliver the  
12 drug until January 28, 2016. Patient SSm missed one dose of medication as a result.

13 74. On or about February 8, 2016, Respondent SCPS Fairfield received a prescription  
14 order for Pristiq for patient AAP. Respondent SCPS Fairfield contacted the prescriber late in the  
15 evening at home and made a recommendation to change the prescriber's order from Pristiq to  
16 Effexor because the insurance required AAP to have tried and failed Effexor before Pristiq.  
17 AAP's patient profile indicated that AAP had already tried and failed Effexor from November  
18 2014 to August 2015.

19 75. On or about May 9, 2013, Respondent SCPS Fairfield dispensed a partial fill for  
20 carbamazepine ER 300mg for patient IS because Respondent SCPS Fairfield did not have enough  
21 of the product on hand to fill the entire prescription. Respondent SCPS Fairfield failed to deliver  
22 the balance of the drug until May 14, 2013, causing patient IS to miss three doses.

23 76. On or about June 5, 2013, Respondent SCPS Fairfield dispensed a partial fill for  
24 diazepam 2mg tablets [9 tablets out of 84] for patient RT. Respondent SCPS Fairfield failed to  
25 timely order diazepam 2mg tablets from its wholesaler on June 5 or June 6, 2013, which would  
26 have arrived before RT ran out of medication. Respondent SCPS Fairfield failed to deliver the  
27 balance of the drug until June 10, 2013, causing patient RT to miss five doses.

28 ///

1 77. Between January 20, 2015 and March 16, 2016, Respondent SCPS Fairfield  
2 dispensed Abilify Maintena ER 400 mg to patient GA. The prescription was written for Abilify  
3 Maintena Injection 400 mg intramuscularly every four weeks. The label prepared by Respondent  
4 SCPS Fairfield stated to inject 1ml (400mg) every four weeks. However, 1ml is equivalent to  
5 200mg, not 400mg. These prescriptions were labeled incorrectly, resulting in a half dose.

6 78. On or about April 12, 2016, Respondent SCPS Fairfield received a verbal order for  
7 Ativan for patient ERL. Respondent SCPS Fairfield refused the verbal order and required the  
8 physician to submit a triplicate order instead. As a result, patient ERL went without Ativan until  
9 April 13, 2016 and attacked another patient at Creekside.

10 79. On or about May 6, 2016, Respondent SCPS Fairfield dispensed clozapine 25mg  
11 tablets with directions for patient WB to take three tablets with one tablet of clozapine 100mg  
12 twice daily. One bubble in the bubble pack contained two clozapine 25mg instead of three.

13 80. On or about May 4, 2016, Respondent SCPS Fairfield received an order from LB's  
14 physician to discontinue a prescription for levothyroxine 50mcg for patient LB. Despite this  
15 order to discontinue, Respondent SCPS Fairfield filled an order for levothyroxine 50mcg for  
16 patient LB on May 5, 2016 and delivered it to Creekside for patient LB on May 11, 2016.

17 81. On or about January 11, 2016, Respondent SCPS Fairfield's contracted transporters  
18 delivered medications to Creekside and left a 30 gallon bag of medications unattended in the  
19 hallway of the lockdown Behavior Health Unit for approximately 20 minutes.

#### 20 **FOURTEENTH CAUSE FOR DISCIPLINE**

##### 21 **(Variation from a Prescription**

##### 22 **Against Respondent SCPS Fairfield)**

23 82. Respondent SCPS Fairfield is subject to disciplinary action under Code section 4301,  
24 subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1716, in that on  
25 or about June 30, 2015, as set forth in paragraph 71 above, a prescription was entered correctly as  
26 zolpidem 5mg but was incorrectly dispensed with zolpidem 10mg.

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**FIFTEENTH CAUSE FOR DISCIPLINE**

**(Variation from a Prescription**

**Against Respondents SCPS Fairfield and Van Nguyen)**

83. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1716, in that on or about August 15, 2015, as set forth in paragraph 72 above, Respondent SCPS Fairfield dispensed Depakote DR 500mg tablets without authorization from the prescriber.

**SIXTEENTH CAUSE FOR DISCIPLINE**

**(Misbranded and/or Expired Products**

**Against Respondents SCPS Fairfield and Van Nguyen)**

84. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), Health and Safety Code section 111330 and/or 111440, Code section 4169, subdivisions (a)(3) and/or (a)(4), and/or 21 U.S.C. § 352, in that, as set forth in paragraph 72 above, they sold, delivered, held or offered for sale dangerous drugs with incorrect expiration dates; blister packs for divalproex dispensed October 4, 2015, October 29, 2015, and November 24, 2015, for patient SSa, each bore an incorrect expiration date.

**SEVENTEENTH CAUSE FOR DISCIPLINE**

**(Failure to Timely Dispense Prescription Drugs**

**Against Respondents SCPS Fairfield and Van Nguyen)**

85. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 733, subdivision (a), 4301, subdivisions (j) and (o), and/or California Code of Regulations, title 22, section 72353, subdivision (a), and/or 72355, subdivision (a)(1), in that they failed to timely provide Ativan 2mg for patient SSm as set forth in paragraph 73 above.

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**EIGHTEENTH CAUSE FOR DISCIPLINE**

**(Failure to Consult Appropriate Patient Records**

**Against Respondent SCPS Fairfield)**

86. Respondent SCPS Fairfield is subject to disciplinary action under Code section 4306.5, subdivision (c), in that, as set forth in paragraph 74 above, it failed to review patient AAP's patient profile prior to making a recommendation to change a medication.

**NINETEENTH CAUSE FOR DISCIPLINE**

**(Failure to Timely Dispense Prescription Drugs**

**Against Respondents SCPS Fairfield and Banerjee)**

87. Respondents SCPS Fairfield and Banerjee are subject to disciplinary action under Code section 733, subdivision (a), 4301, subdivisions (j) and (o), and/or California Code of Regulations, title 22, section 72353, subdivision (a), and/or 72355, subdivision (a)(1), in that, as set forth in paragraph 75 above, they failed to timely provide carbamazepine to patient IS.

**TWENTIETH CAUSE FOR DISCIPLINE**

**(Failure to Timely Dispense Prescription Drugs**

**Against Respondents SCPS Fairfield and Banerjee)**

88. Respondents SCPS Fairfield and Banerjee are subject to disciplinary action under Code section 733, subdivision (a), 4301, subdivisions (j) and (o), and/or California Code of Regulations, title 22, section 72353, subdivision (a), and/or 72355, subdivision (a)(1), in that, as set forth in paragraph 76 above, they failed to timely provide diazepam 2mg tablets to patient RT.

**TWENTY-FIRST CAUSE FOR DISCIPLINE**

**(Improperly Labeled Prescription Container**

**Against Respondents SCPS Fairfield and Van Nguyen)**

89. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivisions (j) and/or (o), and/or Code section 4076(a)(2), in that they failed to properly label prescriptions dispensed to patient GA from January 20, 2015 to March 16, 2016, as set forth in paragraph 77 above.

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**TWENTY-SECOND CAUSE FOR DISCIPLINE**

**(Failure to Timely Dispense Prescription Drugs**

**Against Respondents SCPS Fairfield and Van Nguyen)**

90. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 733, subdivision (a), 4301, subdivisions (j) and (o), and/or California Code of Regulations, title 22, section 72353, subdivision (a), and/or 72355, subdivision (a)(1), in that, as set forth in paragraph 78 above, they failed to accept a verbal order for Ativan for patient ERL, unnecessarily delaying delivery of medication pursuant to a valid verbal order.

**TWENTY-THIRD CAUSE FOR DISCIPLINE**

**(Variation from a Prescription**

**Against Respondents SCPS Fairfield and Wong)**

91. Respondents SCPS Fairfield and Wong are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1716, in that on that on May 6, 2016, as set forth in paragraph 85 above, Respondents SCPS Fairfield and Wong dispensed the prescription for Clozapine 25mg for patient WB incorrectly.

**TWENTY-FOURTH CAUSE FOR DISCIPLINE**

**(Variation from a Prescription**

**Against Respondents SCPS Fairfield and Van Nguyen)**

92. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), and/or California Code of Regulations, title 16, section 1716, in that they filled a prescription for levothyroxine 50mcg for patient LB on May 5, 2016 and delivered it to Creekside for patient LB on May 11, 2016, despite the fact that LB's physician had discontinued the prescription on May 4, 2016, as set forth in paragraph 80 above.

**TWENTY-FIFTH CAUSE FOR DISCIPLINE**

**(Failure to Maintain Adequate Security**

**Against Respondents SCPS Fairfield and Van Nguyen)**

93. Respondents SCPS Fairfield and Van Nguyen are subject to disciplinary action under Code section 4301, subdivision (j) and/or (o), California Code of Regulations, title 16, section



1 1714, subdivision (b) and/or (d), in that, as set forth in paragraph 81 above, on or about January  
2 11, 2016, transporters contracted by Respondent SCPS Fairfield left a 30 gallon bag of  
3 medications unattended in the hallway of the lockdown Behavior Health Unit.

4  
5 **PRAYER**

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

8 1. Revoking or suspending Pharmacy Permit Number PHY 50619, issued to Senior Care  
9 Pharmacy Services Fairfield, Inc.;

10 2. Prohibiting Senior Care Pharmacy Services Fairfield, Inc., from serving as a manager,  
11 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if  
12 Pharmacy Permit Number PHY 50619 is placed on probation or until Pharmacy Permit Number  
13 PHY 50619 is reinstated if Pharmacy Permit Number PHY 50619 issued to Senior Care  
14 Pharmacy Services Fairfield, Inc. is revoked;

15 3. Revoking or suspending Original Pharmacist License Number RPH 45184, issued to  
16 Samitendu Banerjee;

17 4. Prohibiting Samitendu Banerjee from serving as a manager, administrator, owner,  
18 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License  
19 Number RPH 45184 is placed on probation or until Pharmacist License Number RPH 45184 is  
20 reinstated if Pharmacist License Number RPH 45184 issued to Samitendu Banerjee is revoked;

21 5. Revoking or suspending Original Pharmacist License Number RPH 66472, issued to  
22 Van Thao My Nguyen;

23 6. Prohibiting Van Thao My Nguyen from serving as a manager, administrator, owner,  
24 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License  
25 Number RPH 66472 is placed on probation or until Pharmacist License Number RPH 66472 is  
26 reinstated if Pharmacist License Number RPH 66472 issued to Van Thao My Nguyen is revoked;


27 7. Revoking or suspending Original Pharmacist License Number RPH 73152, issued to  
28 Kali Wong;

1           8.     Prohibiting Kali Wong from serving as a manager, administrator, owner, member,  
2 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number  
3 RPH 73152 is placed on probation or until Pharmacist License Number RPH 73152 is reinstated  
4 if Pharmacist License Number RPH 73152 issued to Kali Wong is revoked;

5           9.     Ordering Senior Care Pharmacy Services Fairfield, Inc, Samitendu Banerjee, Van  
6 Thao Nguyen and Kali Wong to pay the Board of Pharmacy the reasonable costs of the  
7 investigation and enforcement of this case, pursuant to Business and Professions Code section  
8 125.3; and,

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

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11       DATED:   April 14, 2020



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

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