

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

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

**SENIOR CARE PHARMACY SERVICES INC.,  
SAMITENDU BANERJEE, CEO, ALPESH PATEL, COO,  
KIM BANERJEE, PRESIDENT,  
Pharmacy Permit No. PHY 49798,**

**SENIOR CARE PHARMACY SERVICES SFV INC.,  
SAMITENDU BANERJEE, CEO, ALPESH PATEL, COO,  
KIM BANERJEE, PRESIDENT,  
Pharmacy Permit No. PHY 56057,**

**ALPESH PATEL,  
Registered Pharmacist License No. RPH 48866,**

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

**and**

**PO-AN AKA ANDY LU,  
Registered Pharmacist License No. RPH 69811**

**Respondents.**

**Case No. 6417**

**OAH No. 2020100687**

**and**

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

**SENIOR CARE PHARMACY SERVICES SFV INC.,  
KIM BANERJEE, SAMITENDU BANERJEE  
Community Pharmacy Permit Application Applicant,**

**Respondent.**

**Case No. 6614**

**OAH No. 2020100688**

## DECISION AND ORDER

The attached Corrected Proposed Decision of the Administrative Law Judge 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". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.  
Board President

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

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

**SENIOR CARE PHARMACY SERVICES INC.,**

**SAMITENDU BANERJEE, CEO, ALPESH PATEL, COO,**

**KIM BANERJEE, PRESIDENT**

**Pharmacy License No. PHY 49798,**

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

**SAMITENDU BANERJEE, CEO, ALPESH PATEL, COO,**

**KIM BANERJEE, PRESIDENT**

**Pharmacy License No. PHY 56057,**

**ALPESH PATEL**

**Registered Pharmacist License No. RPH 48866,**

**SAMITENDU BANERJEE**

**Registered Pharmacist License No. RPH 45184,**

**and**

**PO-AN LU AKA ANDY LU**

**Registered Pharmacist License No. RPH 69811**

**Respondents.**

**Case No. 6417**

**OAH No. 2020100687**

**and**

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

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

**KIM BANERJEE, SAMITENDUJ BANERJEE,**

**Community Pharmacy Permit Application Applicant,**

**Respondent.**

**Case No. 6614**

**OAH No. 2020100688**

## **CORRECTED PROPOSED DECISION**

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 10-13, 2021.

Complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs (Complainant) was represented by Langston M. Edwards, Deputy Attorney General.

Respondent Senior Care Pharmacy Services Inc., doing business as Senior Care Pharmacy Services Inc. and as Senior Care Pharmacy Services SFV Inc. (Respondent Pharmacy), Respondent Kim Banerjee, Respondent Samitendu Banerjee, also known as Samit Banerjee, (Respondent Samit Banerjee),<sup>1</sup> and Respondent Po-An Lu, also known as Andy Lu (Respondent Lu) (collectively, Respondents) were represented by Sandra L. Bauer, Attorney at Law. Respondent Alpesh Patel (Respondent Patel) entered into a settlement agreement with the Board.<sup>2</sup>

Respondent Senior Care Pharmacy Services SFV Inc. was not represented at hearing.

---

<sup>1</sup> Respondent Samit Banerjee identified himself during the hearing as "Samit Banerjee."

<sup>2</sup> Official notice is taken of the Department's records, accessible on its website, which contains a copy of the Decision and Order adopted by the Board with respect to Respondent Patel in case numbers 6175 and 6417 (OAH Case Number 2019120088/OAH 2020100687). (Gov. Code, §11515; Evid. Code, §452, subd. (h).)

Testimony and documentary evidence was received.

At the close of hearing, Complainant presented oral closing argument. Respondents requested that they be allowed to submit written closing argument. The ALJ granted the request and provided Respondents until May 21, 2021, to submit written argument and Complainant until June 4, 2021, to submit a reply brief.

On May 19, 2021, Respondents requested an extension to file the briefing. Complainant opposed the request. The request to extend the briefing schedule was granted and Respondents were provided until June 4, 2021, to submit closing argument and Complainant was provided until June 18, 2021, to submit a reply brief.

On June 4, 2021, Respondents requested a second extension of the briefing schedule. The request was denied. The closing argument that was submitted along with the request was marked as exhibit W. Complainant's reply brief was timely received and marked as exhibit 34.

The Joint Statement of the Parties filed on April 28, 2021, was marked for identification and admitted as exhibit 35.

The record was closed, and the matter was submitted on June 18, 2021.

The original Proposed Decision, dated July 13, 2021, was forwarded to the Board.

On August 17, 2021, OAH received the Board's application for technical changes to the Proposed Decision pursuant to California Code of Regulations, title 1, section 1048, subdivision (a). The Board's application was served on Respondents and their counsel, Sandra L. Bauer, the Bauer Law Group, on August 9, 2021. OAH has not received an opposition to the Board's application. The Board's application is granted.

In addition, upon review, the ALJ noted additional corrections/technical changes in the Proposed Decision were appropriate. Those corrections/technical changes are made pursuant to California Code of Regulations, title 1, section 1048, subdivision (c).

A Notice and Order of Correction listing the changes is issued concurrently with this Corrected Proposed Decision.

## **PRELIMINARY MATTERS**

On November 21, 2019, Complainant signed, in her official capacity as Interim Executive Officer, a Statement of Issues against Senior Care Pharmacy Services SFV, Inc, Kim Banerjee (President), Samitendu Banerjee (CEO), (Senior Care SFV), case number 6614 (OAH Case Number 2020100688), denying its application for a Community Pharmacy Permit Application. The Statement of Issues was served on Senior Care SFV on November 25, 2019. On February 10, 2020, Senior Care SFV filed a Notice of Defense.

On October 21, 2020, Complainant filed a motion to consolidate the Statement of Issues with the Accusation in the present matter for hearing. OAH issued a Notice and Order re: Consolidation providing the respondents in both matters an opportunity to oppose the motion. No opposition was received, and the cases were consolidated for hearing.

Subsequent to the consolidation, the Board discovered that Senior Care SFV was not in good standing with the Franchise Tax Board and the Secretary of State, and its corporate status was suspended. Due to its suspended corporate status, Senior Care SFV lacked the capacity to appear in the administrative matter and appeal by filing a Notice of Defense to the Statement of Issues. (See Rev. & Tax Code, §§ 23301, 23301.5;



*Tabarreo v. Superior Court* (2014) 232 Cal.App.4th 849, 862, citing *Sade Shoe Co, v. Oschin & Snyder* (1990) 217 Cal.App.3d 1509, 1512.)

On the first day of hearing, Ms. Bauer moved to be relieved as counsel for Senior Care SFV due to its suspended corporate status. The motion was granted.

Because Senior Care SFV lacked the capacity to file an appeal, the matter was remanded back to the Board pursuant to Government Code section 11520.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1A. On January 16, 2009, the Board issued Original Permit Number PHY 49798 to Respondent Pharmacy to do business as Senior Care Pharmacy Services Inc. at 8000 Wheatland Avenue, Unit 1, Sun Valley, California 91352 (Sun Valley location).

From January 16, 2009, until February 14, 2018, Respondent Kim Banerjee was the Chief Executive Officer (CEO) and 55 percent shareholder; Respondent Patel was the Chief Operating Officer (COO) and 35 percent shareholder; and Daniel Zilafo was a 10 percent shareholder. Respondent Patel was the Pharmacist-in-Charge (PIC) from January 16, 2009, to January 1, 2015, and Respondent Lu was the PIC from January 1, 2015 until February 14, 2018. The license expired on January 1, 2018, and was cancelled on February 14, 2018, pursuant to a change of ownership.

B. On February 13, 2018, the Board issued Original Permit Number PHY 39314 to Respondent Pharmacy to do business as Senior Care Pharmacy Services SFV Inc. at the Sun Valley location. From February 13, 2018, until July 26, 2018, Respondent Kim Banerjee was the President and 100 percent shareholder, and Respondent

Samitendu Banerjee was the Chief Executive Officer (CEO). Respondent Lu was the PIC from February 13, 2018, until July 26, 2018. On July 15, 2018, the license expired.

C. Respondent Pharmacy has had no prior disciplinary action taken against its permit.

2. On March 12, 1992, the Board issued Registered Pharmacist License Number RPH 45184 to Respondent Samitendu Banerjee. The Registered 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. There is no history of prior discipline of the license.

3. On September 30, 2013, the Board of Pharmacy issued Registered Pharmacist License Number RPH 69811 to Respondent Lu. The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2023, unless renewed. There is no history of prior discipline of the license.

4. On November 21, 2019, Complainant filed the original Accusation in her official capacity as Interim Executive Officer. Respondents filed a Notice of Defense, and this hearing ensued.

5. After the hearing commenced, Complainant, through counsel, requested leave to amend the Accusation to include references to Business and Professions Code section 4301, subdivisions (j) and (o). Respondents objected to the amendment and requested a continuance, asserting that they required additional time to review and prepare their defense to the Accusation based on the amendment. Respondents' objection to the amendment was overruled. Pursuant to Government Code section 11507, the Board is permitted to file an amended accusation at "any time before the

matter is submitted for decision. . ." Respondents' motion to continue was also denied based on their failure to establish good cause as required by Government Code section 11524. Business and Professions Code section 4301, subdivisions (j) and (o), were cited on page 4 of the Accusation under "Statutes and Regulations" and no new factual charges were presented. Respondents therefore had notice of the charges they needed to defend against and did not have good cause for the continuance. (Gov. Code, §§11507, 11524.)

6. Complainant was ordered to file and serve the First Amended Accusation, with the requested amendments. Complainant filed the First Amended Accusation on May 12, 2021, which was thereafter marked and admitted for jurisdictional purposes as Exhibit 32.

## **Board Inspections**

7. Karla Retherford-Parreira, Pharm.D. (Inspector Parreira) has been an inspector for the Board since July 2011. She received her Doctor of Pharmacy from the University of the Pacific in 1991 and is licensed as a pharmacist in both California and Nevada. Before becoming an inspector for the Board, Inspector Parreira worked for Longs Drugs, a chain drugstore, first as a staff pharmacist and then as its PIC for 12 years. She then worked for the Tulare Local Healthcare District, a hospital district, as the Director of Retail Pharmacy for approximately eight years. Based on her training and experience, Inspector Parreira is familiar with the laws, regulations, and standards of practice in pharmacy.

8. Inspector Parreira prepared two investigation reports detailing her inspections of the Sun Valley location (also referred to in the exhibits and at hearing as

Sunland) and her contacts with Respondent Pharmacy. Inspector Parreira provided testimony at hearing consistent with the reports' findings.

## **RESPONDENT PHARMACY - ORIGINAL PERMIT NUMBER PHY 49798**

### **February 23, 2016 Inspection**

9. On a date not established by the record, the Drug Enforcement Administration (DEA) contacted the Board and requested the assistance of a Board inspector in conducting an inspection and investigation of Respondent Pharmacy at the Sun Valley location. Inspector Parreira was assigned to assist the DEA.

10. Inspector Parreira and the DEA conducted their initial inspection on February 3, 2016. On the date of the inspection, Respondent Pharmacy was operating at the Sun Valley location under original permit number PHY 49798.

11. When Inspector Parreira and the DEA representatives arrived at the Sun Valley location sometime between 9:00 a.m. and 10:00 a.m., the pharmacy was locked. On the door, Respondent Pharmacy's business hours were listed as Monday through Friday, 12:00 a.m.<sup>3</sup> to 8:00 p.m. (Exh. 7, AGO-153.) Also posted on the door was a paper sign with a phone number to call in case of an emergency. Inspector Parreira called the phone number and was connected to the Senior Care Pharmacy in Garden Grove (Senior Care GG). After identifying herself, Inspector Parreira asked that Respondent

---

<sup>3</sup> Though the business hours posted on the door were from 11:00 a.m. to 8:00 p.m., on the date of the inspection the "1" was covered with the number "2." The investigation report incorrectly indicates that the hours were listed that day as being from 11:00 p.m. to 8:00 p.m. (Exh. 5, A108.)

Pharmacy's PIC contact her. A short while later, Inspector Parreira received a call from Respondent Lu and he agreed to meet her at the Sun Valley location.

12. After Respondent Lu arrived, he let Inspector Parreira and the DEA into the pharmacy. According to Inspector Parreira, it did not look like Respondent Pharmacy was operating at the Sun Valley location. Respondent Pharmacy's compounding room was empty, and the shelving had sparse placement of products. Inspector Parreira also inspected the warehouse connected to the pharmacy, which had records from both Senior Care GG and the Sun Valley location, supplies for the Sun Valley location, old medicine carts, and old emergency kits.

13. Respondent Lu advised Inspector Parreira that: (1) Respondent Pharmacy was a closed-door facility<sup>4</sup> and was open 1 or 2 days per week; (2) Senior Care GG handled the prescription billing for the Sun Valley location; (3) no compounding was performed at the Sun Valley location; (4) Respondent Pharmacy filled an average of 20 to 40 prescriptions per day; (5) drugs were transferred between Respondent Pharmacy and Senior Care GG; and (6) Respondent Pharmacy last filled a prescription on January 18, 2016.

14. Inspector Parreira requested several documents as part of her inspection. The documents included Respondent Pharmacy's self-assessment, invoices, transfer records, logs, and copies of Respondent Pharmacy's policies and procedures. Because Respondent Lu was having difficulty locating many of the requested documents,

---

<sup>4</sup> A closed-door pharmacy is a pharmacy that is not open to the general public and that provides medications to patients in various long-term care facilities, including skilled nursing and residential facilities for the elderly.

Inspector Parreira went over the different responsibilities of a PIC and advised him to review the most current self-assessment on the Board's website which lists the basic elements required for the proper functioning of a pharmacy and provides the different regulations and Code sections which correspond to the different requirements.

15. After review of the records, Inspector Parreira issued three corrections:

- (1) The records for controlled substances listed in Schedules I and II were co-mingled with controlled substances listed in Schedules III, IV and V (21 C.F.R 1304.04, subd. (f));
- (2) the biennial inventory did not indicate whether it was taken at the opening of business or upon the close of business (21 C.F.R 1304.11, subd. (a)); and (3)

Respondent Lu was unable to locate the licensed employee theft or impairment policy. (Bus. & Prof. §, 4104.) Inspector Parreira reviewed the inspection report with Respondent Lu and left him a copy of the report.

### **December 6, 2017 Inspection**

16. On December 6, 2017, Inspector Parreira conducted a second inspection of Respondent Pharmacy. When Inspector Parreira arrived at approximately 9:00 a.m., Respondent Pharmacy was closed. The door of the pharmacy listed its business hours as Monday through Friday, 11:00 a.m. to 8:00 p.m. (Exh. 10, A153.) Respondent Lu arrived at 10:30 a.m. and let Inspector Parreira into the pharmacy.

17. Once inside the pharmacy, Inspector Parreira noticed most of the supplies were gone. There was only one computer in the pharmacy area, and though there were other computer monitors, the processing computers had been removed. There were approximately 30 to 40 stock drug bottles sporadically located on the shelving, no diabetic supplies, and both the refrigerator and the compounding room

was empty. In the connected warehouse, there were old medication carts, emergency kits, bubble packing supplies and pharmacy records in the warehouse.

18. Respondent Lu advised Inspector Parreira that Respondent Pharmacy serviced two homes in Lancaster. The last prescription filled at the Sun Valley location was on June 20, 2016. Though there was a label on the computer printer dated August 10, 2017, it had the Garden Grove location printed on it. Respondent Lu explained that the label was a test label to ensure the printer still worked with the computers gone. He further explained that prescriptions for Respondent Pharmacy were filled by Senior Care GG and that Senior Care GG would bill Respondent Pharmacy for the prescriptions it filled at the end of the year. Respondent Lu stated that he came to the Sun Valley location, once a week to once every other week, to do paperwork and consultation work, not to fill prescriptions.

19. According to Inspector Parreira, paperwork and consultations do not constitute the operation of a pharmacy. Pharmacies are facilities where medications are compounded and prescriptions are dispensed. She also expressed the concern that it was unclear what Respondent Lu was consulting on at the Sun Valley location as it appeared to her that he had no access to the computer system or the computer profiles.

20. At the end of the inspection, Inspector Parreira provided Respondent Lu with a copy of the inspection report, containing a list of questions and reviewed the report with Respondent Lu.

21. On December 21, 2017, Inspector Parreira received responses to the list of questions she provided Respondent Lu from Respondent Pharmacy's attorney, Amber Hannah. Among the responses that pertained to Respondent Pharmacy were

the following: (1) Respondent Pharmacy was owned by Respondent Kim Banerjee; (2) the last order by Respondent Pharmacy for dangerous drugs or devices was placed on June 20, 2016; (3) Senior Care GG ordered diabetic supplies for Respondent Pharmacy pursuant to a management agreement; and (4) the last prescription physically filled by Respondent Pharmacy was on June 20, 2016. (Exh. 13, A197.)

### **CHANGE OF OWNERSHIP**

22. On December 29, 2017, the Board received a community pharmacy permit application from Senior Care SFV at the Sun Valley location. (Exh. 14.) The corporation ownership information listed Respondent Kim Banerjee as the president and Respondent Samitendu Banerjee as the chief executive officer.

23. Inspector Parreira noted in her investigative report that the shareholder information provided with the permit application stated that Respondent Patel's 35 percent shares in the corporation were cancelled on July 23, 2017, and Daniel C. Zilafro's 10 percent shares in the corporation were cancelled on September 23, 2017. (Exh. 5, A112.) She further noted that the Board had not been notified within 30 days of when these shares were cancelled and concluded that Respondent Pharmacy and Respondent Lu violated California Code of Regulations, title 16, section (Regulation) 1709, subdivision (a), due to their failure to notify the Board within 30 days of when their shares had been cancelled.

24. The evidence, however, did not support that conclusion. Though Respondent Pharmacy had a permit to operate as "Senior Care Pharmacy Services SFV, Inc.," Respondent Pharmacy and Senior Care SFV are separate corporations and therefore Respondent Pharmacy had no obligation to report any change in ownership of Senior Care SFV to the Board.



25. On January 1, 2018, Respondent Pharmacy's license was not renewed and expired.

### **NOTICE OF CLOSURE**

26. On January 24, 2018, Inspector Parreira called Senior Care GG and left a message for Respondent Lu to obtain a copy of the management agreement between Respondent Pharmacy and Senior Care Pharmacy Services of Fairfield, Inc. (Senior Care Fairfield) and to clarify the plans for the Sun Valley location and filing a discontinuance of business. She did not receive a return call.

27. On January 29, 2018, Inspector Parreira went to Respondent Pharmacy. On the door, the business hours were still posted as being from 11:00 a.m. to 8:00 p.m., Monday through Friday. Though she waited until 11:30 a.m., no one appeared. Inspector Parreira left a copy of an inspection report and a written notice for the pharmacy being closed for over 120 days. (Exh. 15.)

28. Inspector Parreira then drove to Senior Care GG to hand deliver the written notice to the owner of Respondent Pharmacy. Neither Respondent Kim Banerjee nor Respondent Lu was present. The pharmacist on duty contacted Respondent Samit Banerjee and Inspector Parreira spoke to him over the phone. After Inspector Parreira explained the written notice to him, Respondent Samit Banerjee asked her to postpone it, stating that he had lost business in the Sun Valley area but had retained two facilities in the San Fernando Valley as clients. He also told her that there had been a change in ownership, a new application had been sent to the Board in December and that he had submitted paperwork for a temporary license. Inspector Parreira advised him that she was not familiar with what the licensing department was doing regarding that issue.

29. After speaking with Respondent Banerjee, Inspector Parreira spoke with Kenny Tran, the pharmacy manager. Mr. Tran advised Inspector Parreira that they maintained the Sun Valley location because they expected business to pick back up.

30. On February 20, 2018, Inspector Parreira received an email from Ms. Hannah in response to the January 28, 2018 written notice. In the email, Ms. Hannah stated, in part:

In 2016, the Sun Valley location had a business downturn when three nursing home customers moved to another vendor. The remaining volume of business did not justify a full-time pharmacist at that location. In order to attract new business, Senior Care's Sun Valley location must remain open due to the operational and logistical challenges faced by the Garden Grove location when servicing customers in LA county. A cancellation of the Sun Valley license would be punitive and impact Senior Care's business operations. In order to meet its obligations under Business and Professions § 4312, Senior Care will keep the Sun Valley location open one day a week and have it staffed by a pharmacist and technician beginning March 1, 2018.

(Exh. 16, AGO 213.)

#### **RESPONDENT PHARMACY - ORIGINAL PERMIT NUMBER PHY 56057**

31. On February 13, 2018, the Board issued Respondent Pharmacy a temporary permit (PHY 56057) to do business as Senior Care Pharmacy Services SFV

Inc. at the Sun Valley location. (Exh. 8.) Along with the new permit, a new DEA registration number (FS7433648) was issued to the Sun Valley location.

### **July 11, 2018 Inspection**

32. On July 11, 2018, Inspector Parreira conducted a third inspection of Respondent Pharmacy with the assistance of Respondent Lu. Though the door of the pharmacy still had its business hours posted on the door as being from Mondays to Fridays on 11:00 a.m. to 8:00 p.m., Respondent Lu advised Inspector Parreira that the Sun Valley location was only open on Mondays from 12:00 p.m. to 8:00 p.m.

33. When Inspector Parreira entered the pharmacy, the temperature inside was 85 degrees. Inspector Parreira observed the old pharmacy license posted and the same stock drugs bottles she had observed during the prior inspection on the shelves. Respondent Lu confirmed the drugs had been purchased before the new permit had been issued. Inspector Parreira also saw expired medication on the shelves, totes and bins. Respondent Lu advised Inspector Parreira that all the controlled drugs at Respondent Pharmacy had expired. Both the pharmacy refrigerator and the compounding room were still empty. The warehouse area of the pharmacy also remained unchanged, containing old records, carts and supplies, that had been present during her previous visit. There were computers in both the billing and the pharmacy filling area, which Respondent Lu stated were programmed remotely by an IT (information technology) person. At her request, Respondent Lu tried to log onto the billing computers but was unable to do so.

34. According to Respondent Lu, he was the only employee who worked at the Sun Valley location. If the Sun Valley location had a prescribed drug stocked, he would fill and deliver prescriptions to contracted facilities. If the Sun Valley location

did not have the drug in stock, the prescriptions were either filled at the Senior Care GG or a stock transfer was done between the two locations. The stock transfer would then be documented on the shared computer system.

35. When Inspector Parreira questioned Respondent Lu about the temperature, he stated that he did not think about the temperature being above the required temperature for storage of drug stock and did not run the air conditioning when he was not there. Inspector Parreira instructed Respondent Lu to destroy the drug stock due to the high temperature inside the pharmacy and provide her with proof of destruction.

36. During the inspection, Inspector Parreira determined that there was no self-assessment completed for the change of ownership and a DEA initial inventory had not been completed, as required when the new DEA Registration number was issued. Inspector Parreira instructed Respondent Lu to complete a self-assessment for the new pharmacy license and complete an initial DEA inventory.

37. Inspector Parreira also requested and received several documents as part of her inspection. They included delivery sheets, pharmacy orders, lists of orders filled, prescription label samples and the prior Pharmacy Self-Assessment dated and signed on February 3, 2018. After reviewing the documents, Inspector Parreira created a spreadsheet and was able to determine that, from February 13, 2018, and the inspection on July 11, 2018, the pharmacy filled 56 prescriptions as follows: (1) in February, no prescriptions were filled; (2) in March, 19 prescriptions were filled on a

Thursday (March 15);<sup>5</sup> (3) in April, 20 prescriptions were filled on a Tuesday (April 3), Sunday (April 8), Monday (April 9), and a Friday (April 27); (4) in May, no prescriptions were filled; (5) in June, 10 prescriptions were filled on a Saturday (June 16) and a Sunday (June 17); and (5) in July, seven prescriptions were filled on a Monday (July 9). (Exh. 22.) This information was inconsistent with Respondent Lu's statement to her that the pharmacy was only open on Mondays.

38. On July 12, 2018, Inspector Parreira received the following information from Respondent Lu: (1) a spreadsheet listing the medications that were to be destroyed due to the temperature excursions<sup>6</sup> (summary of drug stock); (2) dispensing record for the Sun Valley location generated from Senior Care GG; (3) a DEA inventory that indicated no controlled substances were in stock; (4) and a pharmacy self-assessment signed and dated by Respondent Lu and Respondent Kim Banerjee on July 11, 2018, which listed the pharmacy's hours of operation as Monday from 12:00 p.m. to 8:00 p.m. and also indicated Senior Care GG filled some refills for the Sun Valley location.

39. Inspector Parreira used the spreadsheet provided by Respondent Lu to verify the recommended storage of the drug stock. Based on her review, some of the manufacturing information regarding the drug stock which had to be destroyed indicated that the proper storage of medication to be 68 to 77 degrees. According to

---

<sup>5</sup> The supplemental investigation report incorrectly indicates that there were only nine prescriptions filled in March. (Exh. 17, A218.)

<sup>6</sup> A temperature excursion is any period of time when a medication is exposed to temperatures outside the ranges prescribed for by the manufacturer.

Inspector Parreira, though excursions are permitted for short periods of time, usually transport, they are not allowed for longer periods as it could effect the quality and strength of the medications.

40. On July 13, 2018, the Board issued a written notice to Respondent Pharmacy that it was cancelling the temporary permit that had been issued to Respondent Pharmacy (PHY 56057) due to the pharmacy being closed, pursuant to its authority under Business and Professions Code section 4312, subdivision (a). "For the purposes of [Business and Professions Code section 4312], 'closed' means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period." (Bus. & Prof., §4312, subd. (e).)

41. Complainant did not present any evidence that Respondent Pharmacy filed a written objection to the July 13, 2018 notice of cancellation of temporary permit PHY 56057.

## **Respondents' Evidence**

### **TESTIMONY OF RESPONDENT LU**

42. Respondent Lu graduated from pharmacy school in 2013 and began working for Senior Care Pharmacy. In 2015, Respondent Lu obtained a certification<sup>7</sup> in geriatric pharmacy from the Board of Pharmacy Specialties.

---

<sup>7</sup> Respondent Lu is not licensed as an advanced practice pharmacist as defined by Business and Professions Code section 4210. The Board of Pharmacy Specialties is not a state agency and is a different entity than the Board.

43. According to Respondent Lu, a pharmacist's duties include filling and dispensing medications, consultation work, monitoring labs and talking with doctors and nurses to optimize medication therapies and prevent disease, and helping facilities remain in compliance with state and federal regulations.

44. Respondent Lu routinely provides consultations to facilities and therefore he "is always out there helping out the nurses and doctors and residents." When he was at the Sun Valley location, his work consisted of "a lot of customer service" and "a lot of desktop medication reviews." To be better informed for his consultations, Respondent used the Senior Care Pharmacy's computer system to review all of the patients' medication history when he was in the office. He also reviewed the patient charts, labs and progress notes and talked with the patients at the facility. Respondent Lu does not use the computers in the billing area.

45. Respondent Lu visited these facilities at least twice a month to perform the consultations even though he is not required to as the PIC of the Sun Valley location. He also worked with the Director of Nursing (DON) of the facilities to dispose of Schedule II to V narcotics and ensure there was no drug diversion occurring.

46. Respondent Lu admitted that Inspector Parreira spoke with him about the role of a PIC, that he was not able to locate the Sun Valley locations' policies and procedures when asked by the inspector, the Sun Valley location had essentially stopped filling prescriptions and weeks would go by without medications being dispensed.

47. Respondent Lu disputed Inspector Parreira's assertion that he did not appear to have access to a computer system or server. Respondent Lu claimed that Inspector Parreira took a picture of the computer he used to perform consultations.

(Exh. 10, A189.) Respondent also submitted screenshots he obtained from Respondent Pharmacy's computer which indicates he was at the Sun Valley location for at least a portion of the day on the following Mondays in 2018: April 2, April 9, April 23, April 30, May 7, May 14, May 21, May 28, June 4, June 11, June 18, June 25, July 2. There was no evidence Respondent Lu was at the Sun Valley location on the following Mondays in 2018: April 16 and July 9.

48. With respect to the July 11, 2018, inspection, Respondent Lu asserted that a self-assessment was completed in early March following the change of ownership, but he could not locate the assessment at the time of the July 11, 2018 visit.

49. Respondent Lu's testimony was largely not credible. Though Respondent Lu responded to questions in a straight-forward fashion during his direct examination, he was evasive or claimed to not have an independent memory of many events when responding to cross-examination questions. For example, when asked if he prepared a DEA initial inventory following the change of ownership, Respondent Lu responded, "we had no inventory for controlled substances." After additional questioning, Respondent Lu then claimed that he had completed the DEA inventory within 30 days of the change of ownership. Respondent Lu also asserted that he had completed the inventory at the same time of the self-assessment, neither of which he produced at the time of the July 11, 2018 inspection.

50. Respondent Lu's testimony also demonstrated his failure to understand his responsibilities as a PIC. When asked on multiple occasions if he had a responsibility to complete a DEA inventory following the change of ownership, Respondent Lu would only respond that Respondent Pharmacy did not have any controlled substances. When asked if Respondent Lu should have notified the Board



within 30 days of the change of ownership, Respondent Lu responded, "I signed the application." Finally, it was only after Respondent Lu was directed to answer Mr. Edward's question that he finally acknowledged that it was his duty as the PIC to maintain the self-assessment. At no time did Respondent Lu acknowledge that he made any errors while acting as the PIC for the Sun Valley locations.

51. Respondent Lu also asserted that he did not inform Inspector Parreira that he did not run the air conditioning when he was not there. He asserts that he told Inspector Parreira that he did not control the air conditioning and that there had been electrical issues in the past. However, Respondent Lu has no proof that it was an electrical malfunction that caused the air conditioning to turn off. In support of the contention that the air conditioning had been turned off on July 11, 2018 due to electrical issues, Respondents submitted evidence that the Sun Valley location had issues with leaking in 2017 and 2018. On more than one occasion, the leaking caused the electrical breaker to trip, which in turn caused local computers and servers to crash and turn off the air conditioning units inside. (Exh. V, B221.) Though this does establish that Respondent Lu did not turn the air conditioning unit off, this raises another concern regarding Respondents' practices at the Sun Valley location. Even though Respondents were aware that there were issues with the air conditioning, they apparently continued to store medications at the Sun Valley location without increasing employee presence in order to prevent temperature excursions and to ensure the safety of the medications at the pharmacy. Further, Respondent Pharmacy did not resolve the electrical issues as of October 28, 2019, as the evidence demonstrated that Respondent Pharmacy arranged for diagnostic testing to be performed on October 28, 2019. (Exh. V, B216.)

52. Despite evidence that Respondents sent Inspector Parreira (1) the self-assessment; (2) a completed DEA inventory; and (3) proof of medication destruction following the July 11, 2018 inspection, it is concerning that Respondent Lu's testimony suggested that he would not have completed the DEA inventory or destroyed the medications had it not been for Inspector Parreira's request.

### **TESTIMONY OF TONY NGUYEN**

53. Tony Nguyen has worked for Senior Care Pharmacy for 15 years. He is the operation manager for all Senior Care Pharmacy locations and is responsible for overseeing staff scheduling, the day-to-day operations and budgeting. He is therefore familiar with the operations of the Sun Valley location.

54. At the hearing, Mr. Nguyen stated that before Senior Care Pharmacy lost business at the Sun Valley location, Respondent Lu was at the pharmacy five days per week. After Senior Care Pharmacy lost business, Respondent Lu was at the Sun Valley location one or two days per week. Though Mr. Nguyen did not go to the Sun Valley location with Respondent Lu and Respondent Lu did not check in with Mr. Nguyen after arriving at the Sun Valley location, Mr. Nguyen insisted he would know whether Respondent Lu was present at the Sun Valley location. Mr. Nguyen's testimony was not credited.

### **TESTIMONY OF SAMIT BANERJEE**

55. Respondent Samit Banerjee originally received his pharmacy degree in India. He then completed his further education at the University of Southern California. He took the Board examination and was licensed in 1991.

56. Respondent Samit Banerjee's professional background has been largely in long-term care. He began working in the field while an intern and continued working in the industry after he received his license. Respondent Samit Banerjee then opened Senior Care Pharmacy with his wife, Respondent Kim Banerjee, in 2001. They acquired the Sun Valley location in 2009, and then opened a third location in Fairfield in 2011. Throughout his career, Respondent Samit Banerjee has worked as an intern, pharmacist, consulting pharmacist, and PIC.

57. Respondent Samit Banerjee is familiar with the operations of the Sun Valley location. Respondent Samit Banerjee regularly had calls with Respondent Lu, Mr. Nguyen, and Kenny Tran to discuss the operations of each of the different locations (Senior Care GG, Senior Care Fairfield and the Sun Valley location). He was the CEO at all three locations and was involved in their business operations.

58. According to Respondent Samit Banerjee, long term care pharmacies are different than retail pharmacies and are subject to stringent CMS (Centers for Medicare & Medicaid Services) regulations. Many of the services provided by a long-term care pharmacy is dependent upon where the patient lives. Some of the services that a long-term care pharmacy provides that are not required of retail pharmacies include (1) the provision of e-Kits, a supply of medications that are kept at the facilities; (2) delivery drivers who will deliver prescriptions 24 hours a day, seven days per week; and (3) pharmacists who are on-call. The reason for this is, in part, the CMS regulations governing when certain types of medications have to be delivered to a facility.

59. Respondent Samit Banerjee asserted that dispensing prescriptions can be somewhat automotive and what sets pharmacists apart is their patient care, their professional judgement, and the ability to influence a patient's care. Respondent Samit

Banerjee asserted that the “practice of pharmacy” includes these consulting functions, along with a pharmacist’s duty to ensure compliance with state and federal statutes and regulations that constitute the practice of pharmacy.

60. Respondent Samit Banerjee acknowledges that there are no consultation documents retained at the Sun Valley location. He explained that the reason for this is that those documents are kept at the facilities as most of the consulting activity is done at the facilities. Consulting is also done at the pharmacy level when there is a change of patient status, such as a patient fall or patient weight loss. The pharmacist will then look at the patient profile, make recommendations and send provide them to the facility.

61. The Sun Valley location was fully staffed with a full-time pharmacist until 2016. The hours were reduced after Sun Valley lost its contracts with some of the facilities.

62. Respondent Samit Banerjee stated that Respondent Pharmacy is not seeking to retain its permits to operate a pharmacy. The Sun Valley location has been leased and there are no plans to re-open a pharmacy at that location. Respondent Samit Banerjee, however, disputes the allegations that Respondent Pharmacy’s conduct subjected it to revocation of its license and is seeking to defend his and Respondent Lu’s pharmacist licenses.

## **Disciplinary Considerations**

63. On January 13, 2016, Respondent Pharmacy was assessed a modified citation<sup>8</sup> and fine in the amount of \$5,000 for deviating from the requirements of a prescription in violation of Regulation 1716, when, in March 11, 2011, it dispensed 125 mcg Fentanyl patch to a patient instead of the 12.5 mcg patch the patient was supposed to be prescribed. The prescription that did not meet the requirements of Health and Safety Code section 11164.

64. Though Complainant alleged that a Cease & Desist Order was issued by the Board to Respondent Pharmacy/Novasys Pvt. Ltd. for violating Regulations 1717.1 (common electronic files) and 1793.2 (duties of a pharmacy technician), effective May 22, 2018, Complainant did not submit any evidence of the Cease & Desist Order<sup>9</sup> at hearing.

## **Costs of Investigation and Prosecution**

65. The Board incurred costs in investigating this matter of \$12,490.25 and costs of prosecution in the amount of \$45,582. A portion of those costs were not reasonably incurred.

---

<sup>8</sup> The citation and fine was modified following Respondent Pharmacy's explanation to the Board regarding the circumstances surrounding the incident.

<sup>9</sup> Though Complainant's Exhibit List indicates that it was part of Exhibit 31, the only documents that were uploaded were the Modified Citation and Fine with the accompanying Board correspondence.

66A. The Attorney General's Matter Time Activity report, which details its costs in increments of one-quarter hour and describes each corresponding task performed, reflects that: (1) 186.25 hours of Deputy Attorney General (DAG) time was billed at a rate of \$220 per hour; (2) 9 hours of DAG time was billed at \$170 per hour; (3) 7.5 hours of paralegal time was billed at \$205 per hour; (4) 2.5 hours of paralegal time was billed at \$120 per hour; and (5) costs in the amount of \$255.40 were incurred by Ace Attorney Service Inc. (Ace).

B. The report shows that four supervising attorneys, three DAGs and four paralegals billed for tasks related to this matter. There was no explanation provided as to why there were multiple attorneys billing over the course of three years. The costs are therefore reduced by the hours billed by one of the attorneys who did not appear at the hearing, totaling \$24,587.50 (*i.e.* 52.50 hours in 2020, 52.50 hours in 2019 and 8.75 hours in 2018).

C. Finally, the request for costs in the amount of \$255.40 for services provided by Ace were disallowed as there was no declaration from Ace or invoice attached to the request for costs as required. (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).)

D. The total supported prosecution costs in this matter are \$20,739.10.

67A. With respect to the investigative costs, the Board has requested \$12,490.25. The Board certified that 93.50 hours of inspector time was billed at \$121 per hour and 9.25 hours of supervising inspector time was billed at \$127 per hour. In support of the requests were two declarations. The "Certification of Investigative Costs; Declaration by Chief of Inforcement [*sic*], Julia Ansel" indicates that the request for supervising inspector time was due to Ms. Ansel's supervision of Janice Dang. (Exh. 3,

A87.) There was no indication from any of the documentation that Ms. Dang took any part in the investigation of this matter and those costs (\$1,174.75) were disallowed.

B. The total supported investigation costs in this matter are \$11,315.25.

68. The submitted certifications support a finding that the reasonable costs of investigation and enforcement are \$32,054.35. Respondent Patel has, as part of his stipulation, agreed to reimburse the Board its costs in the amount of \$16,000. As those costs involved the costs associated with two cases, one of which is not addressed in this matter, the costs are reduced by \$8,000 to \$24,054.35.

## **LEGAL CONCLUSIONS**

### **Board Mandate**

1. The Board is vested with the administration and enforcement of pharmacy law. (Bus. & Prof. Code, § 4001.) "Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions." (Bus. & Prof. Code, § 4001.1.)

### **Standard and Burden of Proof**

2. As the party bringing administrative charges and seeking discipline against licensee, Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175-176.)

3. Pharmacy permits are nonprofessional licenses because they do not have extensive educational, training, or testing requirements similar to professional licenses.

(See *Mann v. Dept. of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894.) An applicant for a pharmacy permit need not be a pharmacist; instead, the applicant must designate a pharmacist-in-charge with the requisite education, training, and licensure. (Bus. & Prof., §§ 4110, subd. (a), 4113, subd. (a).) To impose discipline on Respondent Pharmacy's nonprofessional pharmacy permit, Complainant need only prove cause for discipline by a preponderance of the evidence. (*Imports Performance v. Dept. of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916-917 (*Imports Performance*); Evid. Code, §115.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

4. Pharmacist licenses, however, are professional licenses. (Bus. & Prof., § 4050; *Murphy v. E. R. Squibb & Sons, Inc.* (1985) 40 Cal.3d 672, 678-679.) To impose discipline on a professional license, Complainant must prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171 (*Sternberg*); *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of "high probability," and has been described as requiring proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

5. Therefore, Complainant must prove by clear and convincing evidence that disciplining Respondent Samit Banerjee and Respondent Lu's licenses are warranted (*Sternberg, supra*, 239 Cal.App.4th at p. 1171), and by a preponderance of



the evidence that disciplining Respondent Pharmacy's license is warranted (*Imports Performance, supra*, 201 Cal.App.4th 916-917).

## **Applicable Authority**

6. All pharmacies operating in the state of California must have a license. (Bus. & Prof. Code, § 4110, subd. (a).) The Board may "at its discretion, issue a temporary permit upon the conditions and for any periods of time as the board determines to be in the public interest. . . ." (Bus. & Prof. Code, § 4110, subd. (b).)

7. The Board may cancel the license of a pharmacy if the licensed premises remain closed for any other reason than by the order of the Board. (Bus. & Prof. Code, § 4312, subd. (a).) "If the licensee files a written objection, the Board shall file an accusation based on the licensee remaining closed." (*Ibid.*) If no written objection is received, the license may be cancelled without a hearing.

8. Pursuant to Business and Professions Code section 4301, the Board may also suspend or revoke a license for unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

[¶] . . . [¶]

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

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to

violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . .

9. The Board retains jurisdiction to discipline an expired, cancelled or suspended license. (Bus. & Prof. Code, §§ 118, subd. (b), 4300.1.)

## **Analysis**

10. Business and Professions Code section 4037, subdivision (a), provides a "[p]harmacy' is 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." (Bus. & Prof. Code, § 4037, subd. (a).)

11. The evidence established that no compounding was performed at the Sun Valley location while it was operating under permit PHY 49798 or temporary permit PHY 56057; there were no prescriptions dispensed from the Sun Valley location for over a year when it operated under permit PHY 49798; and that only 56 prescriptions were filled during the five month period it operated under temporary permit PHY 56057.

12. Complainant asserted that this reflects that the pharmacy was "not engaged in the ordinary activity for which a license has been issued for at least one

day each calendar week during any 120-day period” and was therefore “closed.” (Bus. & Prof. Code, § 4312, subd. (e).) Respondents asserted that the “profession of pharmacy” is not solely comprised of compounding and dispensing prescriptions but also includes consultations with patients, medical professionals and, for long term care pharmacies, facility staff. (See Bus. & Prof. Code, 4050, subd. (b), “. . . Pharmacy practice is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. . .”

13. Even accepting Respondents’ contention that the “profession of pharmacy” referred to in Business and Professions Code section 4037 includes consultations, Complainant still established that Respondent Pharmacy was not open one day each calendar week during the period between June 20, 2016, and December 20, 2017, and that Respondent Pharmacy was therefore closed for purposes of Business and Professions Code section 4312.

14. Respondent Pharmacy is a closed-door pharmacy and not open to the general public. According to Respondent Lu, he performed customer service, completed paperwork and engaged in consultations when he was at the Sun Valley location. The portion of the consultations that was performed at the Sun Valley location largely consisted of reviewing the prescription history of the patients which was on the Senior Care Pharmacy servers. Respondent Lu’s consultations otherwise consisted of going to facilities where the patients resided, where he would review patient files, interview patients and work with facility staff on various matters. His description of his consulting duties at hearing coupled with Respondent Lu’s statement to Inspector Parreira during the December 6, 2017 inspection that he was only at the facility once a week to once every other week, and the February 20, 2018

statement submitted by Respondent Pharmacy through their attorney that Respondent Pharmacy opened the Sun Valley location one day per week beginning March 1, 2018, established by a preponderance of the evidence that Respondent Pharmacy was closed.

15. The assertions by Mr. Nguyen and Respondent Samit Banerjee regarding Respondent Lu's presence at the Sun Valley location were not afforded any weight as their conclusions as to Respondent Lu's presence were not based on any direct evidence.

16. Having determined that Respondent Pharmacy was closed pursuant to Business and Professions Code section 4312, the issue is then whether the closure provides grounds to discipline Respondent Samit Banerjee and Respondent Lu's licenses.

17. The purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Ca.App.3d 853, 856.) It is not for the purpose of punishing a licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.)

18. Complainant failed to present any evidence that the closure of Respondent Pharmacy in any way posed a harm to the public or constituted unprofessional conduct "which indicates an unfitness to practice medicine. . .[or] breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575 and n.5.) Based on the forgoing, Complainant failed to establish by a clear and convincing standard that grounds exist to discipline Respondent Samit Banerjee and Respondent Lu's licenses based on the closure.

## **First Cause for Discipline**

19. Cause exists pursuant to Business and Professions Code section 4312, subdivisions (a) and (e) to cancel Respondent Pharmacy's permit PHY 49798, as set forth in Factual Findings 9 through 30 and Legal Conclusions 10 through 18.

20. Cause does not exist pursuant to Business and Professions Code section 4312, subdivisions (a) and (e) to discipline the licenses of Respondent Samit Banerjee and Respondent Lu, as set forth in Factual Findings 9 through 30 and Legal Conclusions 10 through 18.

21. Cause does not exist to discipline Respondent Pharmacy, Respondent Samit Banerjee and Respondent Lu pursuant to Business and Professions Code section 4301, subdivision (j), in that Complainant did not present evidence that, while Respondent Pharmacy was operating under permit PHY 49798 during periods alleged in the Accusation, Respondents violated any statutes of this state, other state or of the United States regulating controlled substances and dangerous drugs.

22. Cause exists pursuant to Business and Professions Code section 4301, subdivision (o) to discipline Respondent Pharmacy's permit PHY 49798, in that Respondent Pharmacy violated federal regulations governing pharmacy by co-mingling records for controlled substances (21 C.F.R. 1304.04, subd. (f), and by failing to comply with the requirements of a biennial inventory that require an indication of when the inventory was taken. (21 C.R.F. 1304.11, subd. (a)), as set forth in Factual Findings 14 and 15.

23. Cause does not exist pursuant to Business and Professions Code section 4301, subdivision (o) to discipline Respondent Samit Banerjee's license in that there

was no evidence that Respondent Samit Banerjee had any responsibility to maintain Respondent Pharmacy's records or perform the biennial inventory.

24. Cause exists pursuant to Business and Professions Code section 4301, subdivision (o) to discipline Respondent Lu's license in that Respondent Lu was the PIC for Respondent Pharmacy at the Sun Valley location and, as such, was charged pursuant to Business and Professions Code section 4113, subdivision (c) to ensure Respondent Pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy and failed to do so.

25. Cause does not exist pursuant to Business and Professions Code section 4301, subdivision (o), in conjunction with Regulation 1709, to discipline Respondent Pharmacy's permit PHY 49798, in that Complainant failed to establish by a preponderance of the evidence that Respondents failed to notify the Board of a change in ownership of Respondent Pharmacy as set forth in Factual Findings 22 through 25.

## **Second Cause for Discipline**

26. Cause exists<sup>10</sup> pursuant to Business and Professions Code section 4312, subdivisions (a) and (e), to cancel Respondent Pharmacy's temporary permit PHY

---

<sup>10</sup> However, as there is no evidence Respondent Pharmacy filed a written objection to the cancellation of its temporary permit, the permit may have been cancelled by the Board without the necessity of a hearing. (Bus. & Prof. Code, § 4312, subd. (a).)

56057, as set forth in Factual Findings 31 through 41 and Legal Conclusions 10 through 18.

27. Cause does not exist pursuant to Business and Professions Code section 4312, subdivisions (a) and (e) to discipline the licenses of Respondent Samit Banerjee and Respondent Lu, as set forth in Factual Findings 31 through 41 and Legal Conclusions 10 through 18.

28. Cause does not exist to discipline Respondent Pharmacy, Respondent Samit Banerjee and Respondent Lu pursuant to Business and Professions Code section 4301, subdivision (j) and (o), in that Complainant failed to establish that closure of the pharmacy constituted unprofessional conduct as set forth in Business and Professions Code section 4301, subdivision (j) and (o).<sup>11</sup>

29. Cause does not exist pursuant to Business and Professions Code section 4301, subdivision (o), in conjunction with Regulation 1709, in that Complainant failed to establish by a preponderance of the evidence that Respondents failed to notify the Board of a change in ownership of Respondent Pharmacy as set forth in Factual Findings 22 through 25.

### **Third Cause for Discipline**

30A. Business and Professions Code section 4169, subdivision (a)(2) prohibits the "[p]urchase, trade, sell, or transfer dangerous drugs that the person knew or

---

<sup>11</sup> As Complainant asserts Business and Professions (j) and (o) as grounds for discipline under the Third Cause for Discipline, the allegations set forth in paragraphs 36 through 47 will be addressed under the Third Cause for Discipline.

reasonably should have known were adulterated. . .” “Any drug. . . is adulterated if it has been . . .held in conditions whereby . . . it may have been rendered injurious to health.” (Health & Saf. Code, §111255.) Sale of an adulterated drug is unlawful. .” (Health & Saf. Code, § 111295.)

B. Cause does not exist to discipline Respondents’ licenses pursuant to Business and Professions Code sections 4169, subdivision (a)(2) and 4301, subdivisions (j) and (o), in conjunction with Health and Safety Code sections 111255 and 111295, in that Complainant failed to present any evidence that Respondents sold any adulterated drugs. Though Inspector Parreira’s testimony and report established that there were medications at the Sun Valley location that experienced a temperature excursion, those medications were destroyed.

31. Cause does not exist to discipline Respondent Pharmacy’s permit PHY 56057 pursuant to Business and Professions Code section 4301, subdivision (j) in that Complainant did not present evidence that, while Respondent Pharmacy was operating under permit PHY 56057, Respondents violated any statutes of this state, other state or of the United States regulating controlled substances and dangerous drugs.

32. Cause exists pursuant to Business and Professions Code section 4301, subdivision (o) to discipline Respondent Pharmacy’s permit PHY 56057 in that Respondent Pharmacy failed to complete an initial DEA inventory. (21 C.F.R. 1304.11, subds. (a) and (b).)

33. Cause does not exist to discipline Respondent Samit Banerjee’s license pursuant to Business and Professions Code section 4301, subdivision (j) and (o) in that there was no evidence that Respondent Samit Banerjee was responsible for maintaining Respondent Pharmacy’s records or performing the biennial inventory.



34. Cause exists pursuant to Business and Professions Code section 4301, subdivision (o) to discipline Respondent Lu's license in that Respondent Lu was the PIC for Respondent Pharmacy at the Sun Valley location and, as such, was charged with completing and maintaining a self-assessment following the change of ownership (Cal. Code Regs., tit. 16, § 1715, subd. (a) & (d).) and was charged pursuant to Business and Professions Code section 4113, subdivision (c) with ensuring that the initial DEA inventory was completed. (21 C.F.R. 1304.11, subds. (a) and (b).)

## **Disposition**

35. Once cause for discipline was established in this case, the level of discipline to be imposed on Respondents must be determined. In reaching a decision on the appropriate level of discipline, the Board must consider the *Disciplinary Guidelines, A Manual of Disciplinary Guidelines and Model Disciplinary Orders* [Rev. 2/2017] (Guidelines). Cal. Code Regs, tit. 16, § 1760.)

36. The Guidelines list a number of factors that should be considered. The factors relevant to this matter are: actual or potential harm to the public; actual or potential harm to any consumer; prior disciplinary record; prior warnings (including citations, letters of admonishment, and correction notices); number and/or variety of current violations; nature and severity of the acts under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; time passed since the acts; whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; and financial benefit to respondent from the misconduct. (Guidelines (p. 4); § 4300.)

37. The Guidelines also establish four categories, ranging from the least serious, Category I, to the most serious, Category IV.

38. Category I violations include "violations of recordkeeping requirements, scope of practice requirements, or inventory control requirements" and "violation(s) of obligations to supply or update information to the board, or to other enforcement or regulatory agencies" and are considered "potentially harmful." (Guidelines at p. 6.) The minimum recommended discipline for a Category I violation is revocation stayed with two years of probation while the maximum discipline is revocation.

39A. Complainant has failed to establish that Respondent Pharmacy's Sun Valley location was closed by virtue of its failure to engage in the practice of pharmacy for at least one day each calendar week during any 120-day period is grounds for discipline. Business and Professions Code section 4312 permits the cancellation of the license. Cancellation and revocation are not synonymous actions. (See Bus.& Prof. Code, §4303, subd. (b) which provides the Board the authority to "cancel, deny, revoke, or suspend a nonresident pharmacy registration. . .") Further, there was no evidence that Respondent Pharmacy's failure to operate resulted in any actual or potential harm to the public.

B. Respondent Pharmacy's violations established by Complainant all fall under Category I. In addition, the violations resulted in no actual harm and minimal potential harm to the public; Respondent Pharmacy has had no prior disciplinary record but has been issued a prior citation for conduct unrelated to the current violations; and these violations were not intentional or motivated by any financial motive. The record in this case therefore supports the conclusion that public reproof, which constitutes license discipline, will suffice to protect the public.

40. Respondent Lu's violations also fall under Category I. The analysis here, however, is somewhat different in that Respondent Lu's failure to accept any responsibility for the violations and apparent failure to understand his responsibilities of a PIC warrants a different outcome. Under the circumstances, standard terms and conditions of probation for two years will serve the preventative, protective and remedial purposes of discipline.

## **Other Matters**

41A. Cause does not exist, pursuant to Business and Professions Code section 4307, to prohibit Respondent Samit Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years, as Pharmacy Permit Numbers PHY 49798 and 56057 have not been revoked or placed on probation.

B. Cause does not exist, pursuant to Business and Professions Code section 4307, to prohibit Respondent Kim Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years, as Pharmacy Permit Numbers PHY 49798 and 56057 have not been revoked or placed on probation.

## **Cost Recovery**

42. Complainant requests an award of investigative and enforcement costs. "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the [Department of Consumer Affairs] . . . , upon request of the entity bringing the proceeding, the administrative law judge may 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." (§ 125.3, subd. (a).)

43. The Board must not assess its full costs, however, if doing so would unfairly penalize a licensee "who has committed some misconduct but used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) The Board must also consider respondents' "'subjective good faith belief in the merits of [their] position;'" and whether [they] raised a "'colorable challenge'" to the proposed discipline. (*Ibid.* [quoting *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 342, 345].) Furthermore, the Board must determine respondents "will be financially able to make later payments," and "may not assess the full costs . . . when it has conducted a disproportionately large investigation to prove that [a licensee] engaged in relatively innocuous misconduct." (*Ibid.*)

44. Respondents did not present any evidence of financial inability to pay the Board's costs. Both Respondent Pharmacy and Respondent Lu are responsible for all of the violations established in this case. Both Respondent Pharmacy and Respondent Lu used the hearing process to obtain a reduction in the severity of the discipline imposed. The Board, therefore, should not assess its full costs against them. Under the circumstances, Respondent Pharmacy and Respondent Lu shall each be responsible for costs of \$5,000, or approximately 20 percent of the costs supported by the certifications.

## **ORDER**

### **Respondent Pharmacy**

#### **CANCELLATION**

1. Permit Number PHY 49798 and Permit Number PHY 56057 are cancelled.

#### **PUBLIC REPROVAL**

2. The Board shall issue a public reproof to Senior Care Pharmacy Services Inc. (Respondent Pharmacy). Respondent Pharmacy is required to report this Public Reproof as a disciplinary action.

#### **REIMBURSEMENT OF BOARD COSTS**

3. Within 30 days of the effective date of this decision, or on a payment plan approved by the Board, Respondent Pharmacy shall reimburse the Board in the amount of \$5,000.

### **Respondent Samitendu Banerjee**

4. The First Amended Accusation against Respondent Samitendu Banerjee, also known as Respondent Samit Banerjee, Registered Pharmacist License RPH 45184, is dismissed.

### **Respondent Po-An Lu**

5. Registered Pharmacist License RPH 69811, issued to Po-An Lu, also known as Andy Lu is revoked; however, the revocation is stayed and respondent is placed on probation for two years upon the following terms and conditions:

## **1. Definition: Respondent**

For the purposes of these terms and conditions, “respondent” shall refer to Po-An Lu, also known as Andy Lu. All terms and conditions stated herein shall bind and be applicable to the licensed premises and to all owners, managers, officers, administrators, members, directors, trustees, associates, or partners thereof. For purposes of compliance with any term or condition, any report, submission, filing, payment, or appearance required to be made by respondent to or before the board or its designee shall be made by an owner or executive officer with authority to act on behalf of and legally bind the licensed entity.

## **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent’s pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distributing,

billing, or charging for any dangerous drug, and/or dangerous device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

### **3. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

### **4. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

## **5. Cooperate with Board Staff**

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of the probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

## **6. Continuing Education**

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

## **7. Reporting of Employment and Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6417 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 10 days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of his employers, and the names and telephone numbers of all of his direct supervisors, as well as any pharmacists-in-charge, designated representatives-in-charge, responsible manager, or other compliance supervisors and the work schedule, if known. Respondent shall also include the reasons for leaving the prior employment. Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to



communicate with all of respondent's employers and supervisors, and authorizing those employers or supervisors to communicate with the Board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6417, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgments are timely submitted to the Board. In the event of a change in the persons serving the roles described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the change acknowledging that he has read the decision in case number 6417, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 6417, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he has read the decision in case number 6417, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacist, or any position for which a Registered Pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

## **8. Notification of Change in Name, Address, or Phone Number**

Respondent shall further notify the Board in writing within 10 days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

## **9. Restrictions on Supervision and Oversight of Licensed Facilities**

During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the Board. Respondent

may be a pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any single entity licensed by the Board, but only if respondent or that entity retains, at his expense, an independent consultant who shall be responsible for reviewing the operations of the entity on a quarterly basis for compliance by respondent and the entity with state and federal laws and regulations governing the practice of the entity, and compliance by respondent with the obligations of his supervisory position. Respondent may serve in such a position at only one entity licensed by the Board, only upon approval by the Board or its designee. Any such approval shall be site specific. The consultant shall be a pharmacist licensed by and not on probation with the Board, who has been approved by the Board or its designee to serve in this position. Respondent shall submit the name of the proposed consultant to the Board or its designee for approval within 30 days of the effective date of the decision or prior to assumption of duties allowed in this term. Assumption of any unauthorized supervision responsibilities shall be considered a violation of probation. In addition, failure to timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be considered a violation of probation.

## **10. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,000.

Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

## **11. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

## **12. Status of License**

Respondent shall, at all times while on probation, maintain current pharmacist with the board. Failure to maintain current licensure shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

## **13. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease practice due to retirement or health or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the Board, along with a request to surrender the license. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and

conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the Board within 10 days of notification by the Board that the surrender is accepted if not already provided.

Respondent may not apply for any new license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

Respondent further stipulates that it shall reimburse the board for its costs of investigation and prosecution prior to the acceptance of the surrender.

#### **14. Practice Requirement – Extension of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a Registered Pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the Board or its designee.

If respondent does not practice as a Registered Pharmacist in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the Board in writing within 10 days of the conclusion of that

calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which respondent will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the next calendar month during which respondent practices as a Registered Pharmacist in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

## **15. Violation of Probation**

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and the Board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The Board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney

General, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

## **16. Completion of Probation**

Upon written notice by the Board or its designee indicating successful completion of probation, respondent's license will be fully restored.

DATE: 09/01/2021

  
Nana Chin (Sep 1, 2021 09:36 PDT)  
NANA CHIN

Administrative Law Judge

Office of Administrative Hearings

1 XAVIER BECERRA  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 MORGAN MALEK  
Deputy Attorney General  
4 State Bar No. 223382  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6278  
6 Facsimile: (916) 731-2126  
*Attorneys for Complainant*  
7

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

12 In the Matter of the Accusation Against:

Case No. 6417

13 **SENIOR CARE PHARMACY SERVICES**  
14 **INC, SAMITENDU BANERJEE, CEO,**  
15 **ALPESH PATEL, COO, KIM BANERJEE,**  
16 **PRESIDENT**  
17 **8000 Wheatland Ave #1**  
18 **Sun Valley, CA 91352**  
19 **Pharmacy License No. PHY 49798,**

**ACCUSATION**

20 **SENIOR CARE PHARMACY SERVICES**  
21 **SFV INC, SAMITENDU BANERJEE,**  
22 **CEO, KIM BANERJEE, PRESIDENT**  
23 **8000 Wheatland Ave #1**  
24 **Sun Valley, CA 91352**  
25 **Pharmacy License No. PHY 56057,**

26 **ALPESH PATEL**  
27 **8224 E. Marblehead Way**  
28 **Anaheim, CA 92808**  
**Registered Pharmacist License No. RPH**  
**48866,**

**SAMITENDU BANERJEE**  
**P.O. Box 27638**  
**Anaheim, CA 92809**  
**Registered Pharmacist License No. RPH**  
**45184,**

**and**



1 **PO-AN LU AKA ANDY LU**  
2 **17053 Glenford Dr.**  
3 **Hacienda Heights, CA 91745**  
4 **Registered Pharmacist License No. RPH**  
5 **69811**

Respondents.

### 6 **PARTIES**

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

9 2. On or about January 16, 2009, the Board of Pharmacy issued Pharmacy License  
10 Number PHY 49798 to Senior Care Pharmacy Services Inc., Samitendu Banerjee, CEO, Alpesh  
11 Patel, COO, Kim Banerjee, President, Po-An Lu as PIC from 1/1/2015 – 2/14/2018 (Respondent  
12 Pharmacy). The Pharmacy License expired on January 1, 2018 and was canceled on February 14,  
13 2018.

14 3. On or about February 13, 2018, the Board of Pharmacy issued Pharmacy License  
15 Number PHY 56057 to Senior Care Pharmacy Services SFV Inc., Samitendu Banerjee, CEO,  
16 Kim Banerjee, President, Alpesh Patel, PIC, Po-An Lu as PIC from 2/13/2018 – 7/26/2018  
17 (Respondent Pharmacy SFV). The Pharmacy License expired on July 15, 2018 and was canceled  
18 on July 15, 2018.

19 4. On or about August 14, 1996, the Board of Pharmacy issued Registered Pharmacist  
20 License Number RPH 48866 to Alpesh Patel (Respondent Patel). The Registered Pharmacist  
21 License was in full force and effect at all times relevant to the charges brought herein and will  
22 expire on May 31, 2020, unless renewed.

23 5. On or about March 12, 1992, the Board of Pharmacy issued Registered Pharmacist  
24 License Number RPH 45184 to Samitendu Banerjee (Respondent Banerjee). The Registered  
25 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
26 and will expire on January 31, 2020, unless renewed.

27 6. On or about September 30, 2013, the Board of Pharmacy issued Registered  
28 Pharmacist License Number RPH 69811 to Po-An Lu (Respondent Lu). The Registered

Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2021, unless renewed.

### **JURISDICTION**

7. This Accusation is brought before the Board of Pharmacy (Board), 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.

8. **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."

9. **Section 4300** of the Code states, in pertinent part:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of

1 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
2 Civil Procedure."

### 3 4 **STATUTES AND REGULATIONS**

5 10. **Section 4169**, subdivision (a) (2) of the Code states:

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

7 ...

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

11 11. **Section 4301** of the Code states, in pertinent part:

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

15 . . . .

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

18 . . . .

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

23 12. **Section 4307**, subdivision (a), of the Code states, in pertinent part:

24 (a) Any person who has been denied a license or whose license has been revoked or is  
25 under suspension, or who has failed to renew his or her license while it was under suspension, or  
26 who has been a manager, administrator, owner, member, officer, director, associate, partner, or  
27 any other person with management or control of any partnership, corporation, trust, firm, or  
28 association whose application for a license has been denied or revoked, is under suspension or has

1 been placed on probation, and while acting as the manager, administrator, owner, member,  
2 officer, director, associate, partner, or any other person with management or control had  
3 knowledge of or knowingly participated in any conduct for which the license was denied,  
4 revoked, suspended, or placed on probation, shall be prohibited from serving as a manager,  
5 administrator, owner, member, officer, director, associate, partner, or in any other position with  
6 management or control of a licensee as follows:

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

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

11 (b) "Manager, administrator, owner, member, officer, director, associate, partner, or any  
12 other person with management or control of a license" as used in this section and Section 4308,  
13 may refer to a pharmacist or to any other person who serves in such capacity in or for a licensee.

14 (c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to  
15 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.  
16 However, no order may be issued in that case except as to a person who is named in the caption,  
17 as to whom the pleading alleges the applicability of this section, and where the person has been  
18 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part  
19 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision  
20 shall be in addition to the board's authority to proceed under Section 4339 or any other provision  
21 of law."

22 13. **Section 4312**, of the Code states, in pertinent part:

23 "(a) The board may cancel the license of a wholesaler, third-party logistics provider,  
24 pharmacy, veterinary food-animal drug retailer, or outsourcing facility if the licensed premises  
25 remain closed, as defined in subdivision (e), other than by order of the board. For good cause  
26 shown, the board may cancel a license after a shorter period of closure. To cancel a license  
27 pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by  
28 personal service on the licensee. If a written objection is not received within 10 days after

1 personal service is made or a diligent, good faith effort to give notice by personal service on the  
2 licensee has failed, the board may cancel the license without the necessity of a hearing. If the  
3 licensee files a written objection, the board shall file an accusation based on the licensee  
4 remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing  
5 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board  
6 shall have all the powers granted in that chapter.

7 ...

8 “(e) For the purposes of this section, “closed” means not engaged in the ordinary activity  
9 for which a license has been issued for at least one day each calendar week during any 120-day  
10 period.”

11 14. **Health and Safety Code section 111255** states, in pertinent part:

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

15 15. **Health and Safety Code section 111260** states, in pertinent part:

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

21 16. **Health and Safety Code section 111295** states, in pertinent part:

22 " It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug  
23 or device that is adulterated.”

24 17. **California Code of Regulations, title 16, section 1709, subdivision (a)** states in  
25 pertinent part:

26 "The owner shall report to the Board within thirty (30) days of discovery of any loss of the  
27 controlled substances, including their amounts and strengths."  
28

1 **COST RECOVERY**

2 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **BOARD'S INSPECTION OF DECEMBER 2012**

9 19. On February 3, 2016, Inspector K.R. assisted the Drug Enforcement Administration  
10 (DEA) with an inspection and investigation of Respondent Pharmacy. The sign on the front door  
11 of the business indicated the hours were Monday - Friday 11am to 8pm, closed Saturday and  
12 Sunday, in case of emergency call 714-891-8900. Inspector K.R. called the number posted on the  
13 door of Respondent Pharmacy. The number connected her to Senior Care Pharmacy in Garden  
14 Grove. She identified herself and asked for the pharmacist-in-charge (PIC) of the Sun Valley  
15 location to contact her. Respondent Lu contacted her and agreed to come to Respondent  
16 Pharmacy. Respondent Lu let the DEA and Inspector K.R. into the pharmacy. Upon entering the  
17 pharmacy, Inspector K.R. noticed there was a conference table with chairs. Down the hall from  
18 that was the prescription processing area which contained desks and computers. Past that was the  
19 pharmacy filling/dispensing area. The pharmacy also had a compounding room, which was  
20 empty. The shelving had sparse placement of products. Connected to the pharmacy was a  
21 warehouse. The warehouse contained records from the Garden Grove Senior Care and Sun  
22 Valley, supplies for the pharmacy, old medicine carts, and old emergency kits.

23 20. Respondent Lu stated that the last prescription dispensed from Respondent Pharmacy  
24 was on January 18, 2016, and that Respondent Pharmacy was open maybe one or two days a  
25 week. During this inspection, Respondent Lu stated that Respondent Pharmacy was a closed door  
26 facility, open 1 or 2 days per week, Senior Care Pharmacy located in Garden Grove handled the  
27 prescription billing for Sun Valley, no compounding was performed at Respondent Pharmacy  
28 location, pharmacy filled an average of 20-40 prescriptions per day, and Sr. Care Garden Grove

1 and Sr. Care Sun Valley transferred drugs between each other. Respondent Lu had a difficult  
2 time locating requested items such as invoices, transfer records, logs, and policy and procedures.  
3 Inspector K.R. discussed with Respondent Lu the role of the PIC and the responsibility that  
4 comes along with the title.

5 21. After reviewing the self-assessment completed by Respondent Lu, it appeared that  
6 every box except four and the compounding section was answered with YES. Inspector K.R.  
7 encouraged him to carefully review the most current self-assessment on the BOP website.

8 22. Inspector K.R. issued three corrections: (1) Records for control drugs schedule II  
9 must be maintained separately from schedule drugs 3-5. The records were co-mingled; (2)  
10 Biennial Inventory must be dated and indicate open or close of business. The inventory provided  
11 did not indicate open or close of business; and (3) Respondent Lu was unable to locate the  
12 licensed employee theft or impairment policy. Inspector K.R. requested proof of destruction of  
13 some expired medications and sharps containers. Respondent Lu provided her with a record of  
14 destruction for medical waste as well as a copy of the service agreement between Thermal  
15 Combustion Innovators and Senior Care Pharmacy. The contract was dated February 5, 2016. It  
16 was between Senior Care Services P.O. Box 27458 Anaheim California, Owner Alpesh Patel and  
17 Thermal Combustion Innovators. The service location was listed as Senior Care, 8000 Wheatland  
18 A venue, Sunland.

19 23. On December 6, 2017, Inspector K.R. conducted a routine inspection of Respondent  
20 Pharmacy. She arrived at the pharmacy around 9am to find it closed. She contacted Respondent  
21 Lu who arrived around 10:30am. The hours posted on the door stated Monday-Friday 11am to  
22 8pm, closed on Saturday and Sunday. Upon entering the pharmacy, Inspector K.R. noticed the  
23 processing computers had been removed from the office area. The monitors remained. Most of  
24 the supplies were gone. The pharmacy area had approximately 30-40 stock drug bottles  
25 sporadically located on the shelving. There were no diabetic supplies and the refrigerators were  
26 empty. The compounding room was empty. There was one computer remaining in the pharmacy  
27 area. Respondent Lu stated that the facility serviced two homes located in Lancaster. The last  
28 prescription filled at this pharmacy location was on June 20, 2016. There was a label on the

1 computer printer dated 8/10/17. That prescription number started with a #6 and had the Garden  
2 Grove location printed on it. Respondent Lu explained that this was a test label to ensure the  
3 printer still worked with the computers gone. He further explained that prescriptions for the Sun  
4 Valley location were filled by Senior Care in Garden Grove. Prescriptions filled for this location  
5 by the Garden Grove location were distinguished by the prescription number beginning the # 1.  
6 At the end of the year, the Garden Grove location billed the Sun Valley location for the  
7 prescriptions. Respondent Lu stated that he came to this location, once a week to once, every  
8 other week, to do paper work and consultation work, not to fill prescriptions. The records  
9 previously stored for Garden Grove had been moved from the warehouse. There were old  
10 medication carts, emergency kits, bubble packing supplies and pharmacy records in the  
11 warehouse. At the end of the inspection, Inspector K.R. reviewed the inspection report with  
12 Respondent Lu and provided him a copy.

13 24. Inspector K.R. took the followings from the Respondents: (1) the last prescription  
14 filled from the Sunland location- RX #16080974 for patient EN dated 6/20/16; (2) a work flow  
15 report for December 5, 2017. This report showed the prescriptions filled by Senior Care Garden  
16 Grove for the Sun Valley location. The prescriptions numbers that began with # 1 were for the  
17 Garden Grove location and the numbers that began with #6 were from the Sun Valley location.  
18 The filled prescriptions were co-mingled on the report and Respondent Lu allegedly was not  
19 aware of a way to separate them into single reports specific for each location; (3) a transfer log  
20 report dated January 1, 2015 to February 3, 2016 showing transfers of prescription information  
21 between Senior Care Garden Grove and Senior Care Sun Valley; (4) the service agreement  
22 between Thermal Combustion Innovators and Senior Care Pharmacy dated 2/5/16. This indicated  
23 Alpesh Patel was owner of Senior Care Pharmacy Services, Inc.; (5) Controlled Substance  
24 Destruction log dated June 5, 2017; (6) Pharmacy Self-Assessment.

25 25. Inspector K.R. provided Respondent Lu a list of questions on the Inspection Report  
26 along with a blank statement form. She asked Respondent Lu to provide a statement.

27 26. On December 21, 2017, she received a response from Respondent's counsel:

- 28
- Are Sunland, Garden Grove and Fairfield locations of Senior Care owned by the same



1 people/corporation?

2 Fairfield: Samit Banerjee owns 5% of issued and outstanding shares, Kim

3 Banerjee owns 50%, Prema Thekkekk owns 22.5%, Anthony Thekkekk owns 22.5%

4 Garden Grove: Kim Banerjee owns 100%

5 Sun Valley: Kim Banerjee owns 100%

- 6 • When was the last order placed for Dangerous Drugs or Devices at the Sun Valley location?

7 Answer-June 20, 2016

- 8 • How does the pharmacy order diabetic supplies/test strips?

9 Answer-Sun Valley does not order diabetic supplies/test strips

- 10 • Does the Garden Grove location order diabetic supplies for other locations Sun Valley and  
11 Fairfield?

12 Answer- Yes, pursuant to a management agreement.<sup>1</sup>

- 13 • When was the last prescription physically filled at the Sun Valley location?

14 Answer- The last prescription was filled on June 20, 2016

15 27. On or about 12/29/2017, the Board received a community pharmacy permit  
16 application for Senior Care Pharmacy Services SFV Inc. The corporation ownership information  
17 listed Kim E. Banerjee as the president and Samitendu Banerjee as the chief executive officer.  
18 The following percentage of shares were listed:

- 19 • Kim E. Banerjee: 55% shares were issued 1/1/2009 and cancelled 12/21/2017.  
20 • Alpesh Patel: 35% shares were issued 1/1/2009 and cancelled on 7/23/2017.  
21 • Daniel C. Zilafro: 10% shares were issued 1/1/2009 and cancelled on 9/23/2017.  
22 • Kim Banerjee: 100% shares issued 12/21/2017.

23 28. On January 24, 2018, Inspector K.R. called Senior Care Pharmacy in Garden Grove  
24 and left a message for Respondent Lu to obtain a copy of the management agreement between  
25 Sun Valley and Fairfield and to clarify the plans for the Sun Valley location and filing a  
26 discontinuance of business. She did not receive a return call.

27 \_\_\_\_\_  
28 <sup>1</sup> The response left out the "diabetic supplies". Respondent Lu stated he did not order diabetic supplies for any location.

1           29. On January 29, 2018, Inspector K.R. went to Senior Care Pharmacy located in Sun  
2 Valley. The pharmacy was closed. She noted the hours posted were Monday-Friday 11 am to 8  
3 pm closed Saturday and Sunday. She waited until 11:30 am., and left a copy of an inspection  
4 report and written notice. She issued the written notice for the pharmacy being closed over 120  
5 days. She then drove to Senior Care in Garden Grove attempting to hand deliver the written  
6 notice to the owner of the Sun Valley location. Once there, she identified herself and asked to  
7 speak to Respondent Lu. He was not present nor were the owners. She spoke initially to  
8 Pharmacist Mike Ng (RPH 74827), pharmacist on duty, who told Inspector K.R. that he worked  
9 at this location for about a year. Inspector K.R. explained to him why she was there. He called the  
10 owner and Inspector K.R. spoke to Samitendu Banerjee over the phone. She explained the written  
11 notice to him. He asked her to postpone it. He told Inspector K.R. he had lost business in the Sun  
12 Valley area but had picked up two facilities out of San Fernando Valley. He mentioned in June  
13 there was a change in ownership, Mr. Patel was bought out and a new application had been sent  
14 to the Board in December. He said he had sent paperwork to the Board regarding a temporary  
15 license.

16           30. After speaking with RPH Samitendu Banerjee, Inspector K.R. spoke to Kenny Tran  
17 (TCH 57643). Inspector K.R. had previously met TCH Tran. Inspector K.R. explained to him  
18 why she was there and what the written notice was about. He explained they kept the Sun Valley  
19 location because they expected business to pick back up. Inspector K.R. left a copy of the  
20 inspection report and written notice left at the Sun Valley location and left an inspection report  
21 for the Garden Grove location. The pharmacy inspection was deferred. Staff RPH Mike Ng  
22 signed both reports.

23           31. On or around February 20, 2018, Inspector K.R. received an email from Respondents'  
24 counsel responding on behalf of Senior Care Pharmacy Services, Inc., in response to the written  
25 notice issued on January 29, 2018. She explained that in 2016, the Sun Valley location had a  
26 business turndown when three nursing home customers moved to another vendor. The remaining  
27 volume of business did not justify a full-time pharmacist and technician. In order to attract new  
28 business, the Sun Valley location must remain open due to the operational and logistical

1 challenges faced by the Garden Grove location when servicing customers in the LA County. In  
2 order to meet its obligation, Senior Care will keep the Sun Valley location open one day a week  
3 and have it staffed by a pharmacist and technician beginning March 1, 2018.

4 32. Inspector K.R. visited Senior Care Pharmacy located in Sun Valley on February 3,  
5 2016. At that time, Respondent Lu informed her the last prescription dispensed from that location  
6 was on January 18, 2016. Inspector K.R. visited said pharmacy again on December 6, 2017.  
7 Respondent Lu stated that the last prescription filled at the pharmacy was on June 20, 2016. That  
8 was approximately 20 months from February of 2018 since regular pharmacy business had taken  
9 place. The pharmacy computers had been removed and drug stock was noticeable less than the  
10 prior inspection. Inspector K.R. returned a third time on January 29, 2018 during posted business  
11 hours and found the business closed. That would be 588 days over a year and a half since a  
12 prescription was dispensed from the pharmacy. Accordingly, a written notice was issued on  
13 January 29, 2018 for the pharmacy not conducting business in the last 120 days. The pharmacy  
14 license was not renewed and expired on January 1, 2018. Senior Care Pharmacy stated they  
15 submitted a change of ownership around December 27, 2017 to 100% Kim Banerjee. However,  
16 the shareholder information provided listed Alpesh Patel 35% shares were cancelled on July 23,  
17 2017, and Daniel C. Zilafro 10% shares were cancelled on September 23, 2017. The Board was  
18 never notified within 30 days when Alpesh Patel and Daniel Zilafro's shares were cancelled.

19 33. Inspector K.R. received a response to the written notice on February 20, 2018 stating  
20 the pharmacy would begin conducting business one day per week starting March 1, 2018. The  
21 alleged new license (PHY 56057) was issued on February 13, 2018.

### 22 **FIRST CAUSE FOR DISCIPLINE**

#### 23 **(Voiding License of Entity Remaining Closed)**

24 34. Respondent Pharmacy, Respondent Patel, Respondent Banerjee and Respondent Lu  
25 are subject to disciplinary action under Code section 4312, subdivisions (a) and (e), in  
26 conjunction with California Code of Regulations Section 1709 subdivision (a), in that Senior Care  
27 Pharmacy, PHY 49798, located at 8000 Wheatland Avenue Suite 1, Sun Valley California was  
28 not compliant. Specifically, after June 20, 2016, Senior Care Pharmacy Services Inc. failed to

1 conduct pharmacy business from this location. The last prescription dispensed from the pharmacy  
2 was Rx#16080974 dated June 20, 2016. Failure to conduct ordinary pharmacy business for more  
3 than 120 days is a violation of Business and Professions Code 4312(a) as related to 4312(e).

4 35. Complainant refers to and by this reference incorporates the allegations set forth  
5 above in paragraphs 19-33, inclusive, as though set forth fully.

### 6 7 **JULY 11, 2018 INSPECTION**

8 36. On July 11, 2018, Inspector K.R. inspected Senior Care Pharmacy in Sun Valley and  
9 was assisted by Respondent Lu. Business hours on front door of the pharmacy were posted as  
10 Monday-Friday, 11am to 8pm. A new DEA Registration number FS7433648 was issued to Sr.  
11 Care Sun Valley. McKesson Drugs was the primary wholesaler. Respondent Lu confirmed there  
12 had been no drug purchases made for this location since PHY 56057 was issued. The drugs on the  
13 shelving were drugs purchased before the change of ownership. The temperature inside the  
14 pharmacy when Inspector K.R. arrived was 85°F. Respondent Lu stated he did not think about the  
15 temperature being above the required temperature for the storage of the drug stock. He did not run  
16 the air conditioning when he was not there. There were 2 totes and a few bins that contained  
17 expired medication. Respondent Lu indicated that all the controlled drugs in the pharmacy had  
18 expired. Inspector K.R. instructed him to dispose of them via a reverse distributor. There were  
19 computers in the billing area as well as the pharmacy filling area. The software was QS-1.  
20 Respondent Lu stated that the computers were programmed remotely by an IT person. He tried to  
21 log onto the billing computers, however, he was unable to do so. The warehouse area of the  
22 pharmacy was the same as previously noted. It contained old records, carts and supplies. The  
23 compounding room was empty as previously noted. There were no drugs in the pharmacy  
24 refrigerator.

25 37. Respondent Lu indicated that the pharmacy was open on Mondays from 12 p.m. to 8  
26 p.m. He was the only employee that worked at this location. He said he filled prescriptions if he  
27 had the drug stock. He then delivered the prescriptions to contracted facilities. If he did not have  
28 the drug stock the prescriptions were filled at the Senior Care Garden Grove location (PHY4600).

1 Sometimes a stock transfer was done between Garden Grove and Sun Valley. This was  
2 documented on the shared computer system. At the time of this inspection, there was no self-  
3 assessment completed for the change of ownership that occurred. The old pharmacy license was  
4 posted. A DEA initial inventory had not been completed, which was required when the new DEA  
5 Registration number issued. Inspector K.R. instructed Respondent Lu to destroy the drug stock  
6 due to the high temperature inside the pharmacy and provide proof. She told him to complete a  
7 self-assessment for the new pharmacy license and complete an initial DEA inventory.

8 38. Inspector K.R. took delivery sheets, pharmacy orders, lists of orders filled,  
9 prescription label samples and the prior Pharmacy Self-Assessment dated and signed on February  
10 3, 2016. The sample labels she obtained listed the pharmacy address in Sunland. The pharmacy  
11 referred to the location as both Sun Valley and Sunland. Inspector K.R. asked for a label to be  
12 printed for a medication that was filled at the Garden Grove location for the Sunland location to  
13 verify the address. Prescription number 16086153 for patient K.E. appeared on the list of orders  
14 dated July 10, 2018. Respondent Lu indicated that said prescription was filled at the Garden  
15 Grove location. The address on the label was 8000 Wheatland Ave, Suite I, Sunland, California.  
16 There were 14 delivery sheets. The deliveries were made to two facilities. The delivery sheets  
17 indicated deliveries were made to both facilities. The delivery sheets did not contain "received"  
18 signatures from the facilities. Only two of the sheets were signed by Respondent Lu on the  
19 "checked by" line.

20 39. Between February 13, 2018 when Senior Care Sun Valley received temporary PHY  
21 56057 and the pharmacy inspection on July 11, 2018, the pharmacy filled 56 prescriptions. This  
22 count was calculated using the "List of Orders Filled" document. The month of February 2018  
23 and May 2018 had no prescriptions filled. The month of March had 9 prescriptions filled on the  
24 15th which was a Thursday. In April of 2018, there were 20 prescriptions filled on a Monday,  
25 Tuesday and Friday. June of 2018 had 10 prescriptions filled on a Monday. July of 2018 had 7  
26 prescriptions filled on a Monday. This information was inconsistent with the hours of operation  
27 indicated on the pharmacy door and on the pharmacy self-assessment.

1           40. On July 12, 2018, Inspector K.R. received additional information from Respondent  
2 Lu, via email, a spread sheet of medication to be destroyed due to temperature excursions, the  
3 dispensing record for the Sunland/Sun Valley location (which was generated from Senior Care in  
4 Garden Grove), and a DEA inventory which indicated no controlled substances. The pharmacy  
5 self-assessment indicated hours of operation Monday 12 p.m.to 8 p.m. The self-assessment  
6 indicated Senior Care Garden Grove filled some refills for Sunland/Sun Valley, and was signed  
7 and dated by Respondent Lu and Respondent Banerjee on July 11, 2018.

8           41. Inspector K.R. used the spread sheet provided by Respondent Lu to verify the  
9 recommended storage of the drug stock. She provided a sample of medication guides that  
10 indicate proper storage of medication to be 68-77°F.

11           42. On July 13, 2018, a written notice of non-compliance was issued to Senior Care  
12 Pharmacy Sun Valley for noncompliance with Code sections 4312(a) and (e). Inspector M.K.  
13 delivered the written notice to Senior Care Pharmacy located at 8000 Wheatland Avenue, Suite I,  
14 Sun Valley California. When she arrived around 1:45p.m., she noticed the pharmacy was closed  
15 and no one was inside the pharmacy. She left a copy of her signed inspection report and written  
16 notice issued for violation of Code sections 4312(a) and(e) in the mail slot, on the pharmacy door.  
17 A copy of the written notice was provided to Inspector E.D.

18           43. On July 13, 2018, Inspector M.K. mailed through the U.S. Postal Service a copy of  
19 Senior Care Pharmacy inspection report and written notice for violation of Code sections  
20 4312(a) and (e) to Respondent Banerjee (100 % President) at her address of record with the  
21 Board, PO Box 27638, Anaheim, CA 92809.

22           44. On July 13, 2018, Inspector E.D. went to Senior Care Pharmacy Services Inc. (GG,  
23 PHY 46000) located at 12600-12601 Hoover St., Garden Grove, CA 92481 to serve a copy of  
24 SV's BPC 4312 notice since Inspector M.K. had attempted to deliver the notice by personal  
25 service to no avail, however, the pharmacy was closed. During her visit she explained Code  
26 section 4312 notice to Technician Kenny Tran (TCH 57643) and Pharmacist Raymond Liu (RPH  
27 76536). Pharmacist Liu signed the violation notice for SV and the inspection report for Garden  
28 Grove that explained the reason for Inspector E.D.'s visit.

45. On or around July 20, 2018, Inspector K.R. received a response from Respondent's counsel who stated that Senior Care Pharmacy in Sun Valley was fully operative and had engaged in pharmacy activities during the relevant time. The pharmacy was equipped with computers and industry standard pharmacy management software to process prescriptions and manage inventory. Prescriptions were filled by Respondent Lu, and delivered to facilities with which Senior Care entities have a contract.

46. Between February 13, 2018 and July 11, 2018, Respondent Pharmacy SFV had the followings:

- Hours posted on the pharmacy door window, were Monday thru Friday, 11 am to 8pm.
- Temperature inside pharmacy on July 11, 2018 was 85° F.
- Drug stock was minimal and consisted of what remained from prior ownership.
- No new drug stock had been ordered using PHY 56057 or DEA FS7433648.
- No initial DEA inventory had been completed as required with the issuance of a new DEA Registrations.
- No pharmacy self-assessment had been completed since the change of ownership.
- 55 prescriptions were filled according to the dispensing report provided by the pharmacy

47. Inspector K.R. found discrepancies between the dispensing record provided and the List of Orders Filled documents. The dispensing record was generated at Senior Care located in Garden Grove. The List of Orders Filled were obtained from Senior Care located in Sun Valley. It is unclear which pharmacy dispensed the prescriptions.

## SECOND CAUSE FOR DISCIPLINE

**(Voiding License of Entity Remaining Closed)**

48. Respondent Pharmacy SFV, Respondent Lu and Respondent Banerjee are subject to disciplinary action under Code section 4312, subdivisions (a) and (e), in conjunction with California Code of Regulations Section 1709 subdivision (a), in that after February 13, 2018, Senior Care Pharmacy, PHY 49798, located at 8000 Wheatland Avenue Suite 1, Sun Valley California failed to conduct pharmacy business from this location. Business was on day 3 of the 21 posted days open. Failure to conduct ordinary pharmacy business one day each calendar week

1 during any 120 days is a violation of Business and Professions Code 4312(a) as related to  
2 4312(e).

3 49. Complainant refers to and by this reference incorporates the allegations set forth  
4 above in paragraphs 36-47, inclusive, as though set forth fully.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Prohibited Acts)**

7 50. Respondent Pharmacy SFV, Respondent Patel, Respondent Banerjee, and Respondent  
8 Lu, are subject to disciplinary action under Code section 4169, subdivision (a)(2), in conjunction  
9 with Health and Safety Code section 111255 and 111295, in that between February 13, 2018 and  
10 July 11, 2018, Respondent Pharmacy SFV stored drugs at a temperature of 85°F and turned off  
11 the temperature control when the pharmacy was not occupied. Storing drugs at high and  
12 uncontrolled temperatures.

13 51. Complainant refers to and by this reference incorporates the allegations set forth  
14 above in paragraphs 36-47, inclusive, as though set forth fully.

15 **OTHER MATTERS**

16 52. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
17 PHY 49798 issued to Senior Care Pharmacy Services Inc., Samitendu Banerjee, CEO, Kim  
18 Banerjee, President, Alpesh Patel, COO, Po-An Lu, PIC, Samitendu Banerjee shall be prohibited  
19 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
20 of a licensee for five years if Pharmacy Permit Number PHY 49798 is placed on probation or  
21 until Pharmacy Permit Number PHY 49798 is reinstated, if it is revoked.

22 53. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
23 PHY 56057 to Senior Care Pharmacy Services SFV Inc., Samitendu Banerjee, CEO, Kim  
24 Banerjee, President, Alpesh Patel, COO, Po-An Lu, PIC, Samitendu Banerjee shall be prohibited  
25 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
26 of a licensee for five years if Pharmacy Permit Number PHY 56057 is placed on probation or  
27 until Pharmacy Permit Number PHY 56057 is reinstated, if it is revoked.



1 **DISCIPLINE CONSIDERATIONS**

2 54. To determine the degree of discipline, if any, to be imposed on the Respondents,  
3 Complainant alleges that on or about February 12, 2016, the Board of Pharmacy issued a Citation  
4 to Respondent Pharmacy in Case No. CI 2014 65694 in the amount of \$5,000.00 for violating  
5 California Code of Regulations, title 16, section 1716 [variation from prescription] and Health &  
6 Safety Code section 11164 [prescribing, filling, prescribing or compounding controlled  
7 substances]. That Citation is now final and is incorporated by reference as if fully set forth.

8 55. To determine the degree of discipline, if any, to be imposed on the Respondents,  
9 Complainant alleges that effective May 22, 2018, the Cease & Desist Order issued by the Board,  
10 pursuant to the Business & Professions Code section 4316, subsection (b), to Senior Care  
11 Pharmacy Inc./ Novasys Pvt. Ltd., was upheld by the Board for violating Tile 16, California Code  
12 of Regulation sections 1717.1 and 1793.2.

13 **PRAYER**

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

16 1. Revoking or suspending Pharmacy License Number PHY 49798, issued to Senior  
17 Care Pharmacy Services Inc, Samitendu Banerjee, CEO, Kim Banerjee, President, Alpesh Patel,  
18 COO ;

19 2. Revoking or suspending Pharmacy License Number PHY 56057, issued to Senior  
20 Care Pharmacy Services SFV Inc, Samitendu Banerjee, CEO, Kim Banerjee, President;

21 3. Revoking or suspending Registered Pharmacist License Number RPH 48866, issued  
22 to Alpesh Patel;

23 4. Revoking or suspending Registered Pharmacist License Number RPH 45184, issued  
24 to Samitendu Banerjee;

25 5. Revoking or suspending Registered Pharmacist License Number RPH 69811, issued  
26 to Po-An Lu;

27 6. Prohibiting Alpesh Patel from serving as a manager, administrator, owner, member,  
28 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number

PHY 49798 is placed on probation or until Pharmacy Permit Number PHY 49798 is reinstated if Pharmacy Permit Number PHY 49798 issued to Senior Care Pharmacy Services Inc. is revoked;

7. Prohibiting Samitendu Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 49798 is placed on probation or until Pharmacy Permit Number PHY 49798 is reinstated if Pharmacy Permit Number PHY 49798 issued to Senior Care Pharmacy Services Inc. is revoked;

8. Prohibiting Kim Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 49798 is placed on probation or until Pharmacy Permit Number PHY 49798 is reinstated if Pharmacy Permit Number PHY 49798 issued to Senior Care Pharmacy Services Inc. is revoked;

9. Prohibiting Alpesh Patel from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 56057 is placed on probation or until Pharmacy Permit Number PHY 56057 is reinstated if Pharmacy Permit Number PHY 56057 issued to Senior Care Pharmacy Services Inc. is revoked;

10. Prohibiting Samitendu Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 56057 is placed on probation or until Pharmacy Permit Number PHY 49798 is reinstated if Pharmacy Permit Number PHY 56057 issued to Senior Care Pharmacy Services Inc. is revoked;

11. Prohibiting Kim Banerjee from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 56057 is placed on probation or until Pharmacy Permit Number PHY 56057 is reinstated if Pharmacy Permit Number PHY 56057 issued to Senior Care Pharmacy Services Inc. is revoked;

12. Ordering Samitendu Banerjee, Kim Banerjee, Alpesh Patel and Po-An Lu 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; and,

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: November 21, 2019



---

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