

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

In the Matter of the Accusation Against:

Case No. 6495

**CLOVER PHARMACY INC.,  
DBA ADVANCE MEDICAL PHARMACY;  
GERALD NGOYU TUNG, OWNER**  
112 La Casa Via #100  
Walnut Creek, CA 94598

**Original Permit No. PHY 54381,**

and

**GERALD NGOYU TUNG**  
344 Conifer Court  
Walnut Creek, CA 94598

**Original Pharmacist License No. RPH 51708**

Respondents.

**DECISION AND ORDER**

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

This Decision shall become effective at 5:00 p.m. on January 23, 2020.

It is so ORDERED on December 24, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 ASPASIA A. PAPAVALASSIOU  
Deputy Attorney General  
4 State Bar No. 196360  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 879-0818  
Facsimile: (510) 622-2270  
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov  
*Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 6495

14 **CLOVER PHARMACY INC.,**  
15 **DBA ADVANCE MEDICAL PHARMACY;**  
16 **GERALD NGOYU TUNG, OWNER**  
112 La Casa Via #100  
Walnut Creek, CA 94598

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER REGARDING  
ORIGINAL PHARMACIST LICENSE**

17 **Original Permit No. PHY 54381,**

18 and

19 **GERALD NGOYU TUNG**  
20 344 Conifer Court  
Walnut Creek, CA 94598

21 **Original Pharmacist License No. RPH 51708**

22 Respondents.  
23

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

26 **PARTIES**

27 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board of  
28 Pharmacy (Board). She brought this action solely in her official capacity and is represented in

1 this matter by Xavier Becerra, Attorney General of the State of California, by Aspasia A.  
2 Papavassiliou, Deputy Attorney General.

3 2. On or about August 28, 2000, the Board issued Original Pharmacist License No. RPH  
4 51708 to Gerald Ngoyu Tung (Respondent). The Original Pharmacist License was in full force  
5 and effect at all times relevant to the charges brought in Accusation No. 6495, and will expire on  
6 June 30, 2020, unless renewed.

7 3. Respondent is represented in this proceeding by attorney Luis Andre P. Vizcocho,  
8 whose address is: California Pharmacy Lawyers, 49 Discovery, Suite 240, Irvine, California,  
9 92618-6713.

### 10 **JURISDICTION**

11 4. Accusation No. 6495 was filed before the Board, and is currently pending against  
12 Respondent. The Accusation and all other statutorily required documents were properly served  
13 on Respondent on April 19, 2019. Respondent timely filed his Notice of Defense contesting the  
14 Accusation.

15 5. A copy of Accusation No. 6495 is attached as exhibit A and incorporated by  
16 reference.

### 17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, fully discussed with counsel, and understands the  
19 charges and allegations in Accusation No. 6495. Respondent has also carefully read, fully  
20 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
21 Order.

22 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
23 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
24 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
25 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
26 documents; the right to reconsideration and court review of an adverse decision; and all other  
27 rights accorded by the California Administrative Procedure Act and other applicable laws.  
28

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 6495, if proven at a hearing, constitute cause for imposing discipline upon his pharmacist license.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his pharmacist license is subject to discipline and agrees to be bound by the Board's probation terms set forth in the Disciplinary Order below.

## RESERVATION

12. The admissions made by Respondent in this stipulation are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

## CONTINGENCY

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

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

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

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

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 51708, issued to Respondent Gerald Ngoyu Tung, is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

## 1. 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
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves

respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

## **2. 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.

## **3. 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.

## **4. 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 Entity 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.

1           **5. Continuing Education**

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

4           **6. Reporting of Employment and Notice to Employers**

5           During the period of probation, respondent shall notify all present and prospective  
6 employers of the decision in case number 6495 and the terms, conditions and restrictions imposed  
7 on respondent by the decision, as follows:

8           Within thirty (30) days of the effective date of this decision, and within ten (10) days of  
9 undertaking any new employment, respondent shall report to the board in writing the name,  
10 physical address, and mailing address of each of Entity employer(s), and the name(s) and  
11 telephone number(s) of all of Entity direct supervisor(s), as well as any pharmacist(s)-in- charge,  
12 designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s)  
13 and the work schedule, if known. Respondent shall also include the reason(s) for leaving the  
14 prior employment. Respondent shall sign and return to the board a written consent authorizing  
15 the board or its designee to communicate with all of respondent's employer(s) and supervisor(s),  
16 and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,  
17 concerning respondent's work status, performance, and monitoring. Failure to comply with the  
18 requirements or deadlines of this condition shall be considered a violation of probation.

19           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
20 respondent undertaking any new employment, respondent shall cause (a) Entity direct supervisor,  
21 (b) Entity pharmacist-in-charge, designated representative-in-charge, responsible manager, or  
22 other compliance supervisor, and (c) the owner or owner representative of Entity employer, to  
23 report to the board in writing acknowledging that the listed individual(s) has/have read the  
24 decision in case number 6495, and terms and conditions imposed thereby. If one person serves in  
25 more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the  
26 respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the  
27 board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c)  
28 during the term of probation, respondent shall cause the person(s) taking over the role(s) to report



1 to the board in writing within fifteen (15) days of the change acknowledging that he or she has  
2 read the decision in case number 6495, and the terms and conditions imposed thereby.

3 If respondent works for or is employed by or through an employment service, respondent  
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board  
5 of the decision in case number 6495, and the terms and conditions imposed thereby in advance of  
6 respondent commencing work at such licensed entity. A record of this notification must be  
7 provided to the board upon request.

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

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

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

21 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

22 Respondent shall further notify the board in writing within ten (10) days of any change in  
23 name, residence address, mailing address, e-mail address or phone number.

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

26 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

27 During the period of probation, respondent shall not supervise any intern pharmacist, be the  
28 pharmacist-in-charge, designated representative-in-charge, responsible manager or other

1 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption  
2 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

3 **9. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, respondent shall pay to the  
5 board its costs of investigation and prosecution in the amount of \$15,795.50. Respondent shall be  
6 permitted to pay these costs in a payment plan approved by the board or its designee, so long as  
7 full payment is completed no later than one (1) year prior to the end date of probation. Failure to  
8 pay costs by the deadline(s) as directed shall be considered a violation of probation.

9 **10. Probation Monitoring Costs**

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

14 **11. Status of License**

15 Respondent shall, at all times while on probation, maintain an active, current Original  
16 Permit with the board, including any period during which suspension or probation is tolled.  
17 Failure to maintain an active, current Original Permit shall be considered a violation of probation.

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

22 **12. License Surrender While on Probation/Suspension**

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

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

3 Upon acceptance of the surrender, respondent shall relinquish Entity pocket and/or wall  
4 license, including any indicia of licensure not previously provided to the board within ten (10)  
5 days of notification by the board that the surrender is accepted if not already provided.

6 Respondent may not reapply for any license from the board for three (3) years from the effective  
7 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
8 of the date the application for that license is submitted to the board, including any outstanding  
9 costs.

### 10 13. Practice Requirement – Extension of Probation

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

17 If respondent does not practice as a pharmacist in California for the minimum number of  
18 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
19 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
20 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the  
21 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume  
22 practice at the required level. Respondent shall further notify the board in writing within ten (10)  
23 days following the next calendar month during which respondent practices as a pharmacist in  
24 California for the minimum of hours. Any failure to timely provide such notification(s) shall be  
25 considered a violation of probation.

26 It is a violation of probation for respondent's probation to be extended pursuant to the  
27 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
28

1 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended  
2 probation period on its website.

3 **14. Violation of Probation**

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

10 If respondent violates probation in any respect, the board, after giving respondent notice  
11 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
12 was stayed. If a petition to revoke probation or an accusation is filed against respondent during  
13 probation, or the preparation of an accusation or petition to revoke probation is requested from  
14 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of  
15 probation shall be automatically extended until the petition to revoke probation or accusation is  
16 heard and decided, and the charges and allegations in the Accusation shall be deemed true and  
17 correct.

18 **15. Completion of Probation**

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

21 **16. Completion of Board's CE Program Regarding Prescription Drug Abuse**

22 Within 180 days from the effective date of this decision, Respondent must complete and  
23 provide proof of completion of the six (6)-hour Continuing Education (CE) course offered by the  
24 Board and the United States Drug Enforcement Administration (DEA) titled "Prescription Drug  
25 Abuse and Preventing Drug Diversion—What a Pharmacist Needs to Know." Failure to provide  
26 proof of completion shall be considered a violation of probation.

1           **17. Remedial Education**

2           Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
3 board or its designee, for prior approval, an appropriate program of remedial education related to  
4 inventory control, record-keeping, pharmacy management, safe dispensing, opioid sales, and  
5 prescribing/dispensing. The program of remedial education shall consist of at least 10 (ten) hours  
6 per year, live webinar or in-person, and shall be completed every year of Respondent's probation  
7 at Respondent's own expense. All remedial education shall be in addition to, and shall not be  
8 credited toward, continuing education (CE) courses used for license renewal purposes for  
9 pharmacists.

10          Failure to timely submit for approval or complete the approved remedial education shall be  
11 considered a violation of probation. The period of probation will be automatically extended until  
12 such remedial education is successfully completed and written proof, in a form acceptable to the  
13 board, is provided to the board or its designee.

14          Following the completion of each course, the board or its designee may require the  
15 respondent, at Entity own expense, to take an approved examination to test the respondent's  
16 knowledge of the course. If the respondent does not achieve a passing score on the examination  
17 that course shall not count towards satisfaction of this term. Respondent shall take another course  
18 approved by the board in the same subject area.

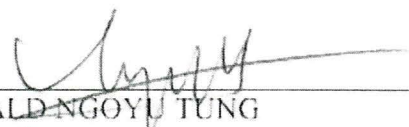
19           **18. No Ownership or Management of Licensed Premises**

20          Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,  
21 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
22 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
23 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
24 days following the effective date of this decision and shall immediately thereafter provide written  
25 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
26 documentation thereof shall be considered a violation of probation.

1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Luis Andre P. Vizcocho. I understand the stipulation and the effect  
4 it will have on my Original Pharmacist License. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Board of Pharmacy.

7 DATED: 9/16/19

8   
GERALD NGOYU TUNG  
Respondent

9  
10 I have read and fully discussed with Respondent Gerald Ngoyu Tung the terms and  
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
12 I approve its form and content.

13 DATED: 9/16/2019

14   
LUIS ANDRE P. VIZCOCHO  
Attorney for Respondent


15  
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the Board of Pharmacy.

19 DATED: 9/17/2019

20 Respectfully submitted,

21 XAVIER BECERRA  
Attorney General of California  
22 DIANN SOKOLOFF  
Supervising Deputy Attorney General

23   
24 ASPASIA A. PAPA VASSILIOU  
25 Deputy Attorney General  
Attorneys for Complainant

26 OK2018900481 91148511.docx  
27  
28

**Exhibit A**

**Accusation No. 6495**

1 XAVIER BECERRA  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 ASPASIA A. PAPAVALASSILOU  
Deputy Attorney General  
4 State Bar No. 196360  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 879-0818  
Facsimile: (510) 622-2270  
7 E-mail: Aspasia.Papavassiliou@doj.ca.gov  
*Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 6495

14 **CLOVER PHARMACY INC**  
15 **DBA ADVANCE MEDICAL PHARMACY;**  
16 **GERALD NGOYU TUNG, OWNER**  
112 La Casa Via #100  
Walnut Creek, CA 94598

**A C C U S A T I O N**

17 **Original Permit No. PHY 54381,**

18 and

19 **GERALD NGOYU TUNG**  
20 344 Conifer Court  
Walnut Creek, CA 94598

21 **Original Pharmacist License No. RPH 51708**

22 Respondents.

23  
24 Complainant alleges:

25 **PARTIES**

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



2. On or about April 19, 2016, the Board of Pharmacy issued Original Permit Number PHY 54381 to Clover Pharmacy Inc dba Advance Medical Pharmacy (Respondent Pharmacy), with Gerald Ngoyu Tung as President, 100 Percent Shareholder, and Pharmacist-in-Charge, and Chui-Shan Tam as secretary. The permit was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 1, 2019, unless renewed.

3. On or about August 28, 2000, the Board of Pharmacy issued Original Pharmacist License Number RPH 51708 to Gerald Ngoyu Tung (Respondent Pharmacist). The license was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on June 30, 2020, unless renewed.

### **JURISDICTION**

4. 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.

5. Section 4113 of the Code, states, in pertinent part:

...

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

6. 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."

7. Section 4307 of the Code states:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control of any partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director,

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

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

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

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

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

### 15 **STATUTORY AND REGULATORY PROVISIONS**

16 8. Section 4081 of the Code states, in pertinent part:

17 "(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition  
18 of dangerous drugs or dangerous devices shall be at all times during business hours open to  
19 inspection by authorized officers of the law, and shall be preserved for at least three years from  
20 the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-  
21 party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility,  
22 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment  
23 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption  
24 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
25 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who  
26 maintains a stock of dangerous drugs or dangerous devices.

27 "(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics  
28 provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-

1 in-charge, responsible manager, or designated representative-in-charge, for maintaining the  
2 records and inventory described in this section.”

3 9. Section 4105 of the Code states, in pertinent part:

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

7 10. Section 4301 of the Code states, in pertinent part:

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

11 . . .

12 “(c) Gross negligence.

13 “(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)  
14 of Section 11153 of the Health and Safety Code.

15 . . .

16 “(j) The violation of any of the statutes of this state, of 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 11. Section 4306.5 of the Code states, in pertinent part:

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

25 . . .

26 “(b) Acts or omissions that involve, in whole or in part, the failure to exercise or  
27 implement his or her best professional judgment or corresponding responsibility with regard to  
28

1 the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or  
2 with regard to the provision of services.”

3 12. Health and Safety Code section 11153 states, in pertinent part:

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

14 13. California Code of Regulations, title 16, section 1718, states:

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

18 “The controlled substances inventories required by Title 21, CFR, Section 1304 shall be  
19 available for inspection upon request for at least 3 years after the date of the inventory.”

20 14. California Code of Regulations, title 16, section 1761, states:

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

25 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense  
26 a controlled substance prescription where the pharmacist knows or has objective reason to know  
27 that said prescription was not issued for a legitimate medical purpose.”  
28

- 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

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

(b)(1)(I), and Title 21 CFR, section 1308.12, subdivision (b)(1)(vi), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

22. Hydromorphone, also known by the brand name Dilaudid, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(J), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

23. Lorazepam, also known by the brand name Ativan, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(16), and a dangerous drug under Business and Professions Code section 4022. It is used for anxiety.

24. Methadone, also known by the brand name Dolophine, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

25. Morphine Sulfate, also known by the brand name MS Contin/Avinza, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(L), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

26. Oxycodone, also known by the brand name Percolone/Roxicodone, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(m), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

27. Oxycodone Extended Release, also known by the brand name Oxycontin, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(m), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

28. Oxycodone/Acetaminophen (APAP), also known by the brand name Percocet, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(m), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

29. Oxymorphone, also known by the brand name Opana, is a Schedule II controlled substance under Health and Safety Code section 11055, subdivision (b)(1)(n), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

30. Tapentadol, also known by the brand name Nucynta, is a Schedule II controlled substance under Title 21, Code of Federal Regulations, section 1308.12, subdivision (c)(28), and a dangerous drug under Business and Professions Code section 4022. It is used for pain.

31. Zolpidem, also known by the brand name Ambien, is a Schedule IV controlled substance under Health and Safety Code section 11057, subdivision (d)(32), and a dangerous drug under Business and Professions Code section 4022. It is used for insomnia.

**FIRST CAUSE FOR DISCIPLINE**

(Failure to Maintain Pharmacy Records)

(Bus. And Prof. Code, §§ 4081 and 4105; Cal. Code Regs., tit. 16, § 1718)

32. Respondent Pharmacy has subjected its permit to discipline, and Respondent Pharmacist has subjected his license to discipline, because Respondents failed to properly maintain pharmacy records (Bus. And Prof. Code, §§ 4081 and 4105; Cal. Code Regs., tit. 16, § 1718). A Board inspection on March 5, 2018, and a subsequent investigation involving pharmacy records from June 23, 2017, to March 7, 2018, found that Respondents had more drugs in stock than their records indicated. Respondents failed to maintain an adequate inventory and had overages of controlled substances with no records to account for the excess drug stock. The overages are listed below.

Drug	Overage
Alprazolam 2 mg	845
Carisoprodol 350 mg	7622
Diazepam 10 mg	693
Hydrocodone/APAP 10/325 mg	25006
Hydrocodone/APAP 5/325 mg	3203
Hydrocodone/APAP 7.5/325 mg	1929
Hydromorphone 8 mg	4860
Methadone 10 mg	1453
Morphine 30 mg	7731

Nucynta 100 mg	1540
Oxycodone 30 mg	8587
Oxycodone/APAP 10/325 mg	7220

### **SECOND CAUSE FOR DISCIPLINE**

(Failure to Exercise Corresponding Responsibility for Legitimacy of Prescriptions)  
(Bus. & Prof. Code, § 4306.5, Health & Saf. Code, § 11153; Cal. Code Regs., tit. 16, § 1761)

33. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent Pharmacist has subjected his pharmacist license to discipline, because Respondents failed to fulfill their corresponding responsibility to ensure the legitimacy of prescriptions for controlled substances that they dispensed (Bus. & Prof. Code, § 4306.5, Health & Saf. Code, § 11153; Cal. Code Regs., tit. 16, § 1761). A Board inspection on March 5, 2018, and a subsequent investigation involving pharmacy records from April 19, 2016 to March 7, 2018, found that Respondents dispensed controlled substance prescriptions to six patients with irregularities and red flags of abuse without ensuring that the prescriptions were issued for a legitimate medical purpose in the usual course of professional practice. Respondents dispensed controlled substances after ignoring, or not being aware of, objective factors which were irregular from medically legitimate prescriptions. As a result of their failure to exercise corresponding responsibility, Respondents dispensed irregularly high doses of controlled substances to patients, as further described below.

- AS was dispensed methadone at three times the safe recommended dose on or about August 18, 2017, and October 19, 2017;
- BB was dispensed a highly abused cocktail of interacting drugs (i.e. the “Trinity,” which consisted of carisoprodol, oxycodone, and lorazepam) and was comprised of prescriptions from two different prescribers from on or about August 22, 2016, to August 31, 2016;
- MS was dispensed fentanyl at twice the safe recommended dose on or about September 7, 2017;



- SK was dispensed different opioids from two different prescribers on or about June 14, 2016;
- ST(1) was dispensed zolpidem at four times the safe recommended dose on six different occasions on or about April 25, 2016; May 2, 2016; June 1, 2016; June 6, 2016; July 8, 2016; and August 4, 2016;
- ST(2) was dispensed zolpidem at three times the safe recommended dose on 46 different occasions on or about April 19, 2016, to February 20, 2018.

**THIRD CAUSE FOR DISCIPLINE**  
(Unprofessional Conduct: Gross Negligence)  
(Bus. & Prof. Code, § 4301, subd. (c))

34. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent Pharmacist has subjected his pharmacist license to discipline, because Respondents engaged in unprofessional conduct by committing gross negligence (Bus. & Prof. Code, § 4301, subd. (c)). The circumstances are set forth in paragraph 33, above.

**FOURTH CAUSE FOR DISCIPLINE**  
(Unprofessional Conduct: Excessive Furnishing of Controlled Substances)  
(Bus. & Prof. Code, § 4301, subd. (d))

35. Respondent Pharmacy has subjected its pharmacy permit to discipline, and Respondent Pharmacist has subjected his pharmacist license to discipline, because Respondents engaged in unprofessional conduct by the clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code (Bus. & Prof. Code, § 4301, subd. (d)). The circumstances are set forth in paragraph 33, above.

**OTHER MATTERS**

36. Pursuant to Code section 4307, if discipline is imposed on Original Permit Number PHY 54381 issued to Clover Pharmacy Inc dba Advance Medical Pharmacy, then Clover Pharmacy Inc shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY 54381 is placed on probation, or until Original Permit Number PHY 54381 is reinstated if revoked.

37. Pursuant to Code section 4307, if discipline is imposed on Original Permit Number PHY 54381 issued to Clover Pharmacy Inc dba Advance Medical Pharmacy while Gerald Ngoyu Tung has been an officer or owner and had knowledge of or knowingly participated in any conduct for which the license was disciplined, then Gerald Ngoyu Tung shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY 54381 is placed on probation, or until Original Permit Number PHY 54381 is reinstated if revoked.

## DISCIPLINARY CONSIDERATIONS

38. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant further alleges that Respondent Pharmacist was aware of a prior disciplinary action for similar violations against Advance Medical Pharmacy and its owner and pharmacist-in-charge at the time. On or about January 08, 2016, the Board filed an accusation against Advance Medical Pharmacy (PHY 46345) and James Yuen (RPH 43557) alleging extensive improper dispensing of controlled substances. On or about February 12, 2016, Advance Medical Pharmacy and Yuen surrendered their permit and license as a result of the accusation. Gerald Ngoyu Tung then purchased the business from Yuen and a new permit was issued, with Tung as the Pharmacist-in-Charge.

## **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and that, following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Original Permit Number PHY 54381, issued to Clover Pharmacy Inc dba Advance Medical Pharmacy;
2. Revoking or suspending Original Pharmacist License Number RPH 51708, issued to Gerald Ngoyu Tung;
3. Prohibiting Clover Pharmacy Inc from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY 54381 is placed on probation, or until Original Permit Number PHY 54381 is reinstated if revoked;

4. Prohibiting Gerald Ngoyu Tung from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Original Permit Number PHY 54381 is placed on probation, or until Original Permit Number PHY 54381 is reinstated if revoked;

5. Ordering Advance Medical Pharmacy and Gerald Ngoyu Tung 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,

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

DATED: April 5, 2019

Anne Sodergren

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

OK2018900481/91041986.docx