

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

In the Matter of the Accusation Against:

**GINIKA INC., dba
CARE-PRO PHARMACY,
Pharmacy Permit No. PHY 51509;**

**NITAL GIRISH PATEL,
Pharmacist License No. RPH 48678;**

and

**TUAN DUC DOAN,
Pharmacist License No. RPH 54387,**

Respondents.

Agency Case No. 6980

OAH No. 2021020918

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 February 24, 2022.

It is so ORDERED on January 25, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.
Board President

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2 MARICHELLE S. TAHIMIC
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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:

14 **GINIKA INC.,**
15 **DBA CARE-PRO PHARMACY**
16 **1307 W. Sixth Street, Suite 107**
Corona, CA 92882

17 **Permit Number No. 51509,**

18 **NITAL GIRISH PATEL**
19 **1220 Teroro Way**
Corona, CA 91719

20 **Pharmacist License No. RPH 48678,**

21 **and**

22 **TUAN DUC DOAN**
23 **2531 E. Riles Circle**
Anaheim, CA 92806

24 **Pharmacist License No. RPH 54387**

25 Respondents.

Case No. 6980

OAH No. 2021020918

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT NITAL GIRISH PATEL,
ONLY**

1 In the interest of a prompt and speedy settlement of this matter, consistent with the public
2 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
3 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
4 be submitted to the Board for approval and adoption as the final disposition of the Accusation
5 solely with respect to Nital Girish Patel only. It does not apply to Tuan Duc Doan.

6 **PARTIES**

7 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
8 (Board). She brought this action solely in her official capacity and is represented in this matter by
9 Rob Bonta, Attorney General of the State of California, by Lauro A. Paredes, Deputy Attorney
10 General.

11 2. Respondent Nital Girish Patel (Respondent) is represented in this proceeding by
12 attorney Lucy S. McAllister, whose address is 255 N. Market Street, Suite 100,
13 San Jose, CA 95110.

14 3. On or about May 9, 1996, the Board issued Pharmacist License Number No. 48678 to
15 Nital Girish Patel.

16 **JURISDICTION**

17 4. Accusation No. 6980 was filed before the Board, and is currently pending against
18 Respondent. The Accusation and all other statutorily required documents were properly served
19 on Respondent on October 12, 2020. Respondent timely filed her Notice of Defense contesting
20 the Accusation.

21 5. A copy of Accusation No. 6980 is attached as exhibit A and incorporated herein by
22 reference.

23 **ADVISEMENT AND WAIVERS**

24 6. Respondent has carefully read, fully discussed with counsel, and understands the
25 charges and allegations in Accusation No. 6980. Respondent has also carefully read, fully
26 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
27 Order.

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1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Pharmacist License Number No. 48678 issued to
10 Respondent Nital Girish Patel is revoked. However, the revocation is stayed and Respondent is
11 placed on probation for two (2) years on the following terms and conditions.

12 1. **Obey All Laws**

13 Respondent shall obey all state and federal laws and regulations.

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

- 16 • an arrest or issuance of a criminal complaint for violation of any provision of the
17 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
18 substances laws
- 19 • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal
20 criminal proceeding to any criminal complaint, information or indictment
- 21 • a conviction of any crime
- 22 • the filing of a disciplinary pleading, issuance of a citation, or initiation of another
23 administrative action filed by any state or federal agency which involves
24 respondent's license or which is related to the practice of pharmacy or the
25 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,
26 device or controlled substance.

27 Failure to timely report such occurrence shall be considered a violation of probation.
28

1 **2. Report to the Board**

2 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
3 designee. The report shall be made either in person or in writing, as directed. Among other
4 requirements, respondent shall state in each report under penalty of perjury whether there has
5 been compliance with all the terms and conditions of probation.

6 Failure to submit timely reports in a form as directed shall be considered a violation of
7 probation. Any period(s) of delinquency in submission of reports as directed may be added to the
8 total period of probation. Moreover, if the final probation report is not made as directed,
9 probation shall be automatically extended until such time as the final report is made and accepted
10 by the board.

11 **3. Interview with the Board**

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

17 **4. Cooperate with Board Staff**

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

24 **5. Continuing Education**

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

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

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 6980 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

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

16 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
17 respondent undertaking any new employment, respondent shall cause (a) her direct supervisor, (b)
18 her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
19 compliance supervisor, and (c) the owner or owner representative of her employer, to report to the
20 board in writing acknowledging that the listed individual(s) has/have read the decision in case
21 number 6980, and terms and conditions imposed thereby. If one person serves in more than one
22 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's
23 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
24 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
25 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in
26 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
27 in case number 6980, and the terms and conditions imposed thereby.

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1 If respondent works for or is employed by or through an employment service, respondent
2 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
3 of the decision in case number 6980, and the terms and conditions imposed thereby in advance of
4 respondent commencing work at such licensed entity. A record of this notification must be
5 provided to the board upon request.

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

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

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

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

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

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

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

25 Respondent retains the right to act as the pharmacist-in-charge of Ginika, Inc., DBA Care-
26 Pro Pharmacy, Permit Number 51509 for ninety (90) days following the effective date of this
27 decision. During the rest of Respondent's period of probation, respondent shall not supervise any
28 intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible

1 manager or other compliance supervisor of any entity licensed by the board, nor serve as a
2 consultant. Assumption of any such unauthorized supervision responsibilities shall be
3 considered a violation of probation. effective date of the decision or prior to assumption of duties
4 allowed in this term. Assumption of any unauthorized supervision responsibilities shall be
5 considered a violation of probation. In addition, failure to timely seek approval for, timely retain,
6 or ensure timely reporting by the consultant shall be considered a violation of probation.

7 **9. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, respondent shall pay to the
9 board its costs of investigation and prosecution in the amount of \$ 10,000.00. Respondent shall
10 make said payments as follows:

11 There shall be no deviation from this schedule absent prior written approval by the board or
12 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
13 probation. Respondent shall be permitted to pay these costs in a payment plan approved by the
14 board or its designee, so long as full payment is completed no later than one (1) year prior to the
15 end date of probation.

16 **10. Community Service**

17 Within six (6) months of the effective date of this decision, respondent shall make
18 charitable donation(s) in the total amount of \$10,000.00 to an organization providing substance
19 use disorder treatment, naloxone distribution, etc.

20 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
21 board or its designee, for prior approval, the organization(s) to which she intends to make the
22 charitable donation(s).

23 Within 60 days of the effective date of this decision, respondent must submit a proposal for
24 the donation. The proposal must specify the entities within California that will receive the
25 donation for prior approval by the Board. Respondents shall submit to the Board proof
26 documenting compliance with the provisions of the proposal.

27 Failure to timely submit for approval or make the charitable donation(s) shall be considered
28 a violation of probation. The period of probation will be automatically extended until the

1 charitable donation(s) is made and written proof, in a form acceptable to the board, is provided to
2 the board or its designee.

3 **11. Probation Monitoring Costs**

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

8 **12. Status of License**

9 Respondent shall, at all times while on probation, maintain an active, current Pharmacist
10 License with the board, including any period during which suspension or probation is tolled.
11 Failure to maintain an active, current Pharmacist License shall be considered a violation of
12 probation.

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

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

18 Following the effective date of this decision, should respondent cease practice due to
19 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
20 respondent may relinquish her license, including any indicia of licensure issued by the board,
21 along with a request to surrender the license. The board or its designee shall have the discretion
22 whether to accept the surrender or take any other action it deems appropriate and reasonable.
23 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to
24 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
25 become a part of the respondent's license history with the board.

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

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

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

6 Except during periods of suspension, respondent shall, at all times while on probation, be
7 employed as a pharmacist in California for a minimum of 100 hours per calendar month. Any
8 month during which this minimum is not met shall extend the period of probation by one month.
9 During any such period of insufficient employment, respondent must nonetheless comply with all
10 terms and conditions of probation, unless respondent receives a waiver in writing from the board
11 or its designee.

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

21 It is a violation of probation for respondent's probation to be extended pursuant to the
22 provisions of this condition for a total period, counting consecutive and non-consecutive months,
23 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended
24 probation period on its website.

25 **15. Violation of Probation**

26 If respondent has not complied with any term or condition of probation, the board shall
27 have continuing jurisdiction over respondent, and the board shall provide notice to respondent
28 that probation shall automatically be extended, until all terms and conditions have been satisfied

1 or the board has taken other action as deemed appropriate to treat the failure to comply as a
2 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
3 board or its designee may post a notice of the extended probation period on its website.

4 If respondent violates probation in any respect, the board, after giving respondent notice
5 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
6 was stayed. If a petition to revoke probation or an accusation is filed against respondent during
7 probation, or the preparation of an accusation or petition to revoke probation is requested from
8 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
9 probation shall be automatically extended until the petition to revoke probation or accusation is
10 heard and decided.

11 **16. Remedial Education**

12 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
13 board or its designee, for prior approval, an appropriate program of remedial education related to
14 the underlying violations charged in the accusation. The program of remedial education shall
15 consist of at least 10 hours per year of probation, which shall be completed at respondent's own
16 expense. The first year of remedial education must include completion of the board's
17 Prescription Drug Abuse Prevention Training. All of the total hours must be live webinar/in-
18 person training. All remedial education shall be in addition to, and shall not be credited towards,
19 continuing education (CE) courses used for license renewal purposes for pharmacists.

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

24 Following the completion of each course, the board or its designee may require the
25 respondent, at her own expense, to take an approved examination to test the respondent's
26 knowledge of the course. If respondent does not achieve a passing score on the examination, that
27 course shall not count towards satisfaction of this term, and respondent shall take another course
28 approved by the board in the same subject area.

1 **17. Ethics Course**

2 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
3 in a course in ethics, at respondent’s expense, approved in advance by the board or its designee
4 that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall
5 provide proof of enrollment upon request. Within five (5) days of completion, respondent shall
6 submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll
7 in an approved ethics course, to initiate the course during the first year of probation, to
8 successfully complete it before the end of the second year of probation, or to timely submit proof
9 of completion to the board or its designee, shall be considered a violation of probation.

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

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

18 **19. 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.

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ENDORSEMENT

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

DATED: _____

Respectfully submitted,
ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC Supervising Deputy
Attorney General

LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

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

DATED: 12/1/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MARICHELLE S. TAHIMIC Supervising Deputy
Attorney General



LAURO A. PAREDES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6980

1 XAVIER BECERRA
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2 THEODORE S. DRCAR
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
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Attorneys for Complainant
8

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14 **GINIKA INC.**
15 **DBA CARE-PRO PHARMACY,**
16 **NITAL GIRISH PATEL AND TUAN DUC**
17 **DOAN OWNERS, DIRECTORS AND/OR**
18 **OFFICERS**
19 **1307 W. Sixth Street, Suite 107**
20 **Corona, CA 92882**

ACCUSATION

21 **Pharmacy Permit No. PHY 51509,**

22 **NITAL GIRISH PATEL**
23 **1220 Teroro Way**
24 **Corona, CA 91719**

25 **Pharmacist License No. RPH 48678,**

26 **and**

27 **TUAN DUC DOAN**
28 **2531 E. Riles Circle**
Anaheim, CA 92806

Pharmacist License No. RPH 54387

Respondents.

1 **PARTIES**

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

4 2. On or about August 2, 2013, the Board of Pharmacy issued Pharmacy Permit Number
5 PHY 51509 to Ginika Inc., dba Care-Pro Pharmacy (Care-Pro Pharmacy). The Pharmacy Permit
6 was in full force and effect at all times relevant to the charges brought herein and will expire on
7 August 1, 2021. Since August 2, 2013, Nital Girish Patel has been the Chief Executive Officer,
8 Director and owner of fifty percent of the outstanding stock of Ginika Inc. Since August 2, 2013,
9 Tuan Duc Doan has been the Secretary and owner of fifty percent of the outstanding stock of
10 Ginika Inc. and the Pharmacist-in-Charge of Care-Pro Pharmacy.

11 3. On or about May 9, 1996, the Board of Pharmacy issued Pharmacist License Number
12 RPH 48678 to Nital Girish Patel. The Pharmacist License was in full force and effect at all times
13 relevant to the charges brought herein and will expire on July 31, 2021, unless renewed.

14 4. On or about March 24, 2003, the Board of Pharmacy issued Pharmacist License
15 Number RPH 54387 to Tuan Duc Doan. The Pharmacist License was in full force and effect at
16 all times relevant to the charges brought herein and will expire on July 31, 2022, unless renewed.

17 **JURISDICTION**

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

21 6. Section 4011 of the Code provides that the Board shall administer and enforce both
22 the Pharmacy Law (Bus. & Prof. Code, § 4000 *et seq.*) and the Uniform Controlled Substances
23 Act (Health & Safety Code, § 11000 *et seq.*).

24 7. Code section 4300, subdivision (a) provides that every license issued by the Board
25 may be suspended or revoked.

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1 8. Code section 4300.1 states:

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

8 **STATUTORY PROVISIONS**

9 9. Code section 4022 states:

10 “Dangerous drug” or “dangerous device” means any drug or device unsafe
11 for self-use in humans or animals, and includes the following:

12 (a) Any drug that bears the legend: “Caution: federal law prohibits
13 dispensing without prescription,” “Rx only,” or words of similar import.

14 (b) Any device that bears the statement: “Caution: federal law restricts this
15 device to sale by or on the order of a _____” “Rx only,” or words of similar import,
16 the blank to be filled in with the designation of the practitioner licensed to use or
17 order use of the device.

18 (c) Any other drug or device that by federal or state law can be lawfully
19 dispensed only on prescription or furnished pursuant to Section 4006.

20 10. Code section 4113, subdivision (c) states:

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

23 11. Code section 4301 states in pertinent part:

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

28 ...

(j) The violation of any of the statutes of this state, or 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 any other state or federal regulatory
agency.

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12. Code section 4306.5, subdivisions (a) and (b) states:

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

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

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

...

13. Code section 4307, subdivision (a) 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, or partner of any partnership, corporation, 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 manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

14. Health and Safety Code section 11153, subdivision (a), states:

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

///

1 15. Health and Safety Code section 11162.1, subdivision (a) states:

2 (a) The prescription forms for controlled substances shall be printed with the
3 following features:

4 (1) A latent, repetitive 'void' pattern shall be printed across the entire front of
5 the prescription blank; if a prescription is scanned or photocopied, the word "void"
6 shall appear in a pattern across the entire front of the prescription.

7 (2) A watermark shall be printed on the backside of the prescription blank; the
8 watermark shall consist of the words "California Security Prescription."

9 (3) A chemical void protection that prevents alteration by chemical washing.

10 (4) A feature printed in thermochromic ink.

11 (5) An area of opaque writing so that the writing disappears if the prescription
12 is lightened.

13 (6) A description of the security features included on each prescription form.

14 (7) (A) Six quantity check off boxes shall be printed on the form so that the
15 prescriber may indicate the quantity by checking the applicable box where the
16 following quantities shall appear:

17 1-24

18 25-49

19 50-74

20 75-100

21 101-150

22 151 and over.

23 (b) In conjunction with the quantity boxes, a space shall be provided to
24 designate the units referenced in the quantity boxes when the drug is not in tablet or
25 capsule form.

26 (8) Prescription blanks shall contain a statement printed on the bottom of the
27 prescription blank that the "Prescription is void if the number of drugs prescribed is
28 not noted."

(9) The preprinted name, category of licensure, license number, federal
controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may
indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

1 (13) An identifying number assigned to the approved security printer by the
2 Department of Justice.

3 (14) (A) A check box by the name of each prescriber when a prescription form
4 lists multiple prescribers.

5 (B) Each prescriber who signs the prescription form shall identify himself or
6 herself as the prescriber by checking the box by his or her name.

7 (b) Each batch of controlled substance prescription forms shall have the lot
8 number printed on the form and each form within that batch shall be numbered
9 sequentially beginning with the numeral one.

10 ...

11 16. Health and Safety Code section 11164 states:

12 Except as provided in Section 11167, no person shall prescribe a controlled
13 substance, nor shall any person fill, compound, or dispense a prescription for a
14 controlled substance, unless it complies with the requirements of this section.

15 (a) Each prescription for a controlled substance classified in Schedule II, III,
16 IV, or V, except as authorized by subdivision (b), shall be made on a controlled
17 substance prescription form as specified in Section 11162.1 and shall meet the
18 following requirements:

19 (1) The prescription shall be signed and dated by the prescriber in ink and
20 shall contain the prescriber's address and telephone number; the name of the
21 ultimate user or research subject, or contact information as determined by the
22 Secretary of the United States Department of Health and Human Services; refill
23 information, such as the number of refills ordered and whether the prescription is a
24 first-time request or a refill; and the name, quantity, strength, and directions for
25 use of the controlled substance prescribed.

26 (2) The prescription shall also contain the address of the person for whom
27 the controlled substance is prescribed. If the prescriber does not specify this
28 address on the prescription, the pharmacist filling the prescription or an employee
acting under the direction of the pharmacist shall write or type the address on the
prescription or maintain this information in a readily retrievable form in the
pharmacy.

....

REGULATORY PROVISIONS

17. Code of Federal Regulations, Title 21, section 1306.04, subdivision (a), states:

A prescription for a controlled substance to be effective must be issued for a
legitimate medical purpose by an individual practitioner acting in the usual course of
his professional practice. The responsibility for the proper prescribing and dispensing
of controlled substances is upon the prescribing practitioner, but a corresponding
responsibility rests with the pharmacist who fills the prescription. An order
purporting to be a prescription issued not in the usual course of professional treatment
or in legitimate and authorized research is not a prescription within the meaning and

1 intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such
2 a purported prescription, as well as the person issuing it, shall be subject to the
penalties provided for violations of the provisions of law relating to controlled
substances.

3 18. California Code of Regulations, title 16, section 1761 states:

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

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

10 **COST RECOVERY**

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

15 **DRUGS**

16 20. Phenergan with Codeine is the brand name for promethazine with codeine, a
17 Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision
18 (c)(1), and is a dangerous drug as defined by Business and Professions Code section 4022.

19 21. Roxicodone is the brand name for oxycodone, a Schedule II controlled substance
20 pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug as
21 defined by Business and Professions Code section 4022.

22 **FACTUAL ALLEGATIONS**

23 22. At all relevant times, Respondent Care-Pro Pharmacy was an independent community
24 pharmacy located in Corona, California. At all relevant times, Respondent Doan was the
25 Pharmacist-in-Charge and Respondent Patel was a staff pharmacist. Both of them were the
26 owners of Respondent Care-Pro Pharmacy (collectively Respondents).

27 23. On May 29, 2015, Doan, on behalf of Care-Pro Pharmacy, certified under penalty of
28 perjury under the laws of the State of California that pharmacists at Care-Pro Pharmacy were

1 aware of their corresponding responsibility to determine that a prescription written for a
2 controlled substance was issued for legitimate medical purposes only. He also verified that he
3 was aware that a pharmacist must not dispense a controlled substance prescription if he knew or
4 had objective reason to know that the prescription was not issued for a legitimate medical purpose
5 and all written controlled substances prescriptions (with limited exceptions) dispensed by Care-
6 Pro Pharmacy were on California Security Prescription forms. He also verified that before
7 dispensing a prescription with a significant irregularity or error, pharmacists should contact the
8 prescriber to obtain information needed to validate the prescription.

9 24. A Board of Pharmacy inspector conducted an inspection of Care-Pro Pharmacy.
10 Respondents Doan and Patel were present during the inspection. Based on the facts set forth
11 below, her educational and professional background and knowledge of pharmacy and drug laws,
12 the Board's inspector determined that on numerous occasions, Respondents failed to exercise
13 their corresponding responsibility and best professional judgment to dispense only controlled
14 substance prescriptions issued for legitimate medical purposes.

15 25. The inspector focused on three prescribers, Dr. R.G., Dr. J.B. and Physician Assistant
16 (PA) J.E. The inspector found those prescribers' prescriptions contained significant irregularities
17 and "red flags," suggesting that prescriptions were not written or filled for a legitimate medical
18 purpose. Respondents' prescribing profiles for these physicians indicated that promethazine with
19 codeine and/or oxycodone 30mg immediate-release, drugs associated with high rates of abuse and
20 diversion, were the most commonly prescribed drugs for these prescribers. Most, if not all of the
21 prescriptions from these prescribers exhibited obvious red flags of drug abuse that Respondents
22 ignored when filling them, in spite of the Respondents' corresponding responsibility to ensure
23 that all prescriptions dispensed were for a legitimate medical purpose.

24 Those red flags included:

- 25 • Irregularities on the face of the prescriptions;
- 26 • Cash payments;
- 27 • Prescriptions written for an unusually large quantity of drugs;
- 28 • The same combinations of drugs prescribed for multiple patients;

- Initial prescriptions written for strong opiates;
- Prescriptions written on non-compliant controlled substance prescription forms;
- Long distances traveled from the patient's home to the prescriber's office or pharmacy.

26. From July 1, 2016 through August 22, 2019, Respondents dispensed **318** prescriptions for controlled substances under the prescribing authority of Dr. R.G., Dr. J.B. and PA J.E., **145** of those prescriptions were dispensed based on prescription forms that were not compliant with the requirements of the Health and Safety Code.

27. In connection with the aforementioned prescriptions, Respondents dispensed an aggregate total of **25,627 tablets** of oxycodone immediate-release 30mg, **180 tablets** of oxycodone immediate-release 20mg and **37,666 mL** of promethazine with codeine.

28. Respondents dispensed controlled substances without ensuring they were for a legitimate medical use when obvious, objective, and systemic signs of irregularities and red flags of illegitimacy existed as described below.

29. Respondents dispensed controlled substances even though customers paid for almost all of the 318 medications in cash even though pharmacists know that almost all patients seek reimbursement from insurance companies or government agencies for medications.

30. In many instances, Respondents charged more than the fair market value for 150 tablets of oxycodone 30mg and 1 pint of promethazine with codeine, allegedly prescribed by Dr. R.G., Dr. J.B. and PA J.E. Namely, Respondents charged customers \$890.60 for 150 tablets of Oxycodone 30mg and \$140.00 for 1 pint of promethazine with codeine when neighboring pharmacies charged \$244.99, \$57.00, \$374.99 and \$538.00 for the same quantity and strength of oxycodone and \$61.59, \$26.00, \$36.99 and \$59.00 for the same quantity of promethazine with codeine.

31. Respondents filled prescriptions written by Dr. R.G. and Dr. J.B. for oxycodone and promethazine with codeine even though it is uncommon for family practitioners to prescribe those controlled substances. Respondents could have reviewed the Medical Board website and concluded that Dr. R.G. reported his primary area of practice as family medicine with emergency

1 and internal medicine as his secondary practices on the Medical Board website while Dr. J.B.
2 reported his primary area of practice as family medicine and geriatric medicine as his secondary
3 area of practice.

4 32. An unusually high percentage, approximately half of the prescriptions that
5 Respondents filled from prescriptions issued by Dr. R.G. and Dr. J.B. were for a drug of high
6 potential for diversion and drug abuse, oxycodone 30mg immediate-release in the highest strength
7 available, and for the unusually high quantity of 150 tablets, to multiple customers. Many of
8 Respondents' customers with prescriptions from these doctors were dispensed the highest
9 strength of oxycodone as a starting dose even though it is not recommended to prescribe the
10 highest strength to opioid naïve patients. Eight of the same customers were dispensed
11 prescriptions for the same controlled substance, oxycodone 30mg from both Dr. R.G. and J.B,
12 around the period, indicating that those customers may have been "doctor shopping."

13 33. An unusually high percentage, approximately one third of the prescriptions that
14 Respondents filled from prescriptions issued by PA J.E., were for a drug of high potential for
15 diversion and drug abuse, promethazine with codeine, written for the unusually large quantity of
16 473 mL (one pint), to multiple patients. Respondents filled sixteen of PA J.E.'s prescriptions for
17 both oxycodone 30mg and promethazine with codeine even though a pharmacist knows that those
18 drugs have the duplicative effect on a patient and they are both controlled substances that are
19 addictive and prone to abuse. Similarly, Respondents dispensed PA J.E.'s prescriptions for two
20 antihistamines, promethazine with codeine and loratadine at the same time; pharmacists know
21 that is irregular to prescribe two antihistamines concurrently because it increases the side effects
22 of those drugs. Respondents also dispensed three of PA J.E.'s prescriptions for promethazine with
23 codeine 17, 72 and 79 days after issuance of the prescriptions even though patients with
24 respiratory infections would immediately fill their prescriptions for their acute condition.
25 Respondents dispensed oxycodone to opioid naïve patients from PA J.E.'s prescriptions in the
26 highest or second highest strength (30mg and 20mg) available even though such a practice is
27 medically not recommended.

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
3 **Irregularities, Uncertainties, Ambiguities or Alterations Against All Respondents)**

4 39. Respondents are subject to disciplinary action under Code section 4301, subdivision
5 (o), for violating title 16, California Code of Regulations, sections 1761, subdivisions (a) and (b)
6 because they dispensed controlled substances based on prescriptions which contained significant
7 errors, omissions, irregularities, uncertainties, ambiguities or alterations, as described above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Failing to Exercise or Implement Best Professional Judgment or Corresponding**
10 **Responsibility when Dispensing Controlled Substances**
11 **Against Respondents Tuan Duc Doan and Nital Girish Patel)**

12 40. Respondents Tuan Duc Doan and Nital Girish Patel are subject to disciplinary action
13 under Code section 4301, subdivision (o), for violating Business and Professions Code section
14 4306.5, subdivisions (a) and (b), because they failed to exercise or implement their best
15 professional judgment or corresponding responsibility when dispensing controlled substances, as
16 described above.

17 **FOURTH CAUSE FOR DISCIPLINE**

18 **(Dispensing Controlled Substance Prescriptions Written**
19 **on Unauthorized Forms Against All Respondents)**

20 41. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
21 (j) and (o), for violating Health and Safety Code section 11164, subdivision (a), because they
22 filled and dispensed controlled substances from prescription forms that did not comply with the
23 requirements of Health and Safety Code section 11162.1, as described above.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct against All Respondents)**

26 42. Respondents are subject to disciplinary action under Code section 4301 for
27 unprofessional conduct because they engaged in the activities described above.

28 ///

1 **OTHER MATTERS**

2 43. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
3 51509 issued to Ginika Inc., doing business as Care-Pro Pharmacy, it shall be prohibited from
4 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
5 licensee for five years if Pharmacy Permit Number PHY 51509 is placed on probation or until the
6 Pharmacy Permit is reinstated if it is revoked.

7 44. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
8 51509 issued to Ginika Inc., doing business as Care-Pro Pharmacy, while Tuan Duc Doan has
9 been an owner or manager and had knowledge of or knowingly participated in any conduct for
10 which the licensee was disciplined, he shall be prohibited from serving as a manager,
11 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
12 the Pharmacy Permit is placed on probation or until the Pharmacy Permit is reinstated, if it is
13 revoked.

14 45. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
15 51509 issued to Ginika Inc., doing business as Care-Pro Pharmacy while Nital Girish Patel has
16 been an owner or manager and had knowledge of or knowingly participated in any conduct for
17 which the licensee was disciplined, she shall be prohibited from serving as a manager,
18 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
19 the Pharmacy Permit is placed on probation or until the Pharmacy Permit is reinstated, if it is
20 revoked.

21 46. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
22 RPH 54387 issued to Tuan Duc Doan, he shall be prohibited from serving as a manager,
23 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
24 the Pharmacist License is placed on probation or until the Pharmacist License is reinstated, if it is
25 revoked.

26 47. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No.
27 RPH 48678 issued to Nital Girish Patel, she shall be prohibited from serving as a manager,
28 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if

1 the Pharmacist License is placed on probation or until the Pharmacist License is reinstated, if it is
2 revoked.

3 **DISCIPLINARY CONSIDERATIONS**

4 48. To determine the degree of discipline, if any, to be imposed on Respondent Care-Pro
5 Pharmacy and Respondent Doan, Complainant alleges as follows. On September 7, 2017, the
6 Board issued Citation number CI 2016 72971 against Respondent Care-Pro Pharmacy and
7 Citation number CI 2017 76189 against Respondent Doan for violating California Code of
8 Regulations, title 16, section 1715, subdivision (a) (failing to complete a community pharmacy
9 self-assessment). The Board issued a fine against Respondent Doan, which he paid.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Permit Number 51509, issued to Ginika Inc., dba
14 Care-Pro Pharmacy;
- 15 2. Revoking or suspending Pharmacist License Number RPH 48678, issued to Nital
16 Girish Patel;
- 17 3. Revoking or suspending Pharmacist License Number RPH 54387, issued to Tuan Duc
18 Doan;
- 19 4. Prohibiting Ginika Inc., dba Care-Pro Pharmacy from serving as a manager,
20 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
21 Pharmacy Permit Number PHY 51509 is placed on probation or until the Pharmacy Permit is
22 reinstated, if it is revoked;
- 23 5. Prohibiting Tuan Duc Doan from serving as a manager, administrator, owner,
24 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
25 Number PHY 51509 is placed on probation or until the Pharmacy Permit is reinstated, if it is
26 revoked;
- 27 6. Prohibiting Nital Girish Patel from serving as a manager, administrator, owner,
28 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit

1 Number PHY 51509 is placed on probation or until the Pharmacy Permit is reinstated, if it is
2 revoked;

3 7. Prohibiting Tuan Duc Doan from serving as a manager, administrator, owner,
4 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
5 Number RPH 54387 is placed on probation or until the Pharmacist License is reinstated, if it is
6 revoked;

7 8. Prohibiting Nital Girish Patel from serving as a manager, administrator, owner,
8 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
9 Number RPH 48678 is placed on probation or until the Pharmacist License is reinstated, if it is
10 revoked;

11 9. Ordering Ginika Inc., dba Care-Pro Pharmacy, Nital Girish Patel and Tuan Duc Doan
12 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
13 case, pursuant to Business and Professions Code section 125.3; and,

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

15
16 DATED: 10/9/2020 _____

Signature on File

17 ANNE SODERGREN
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 *Complainant*

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