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

In the Matter of the Accusation Against:

CHOICECARE PHARMACY,
JOHN MONTELIBANO TALENS, OWNER,
Original Permit No. PHY 57291; and

PETER W. CHIU,
Registered Pharmacist License No. RPH 30425; and

CAROL ANN T. MALINIS,
Registered Pharmacist License No. RPH 43114,

Respondents.

Agency Case No. 7048

OAH No. 2021100753

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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 August 4, 2022.

It is so ORDERED on July 5, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Seung W. Oh, Pharm.D.
Board President

ROB BONTA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHOICECARE PHARMACY;** **JOHN MOTELIBANO TALENS, OWNER** **90 S. Spruce Avenue, Suite W** **South San Francisco, CA 94080** **Original Permit No. PHY 57291,** **PETER W. CHIU** **3711 San Bruno Avenue** **San Francisco, CA 94134** **Registered Pharmacist License No. RPH 30425** **and** **CAROL ANN T. MALINIS** **2398 Riverside Court** **San Leandro, CA 94579** **Registered Pharmacist License No. RPH 43114,** Respondents.	Case No. 7048 OAH No. 2021100753 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER FOR PUBLIC REPROVAL REGARDING RESPONDENT CHOICECARE PHARMACY** **[Bus. & Prof. Code § 495]**

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

PARTIES

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

2. Respondent ChoiceCare Pharmacy, with John Motelibano as Owner (Respondent) is represented in this proceeding by attorney Rob D. Cucher, whose address is: 9454 Wilshire Boulevard, Suite 600, Beverly Hills, CA 90212-2980.

3. On or about April 30, 2019, the Board issued Original Permit No. PHY 57291 to Respondent. The Original Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 7048 and will expire on April 1, 2023, unless renewed.

JURISDICTION

4. Accusation No. 7048 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 20, 2021. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 7048 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 7048. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

7. Respondent is fully aware of its legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at its own expense; the right to confront and cross-examine the witnesses against them; the right to

present evidence and to testify on its own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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. 7048, if proven at a hearing, constitute cause for imposing discipline upon its Original Permit.

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 its right to contest those charges.

11. Respondent agrees that its Original Permit is subject to discipline and agrees to be bound by the Disciplinary Order below.

12. In addition, the charges and allegations in the Accusation regarding Respondent shall be deemed true and correct in any future disciplinary proceeding before the Board against Respondent.

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 they may not withdraw its 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 for Public Reproval 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 for Public Reproval, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order for Public Reproval 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 for Public Reproval 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 Permit No.PHY 57291 issued to Respondent ChoiceCare Pharmacy with John Motelibano as Owner (Respondent) shall be publicly reproved by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No. 7048, attached as exhibit A.

Cost Recovery. Respondent shall pay $5,000 to the Board for its costs associated with the investigation and enforcement of this matter pursuant to Business and Professions Code Section 125.3. Respondent shall be permitted to pay these costs in a payment plan approved by the board or its designee, so long as full payment is completed no later than one (1) year following the effective date of the decision. If Respondent fails to pay the Board costs as ordered, Respondent shall not be allowed to renew its Original Permit until Respondent pays costs in full. In addition, the Board may enforce this order for payment of its costs in any appropriate court, in addition to any other rights the Board may have.

Full Compliance. As a resolution of the charges in Accusation No. 7048, this stipulated settlement is contingent upon Respondent's full compliance with all conditions of this Order. If Respondent fails to satisfy any of these conditions, such failure to comply constitutes cause for discipline, including outright revocation, of Respondent's Original Permit No. PHY 57291.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with my attorney, Rob D. Cucher. I understand the stipulation and the effect it will have on my Original Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____ _____

JOHN MOTELIBANO TALENS, OWNER
CHOICECARE PHARMACY
Respondent

I have read and fully discussed with John Motelibano, Owner of Respondent ChoiceCare Pharmacy, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reproval. I approve its form and content.

DATED: _____ _____

ROB D. CUCHER
Attorney for Respondent

Full Compliance. As a resolution of the charges in Accusation No. 7048, this stipulated settlement is contingent upon Respondent's full compliance with all conditions of this Order. If Respondent fails to satisfy any of these conditions, such failure to comply constitutes cause for discipline, including outright revocation, of Respondent's Original Permit No. PHY 57291.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reproval and have fully discussed it with my attorney, Rob D. Cucher. I understand the stipulation and the effect it will have on my Original Permit. I enter into this Stipulated Settlement and Disciplinary Order for Public Reproval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/28/22

JOHN MOTELIBANO TALENS, OWNER
CHOICECARE PHARMACY
Respondent

I have read and fully discussed with John Motelibano, Owner of Respondent ChoiceCare Pharmacy, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reproval. I approve its form and content.

DATED: May 3, 2022

ROB D. CUCHER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

ASPASIA A. PAPAVASSILIOU
Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Reproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: May 4, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

ASPASIA A. PAPAVASSILIOU
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7048

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Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against**:** **CHOICECARE PHARMACY;** **JOHN MOTELIBANO TALENS, OWNER** **90 S. Spruce Avenue, Suite W** **South San Francisco, CA 94080** **Original Permit No. PHY 57291,** **PETER W. CHIU** **3711 San Bruno Avenue** **San Francisco, CA 94134** **Registered Pharmacist License No. RPH 30425** **and** **CAROL ANN T. MALINIS** **2398 Riverside Court** **San Leandro, CA 94579** **Registered Pharmacist License No. RPH 43114,** Respondents.	Case No. 7048 **ACCUSATION**

PARTIES

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

2. On or about April 30, 2019, the Board of Pharmacy issued Original Permit Number PHY 57291 to ChoiceCare Pharmacy, with John Motelibano Talens as Owner (Respondent ChoiceCare Pharmacy). The Original Permit will expire on April 1, 2022, unless renewed.

3. On or about August 5, 1976, the Board of Pharmacy issued Registered Pharmacist License Number RPH 30425 to Peter W. Chiu (Respondent Peter W. Chiu). The Registered Pharmacist License will expire on June 30, 2022, unless renewed.

4. Respondent Peter W. Chiu has been the Pharmacist-in-Charge (PIC) of Respondent ChoiceCare Pharmacy since on or about May 1, 2020.

5. On or about March 6, 1990, the Board of Pharmacy issued Registered Pharmacist License Number RPH 43114 to Carol Ann T. Malinis (Respondent Carol Ann T. Malinis). The Registered Pharmacist License will expire on July 31, 2021, unless renewed.

6. Respondent Carol Ann T. Malinis was the PIC of Respondent ChoiceCare Pharmacy from on or about April 30, 2019, to on or about January 12, 2020.

JURISDICTION

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

8. Section 4036 of the Code states, in pertinent part:

"Pharmacist" means a natural person to whom a license has been issued by the board, under Section 4200, except as specifically provided otherwise in this chapter. The holder of an unexpired and active pharmacist license issued by the board is entitled to practice pharmacy as defined by this chapter, within or outside of a licensed pharmacy as authorized by this chapter.

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

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

(b) The board shall discipline the holder of any license issued by the board,

whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

10. 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.

11. Section 4307 of the Code states:

(a) 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, associate, partner, or any other person with management or control had knowledge of 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 manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control 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.

(b) "Manager, administrator, owner, member, officer, director, associate, partner, or 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 capacity in or for a licensee.

(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 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

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 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 provision of law.

12. Section 4113, subdivision (c), of the Code states that 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.

STATUTORY PROVISIONS

13. Section 4059.5 of the Code states, in pertinent part:

(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through a designated representative, or in the case of a reverse distributor a designated representative-reverse distributor, that individual shall sign for and receive the delivery.

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

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

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

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

. . .

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

. . .

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

. . .

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

16. Section 11165, subdivision (d) of the Health and Safety Code provides that for each prescription for a Schedule II, Schedule III, Schedule IV, or Schedule V controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and 1308.15, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report certain required information to the department or contracted prescription data processing vendor as soon as reasonably possible, but not more than one working day after the date a controlled substance is released to the patient or patient's representative, in a format specified by the department:

REGULATORY PROVISIONS

17. California Code of Regulations, title 16, section 1714, states, in pertinent part:

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

18. California Code of Regulations, title 16, section 1715, states, in pertinent part:

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

. . .

(2) There is a change in the pharmacist-in-charge, and he or she becomes the new pharmacist-in-charge of a pharmacy.

COST RECOVERY

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

DRUG DEFINITION

20. Carisoprodol, also known by the brand name of Soma, is a muscle relaxant that is a dangerous drug under Code section 4022.

FACTUAL BACKGROUND

21. On or about November 13, 2019, Board staff began a routine pharmacy inspection at Respondent pharmacy. The inspector subsequently found that the pharmacy was missing documentation regarding the disposition of carisoprodol tablets and had not been successfully reporting to the Controlled Substance Utilization Review and Evaluation System (CURES) regarding other substances. In addition, non-pharmacists had signed for carisprodol under the prior pharmacist-in-charge, who attempted to subvert the Board investigation, and the new pharmacist-in-charge failed to fill out the required self-assessment within thirty days of starting.

CHOICECARE PHARMACY

FIRST CAUSE FOR DISCIPLINE

(Operational Standards & Security)

22. Respondent ChoiceCare Pharmacy is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that it failed to comply with operational standards and security, as required by Code section 4081, subdivision (a), and California Code of Regulations, title 16, section 1714, subdivision (b). Respondent has not been able to explain or provide documentation regarding the disposition or loss of approximately 5,300 carisoprodol 350 mg tablets purchased by the pharmacy between October 17, 2019 and March 30, 2020, from wholesalers Auburn and Cardinal/ParMed.

CHOICECARE PHARMACY

SECOND CAUSE FOR DISCIPLINE

(Controlled Substance Reporting)

23. Respondent ChoiceCare Pharmacy is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivisions (j) and (o), in that it failed to comply with controlled substance reporting requirements in violation of Health and Safety Code section 11165, subdivision (d). Respondent dispensed controlled substances on at least 29 occasions

between on or about August 12, 2019, and on or about July 2, 2020, but none of those prescriptions was properly reported to CURES.

CHOICECARE PHARMACY

THIRD CAUSE FOR DISCIPLINE

(Self-Assessment)

24. Respondent ChoiceCare Pharmacy is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that it failed to have a new PIC file a self-assessment within 30 days, as required by California Code of Regulations, title 16, section 1715, subdivision (b)(2). The change-in-PIC form stated that Respondent Peter W. Chiu became the PIC on May 1, 2020, and Respondent Peter W. Chiu stated that he became PIC of Respondent ChoiceCare Pharmacy on or about May 20, 2020, but the self-assessment was not filled out until July 3, 2020.

CHOICECARE PHARMACY

FOURTH CAUSE FOR DISCIPLINE

(Board Investigation)

25. Respondent ChoiceCare Pharmacy is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (q), in that it attempted to subvert a Board investigation. Respondent Carol Ann T. Malinis, while PIC of Respondent ChoiceCare Pharmacy, provided a Board inspector an invoice from on or around October 17, 2019 (Invoice No. 3337859), which had a drug (carisoprodol, 500 tablets) removed from the document after the inspector had notified the pharmacy about its failure to account for carisoprodol.

CHOICECARE PHARMACY

FIFTH CAUSE FOR DISCIPLINE

(Restrictions re Dangerous Drugs)

26. Respondent ChoiceCare Pharmacy is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivisions (j) and (o), in that it had a person other than a licensed pharmacist sign for and receive dangerous drugs, in violation of Code section 4059.5.

Pharmacy technicians, instead of pharmacists, received deliveries of dangerous drugs on at least seven occasions between October 18, 2019, and March 25, 2020, as listed below:

a. October 18, 2019, invoice number 3337859, by A.V.;

b. January 16, 2020, invoice number 3349667, by A.V.;

c. February 12, 2020, invoice number 3353555, by John Motelibano Talens;[1]

d. February 19, 2020, invoice number 3354224, by John Motelibano Talens;

e. February 20, 2020, invoice number 3354896, by John Motelibano Talens;

f. March 10, 2020, invoice number 3357584, by John Motelibano Talens, and

g. March 25, 2020, invoice number 3360567, by John Motelibano Talens.

PETER W. CHIU

FIRST CAUSE FOR DISCIPLINE

(Controlled Substance Reporting)

27. Respondent Peter W. Chiu is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivisions (j) and (o), in that he failed to ensure that controlled substances were reported as required by Health and Safety Code section 11165. Respondent Peter W. Chiu was the PIC of Respondent ChoiceCare Pharmacy on or around July 3, 2020, when a Board inspector found that the pharmacy was not successfully reporting to CURES and was receiving rejection notices. More than one month later, the pharmacy still had not corrected the problem.

PETER W. CHIU

SECOND CAUSE FOR DISCIPLINE

(Self-Assessment of PIC)

28. Respondent Peter W. Chiu is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that he failed to file a self-assessment within 30 days of becoming PIC of Respondent ChoiceCare Pharmacy, as required by California Code of Regulations, title 16, section 1715, subdivision (b)(2). Respondent ChoiceCare Pharmacy's

[1] Respondent ChoiceCare Pharmacy Owner John Motelibano Talens is a registered pharmacy technician.

change-in-PIC form stated that Respondent Peter W. Chiu became the PIC on May 1, 2020, and Respondent Peter W. Chiu stated that he became PIC for Respondent ChoiceCare Pharmacy on or about May 20, 2020, but he failed to fill out the self-assessment form until July 3, 2020.

CAROL ANN T. MALINIS

FIRST CAUSE FOR DISCIPLINE

(Operational Standards & Security)

29. Respondent Carol Ann T. Malinis is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (o), in that she failed to ensure compliance with operational standards and security as required by Code section 4081, subdivision (a), and California Code of Regulations, title 16, section 1714, subdivision (b). Respondent Carol Ann T. Malinis could not explain or account for the disposition or loss of approximately 2,300 carisoprodol 350 mg tablets which were purchased by Respondent Choice Care Pharmacy between October 17, 2019, and December 17, 2019, from wholesalers Auburn and Cardinal/ParMed while Respondent Carol Ann T. Malinis was PIC of the pharmacy.

CAROL ANN T. MALINIS

SECOND CAUSE FOR DISCIPLINE

(Controlled Substance Reporting)

30. Respondent Carol Ann T. Malinis is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivisions (j) and (o), in that she failed to ensure that controlled substances were reported as required by Health and Safety Code section 11165. Respondent Carol Ann T. Malinis was the PIC of Respondent ChoiceCare Pharmacy when it dispensed controlled substances on at least 18 occasions between on or about August 12, 2019, and on or about January 10, 2020, but none of those prescriptions was properly reported to CURES.

CAROL ANN T. MALINIS

THIRD CAUSE FOR DISCIPLINE

(Board Investigation)

31. Respondent Carol Ann T. Malinis is subject to disciplinary action for unprofessional

conduct under Code section 4301, subdivision (q), in that she attempted to subvert a Board investigation. Respondent Carol Ann T. Malinis, while PIC of Respondent ChoiceCare Pharmacy, provided a Board inspector an invoice from on or around October 17, 2019 (Invoice No. 3337859) which had a drug (carisoprodol, 500 tablets) removed from the document after the inspector had notified the pharmacy about its failure to account for carisoprodol.

CAROL ANN T. MALINIS

FOURTH CAUSE FOR DISCIPLINE

(Restrictions re Dangerous Drugs)

32. Respondent Carol Ann T. Malinis is subject to disciplinary action for unprofessional conduct under Code section 4301, subdivisions (j) and (o), in that she had a person other than a licensed pharmacist sign for and receive dangerous drugs, in violation of Code section 4059.5. Respondent Carol Ann T Malinis was the PIC of Respondent ChoiceCare Pharmacy when Invoice Number 3337859 was signed for and received on October 18, 2019, by pharmacy technician A.V. instead of a pharmacist.

DISCIPLINE CONSIDERATIONS

33. Complainant alleges, as discipline considerations, that each respondent has received a citation by the Board, as follows:

A. On or about July 1, 2020, the Board issued Citation No. CI 2019 88653 to Respondent ChoiceCare Pharmacy (John Talens, Owner) for operating a pharmacy for more than 30 days without a pharmacist-in-charge, in violation of Code section 4305, subdivision (d), and for failing to notify the Board within 30 days of the date of a change in pharmacist-in-charge, in violation of Code section 4113, subdivision (d). Respondent paid the $200 fine and the citation is final.

B On or about June 7, 2018, the Board issued Citation No. CI 2017 80111 to Respondent Peter W. Chiu for dispensing a controlled substance prescription that was not on the proper form, in violation of California Code of Regulations, title 16, section 1761, subdivision (d), and Health and Safety Code section 11164, subdivision (a). Respondent paid the $200 fine and the citation is final.

C. On or about September 16, 2016, the Board issued Citation No. CI 2016 72115 to Respondent Carol Ann T. Malinis for dispensing an incorrectly labeled prescription and providing incorrect controlled substance prescriber information to the Department of Justice, in violation of Code sections 4976, subdivision (a)(4), and 4077 subdivision (a), and Health and Safety Code section 11165, subd. (d)(2). Respondent paid the $250 fine and the citation is final.

OTHER MATTERS

34. Under Code section 4307, if discipline is imposed on Original Permit Number PHY 57291 issued to ChoiceCare Pharmacy (John Motelibano Talens, Owner, then ChoiceCare Pharmacy (John Motelibano Talens, Owner) shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Permit Number PHY 57291 is placed on probation or until Original Permit Number PHY is reinstated if it is revoked, in that ChoiceCare Pharmacy (John Talens, Owner) had knowledge of or participated in conduct subjecting the permit to discipline;

35. Under Code section 4307, if discipline is imposed on Original Permit Number PHY 57291 issued to ChoiceCare Pharmacy (John Motelibano Talens, Owner), then Peter W. Chiu shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Permit Number PHY 57291 is placed on probation or until Original Permit Number PHY is reinstated if it is revoked, in that Peter W. Chiu, while Pharmacist-in-Charge, had knowledge of or participated in conduct subjecting the permit to discipline;

36. Under Code section 4307 if discipline is imposed on Registered Pharmacist License Number 30425, issued to Peter W. Chiu, then Peter W. Chiu shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if his registered pharmacist license is placed on probation or until his registered pharmacist license is reinstated if it is revoked.

37. Under Code section 4307, if discipline is imposed on Original Permit Number PHY 57291 issued to ChoiceCare Pharmacy (John Motelibano Talens, Owner), then Carol Ann T. Malinis shall be prohibited from serving as a manager, administrator, owner, member, officer,

director, associate, or partner of a licensee for up to five years if Original Permit Number PHY 57291 is placed on probation or until Original Permit Number PHY is reinstated if it is revoked, in that Carol Ann T. Malinis, while Pharmacist-in-Charge, was had knowledge of or participated in conduct subjecting the permit to discipline;

38. Under Code section 4307 if discipline is imposed on Registered Pharmacist License Number 43114, issued to Carol Ann T. Malinis, then Carol Ann T. Malinis shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if her registered pharmacist license is placed on probation or until her registered pharmacist license is reinstated if it is revoked.

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 57291, issued to ChoiceCare Pharmacy;

2. Revoking or suspending Registered Pharmacist License Number RPH 43114, issued to Carol Ann T. Malinis;

3. Revoking or suspending Registered Pharmacist License Number RPH 30425, issued to Peter W. Chiu;

4. Prohibiting ChoiceCare Pharmacy (John Motelibano Talens, Owner) from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Permit Number PHY 57291 is placed on probation or until the permit is reinstated if it is revoked;

5. Prohibiting Peter W. Chiu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Permit Number PHY 57291 is placed on probation or until the permit is reinstated if it is revoked;

6. Prohibiting Peter W. Chiu from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if his Original Pharmacist License number RPH 30425 is placed on probation or until the license is reinstated if revoked;

7. Prohibiting Carol Ann T. Malinis from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacy Number PHY 57291 is placed on probation or until the permit is reinstated if it is revoked;

8. Prohibiting Carol Ann T. Malinis from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for up to five years if Original Pharmacist License number RPH 43114 is placed on probation or until the license is reinstated if revoked;

9. Ordering ChoiceCare Pharmacy (John Motelibano Talens, Owner), Peter W. Chiu, and Carol Ann T. Malinis 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,

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

DATED: 9/15/2021

Signature on File

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

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