

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

In the Matter of the Accusation Against:

**DEL SUR PHARMACY, A CALIFORNIA CORPORATION, dba
FAIRBANKS PHARMACY;
BERNARD J. GRAMLICH, CEO/PRES,
SECRETARY AND TREASURER/CFO;
CHARLES ADAM COVELLO, OFFICER,
Original Pharmacy Permit No. PHY 55594;**

and

**BERNARD GRAMLICH,
Pharmacist License No. RPH 53112,**

Respondents.

Agency Case No. 7183

OAH No. 2022030854

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 8, 2023.

It is so ORDERED on January 9, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 ERIN M. SUNSERI
Supervising Deputy Attorney General
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10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 7183

15 **DEL SUR PHARMACY, A CALIFORNIA**
16 **CORPORATION, DBA FAIRBANKS**
17 **PHARMACY; BERNARD J. GRAMLICH,**
18 **CEO/PRES, SECRETARY AND**
19 **TREASURER/CFO; CHARLES ADAM**
20 **COVELLO, OFFICER**
16089 San Dieguito Road # H102
P. O. Box 9227
Rancho Santa Fe, CA 92067

OAH No. 2022030854

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT DEL SUR PHARMACY,
A CALIFORNIA CORPORATION, DBA
FAIRBANKS PHARMACY; BERNARD
J. GRAMLICH, CEO/PRES,
SECRETARY AND TREASURER/CFO;
CHARLES ADAM COVELLO, OFFICER
ONLY

21 **Original Permit No. PHY 55594,**

22 **and**

23 **BERNARD GRAMLICH**
24 **PO Box 9227**
Rancho Santa Fe, CA 92067

25 **Pharmacist License No. RPH 53112**

26 Respondents.
27
28

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

3 **PARTIES**

4 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
5 (Board). She brought this action solely in her official capacity and is represented in this matter by
6 Rob Bonta, Attorney General of the State of California, by Amie J. Flynn, Deputy Attorney
7 General.

8 2. Respondent Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy;
9 Bernard J. Gramlich, CEO/PRES, Secretary and Treasurer/CFO; and Charles Adam Covello,
10 Officer (Respondent) is represented in this proceeding by attorney Edward Idell, Esq., whose
11 address is: 355 South Grand Avenue, Suite 1750, Los Angeles, California 90071.

12 3. On or about May 25, 2017, the Board issued Original Permit No. PHY 55594 to Del
13 Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy; Bernard J. Gramlich,
14 CEO/PRES, Secretary and Treasurer/CFO; and Charles Adam Covello, Officer (Respondent).
15 The Original Permit was in full force and effect at all times relevant to the charges brought in
16 Accusation No. 7183, and will expire on May 1, 2023, unless renewed.

17 **JURISDICTION**

18 4. Accusation No. 7183 was filed before the Board, and is currently pending against
19 Respondent. The Accusation and all other statutorily required documents were properly served
20 on Respondent on January 12, 2022. Respondent timely filed its Notice of Defense contesting the
21 Accusation.

22 5. A copy of Accusation No. 7183 is attached as Exhibit A and incorporated herein by
23 reference.

24 **ADVISEMENT AND WAIVERS**

25 6. Respondent has carefully read, fully discussed with counsel, and understands the
26 charges and allegations in Accusation No. 7183. Respondent has also carefully read, fully
27 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
28 Order.

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 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 admits the truth of each and every charge and allegation in Accusation No. 7183.

10. Respondent agrees that its Original Permit is subject to discipline and it agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. 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 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.

12. 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.

13. 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.

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 Original Permit No. PHY 55594 issued to Respondent Del
10 Sur Pharmacy, A California Corporation, dba Fairbanks Pharmacy; Bernard J. Gramlich,
11 CEO/PRES, Secretary and Treasurer/CFO; and Charles Adam Covello, Officer is revoked.
12 However, the revocation is stayed and Respondent is placed on probation for five (5 years) on the
13 following terms and conditions:

14 1. **Obey All Laws**

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

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

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

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

2 **2. Report to the Board**

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

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

12 **3. Interview with the Board**

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

18 **4. Cooperate with Board Staff**

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

25 **5. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, Respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$24,049.75. Respondent shall be
28 jointly and severally liable for costs with Respondent Bernard Gramlich.

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

6. Probation Monitoring Costs

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

7. Status of License

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

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

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent wish to discontinue business, Respondent may tender the Original Permit to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

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

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

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9. Sale or Discontinuance of Business

During the period of probation, should Respondent sell, trade or transfer all or part of the ownership of the licensed entity, discontinue doing business under the license issued to Respondent, or should practice at that location be assumed by another full or partial owner, person, firm, business, or entity, under the same or a different premises license number, the board or its designee shall have the sole discretion to determine whether to exercise continuing jurisdiction over the licensed location, under the current or new premises license number, and/or carry the remaining period of probation forward to be applicable to the current or new premises license number of the new owner.

10. Notice to Employees

Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, Respondent shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to timely provide such notification to employees, or to timely submit such notification to the board shall be considered a violation of probation.

"Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

11. Owners and Officers: Knowledge of the Law

Respondent shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in Respondent or Respondent's stock, and all of its officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws

1 and regulations governing the practice of pharmacy. The failure to timely provide said
2 statements under penalty of perjury shall be considered a violation of probation.

3 **12. Premises Open for Business**

4 Respondent shall remain open and engaged in its ordinary business as a pharmacy in
5 California for a minimum of 120 hours per calendar month. Any month during which this
6 minimum is not met shall toll the period of probation, i.e., the period of probation shall be
7 extended by one month for each month during which this minimum is not met. During any such
8 period of tolling of probation, Respondent must nonetheless comply with all terms and conditions
9 of probation, unless Respondent is informed otherwise in writing by the board or its designee. If
10 Respondent is not open and engaged in its ordinary business as a pharmacy for a minimum of 120
11 hours in any calendar month, for any reason (including vacation), Respondent shall notify the
12 board in writing within ten (10) days of the conclusion of that calendar month. This notification
13 shall include at minimum all of the following: the date(s) and hours Respondent was open; the
14 reason(s) for the interruption or why business was not conducted; and the anticipated date(s) on
15 which Respondent will resume business as required.

16 Respondent shall further notify the board in writing with ten (10) days following the next
17 calendar month during which Respondent is open and engaged in its ordinary business as a
18 pharmacy in California for a minimum of hours. Any failure to timely provide
19 such notification(s) shall be considered a violation of probation.

20 **13. Consultant Review of Pharmacy Operations**

21 Respondent shall retain, at its own expense, an independent consultant who shall review the
22 operations of the facility, during the period of probation, on a monthly basis for compliance of the
23 facility with state and federal laws and regulations governing the practice of pharmacy, and
24 compliance by Respondent. The consultant shall provide the board with an inspection agenda for
25 approval prior to conducting the inspection. Any inspection conducted without prior approval of
26 the inspection agenda shall not be accepted. The consultant shall also provide the board with
27 reports documenting the inspection. The reports shall be provided directly to the board, and
28 receive confirmation of receipt from the board, prior to providing to the Respondent. Should the

1 board determine that the consultant is not appropriately assessing the operations of Respondent,
2 or providing the appropriate written reports, the board shall require Respondent to obtain a
3 different consultant through the same process outlined above, by submitting a new name of an
4 expert within sixty (60) days of Respondent being notified of the need for a new consultant.
5 During the period of probation, the board shall retain discretion to reduce the frequency of the
6 consultant's review.

7 Respondent shall submit the name of the proposed consultant for approval within thirty (30)
8 days of the effective date of this decision. The consultant shall be a pharmacist licensed by and
9 not on probation with the board or other professional as appropriate and not on probation with the
10 board, who has been approved by the board to serve in this position. The consultant shall have
11 sufficient education, training, and professional experience to be able to provide guidance to
12 Respondent related to the causes for discipline in Case No. 7183. Assumption of any
13 unauthorized supervision responsibilities shall be considered a violation of probation. Failure to
14 timely seek approval for, timely retain, or ensure timely reporting by the consultant shall be
15 considered a violation of probation.

16 14. No New Ownership or Management of Licensed Premises

17 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
18 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
19 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
20 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
21 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
22 or hereinafter licensed by the board, Respondent may continue to serve in such capacity or hold
23 that interest, but only to the extent of that position or interest as of the effective date of this
24 decision. Violation of this restriction shall be considered a violation of probation.

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. Completion of Probation

12 Upon written notice by the board or its designee indicating successful completion of
13 probation, Respondent's license will be fully restored.

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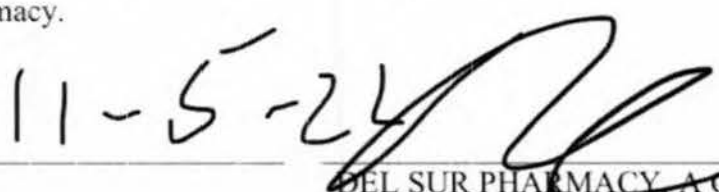
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ACCEPTANCE


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

DATED: 11-5-24


DEL SUR PHARMACY, A CALIFORNIA
CORPORATION, DBA FAIRBANKS PHARMACY;
BERNARD J. GRAMLICH, CEO/PRES,
SECRETARY AND TREASURER/CFO; CHARLES
ADAM COVELLO, OFFICER
Respondent

I have read and fully discussed with Respondent Del Sur Pharmacy, A California Corporation, dba Fairbanks Pharmacy; Bernard J. Gramlich, CEO/PRES, Secretary and Treasurer/CFO; Charles Adam Covello, Officer the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11-5-22


EDWARD IDELL, ESQ.
Attorney for Respondent

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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
ERIN M. SUNSERI
Supervising Deputy Attorney General

AMIE J. FLYNN
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: November 7, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ERIN M. SUNSERI
Supervising Deputy Attorney General



AMIE J. FLYNN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7183

1 ROB BONTA
Attorney General of California
2 MARICHELLE S. TAHIMIC
Supervising Deputy Attorney General
3 AMIE J. FLYNN
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4 State Bar No. 149600
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Attorneys for Complainant

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18 **SECRETARY AND TREASURER/CFO**
19 **CHARLES ADAM COVELLO, OFFICER**
20 **16089 San Dieguito Road # H102**
21 **P. O. Box 9227**
22 **Rancho Santa Fe, CA 92067**

ACCUSATION

23 **Original Permit No. PHY 55594,**

24 **and**

25 **BERNARD GRAMLICH**
26 **P O Box 9227**
27 **Rancho Santa Fe, CA 92067**

28 **Pharmacist License No. RPH 53112**

Respondents.

PARTIES

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

2. On or about May 25, 2017, the Board issued Original Permit Number PHY 55594 to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy (Respondent Pharmacy). The Original Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2022, unless renewed.

3. On or about May 25, 2017, the Board issued Original Permit Number PHY 55594 to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy (Respondent Pharmacy). Bernard J. Gramlich, 50% shareholder, is and has been Chief Executive Officer, President, Secretary and Treasurer/Chief Financial Officer since May 25, 2017. Charles Adam Covello, 50% shareholder, is and has been Vice-President since May 1, 2017.

4. On or about September 26, 2001, the Board issued Pharmacist License Number RPH 53112 to Bernard Gramlich (Respondent Gramlich). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2023, unless renewed. Bernard Gramlich is and has been the Pharmacist-in-Charge of Respondent Pharmacy since May 25, 2017.

JURISDICTION

5. Business and Professions Code (Code) section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

...

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

1 action shall be final, except that the propriety of the action is subject to review
2 by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

3 6. Code section 4300.1 states:

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

10 **STATUTORY AND REGULATORY PROVISIONS**

11 7. This Accusation is brought before the Board under the authority of the following
12 laws. All section references are to the Business and Professions Code unless otherwise indicated.

13 8. Section 4035 of the Code states:

14 "Person" includes, but is not limited to, firm, association, partnership,
15 corporation, limited liability company, state governmental agency, trust, or
16 political subdivision.

17 9. Code section 4052.2 states, in pertinent part:

18 (a) Notwithstanding any other law, a pharmacist may perform the following
19 procedures or functions as part of the care provided by a health care facility, a
20 licensed home health agency, licensed correctional clinic, a licensed clinic in which
21 there is a physician oversight, a provider who contracts with a licensed health care
22 service plan with regard to the care or services provided to the enrollees of that health
23 care service plan, or a physician, in accordance with the policies, procedures, or
24 protocols of that facility, home health agency, licensed correctional clinic, licensed
25 clinic, health care service plan, or physician, and in accordance with subdivision (c):

26 . . .

27 (c) The policies, procedures, or protocols referred to in this subdivision shall be
28 developed by health care professionals, including physicians, pharmacists, and
registered nurses, and shall, at a minimum, do all of the following:

(1) Require that the pharmacist function as part of a multidisciplinary group
that includes physicians and direct care registered nurses. The multidisciplinary
group shall determine the appropriate participation of the pharmacist and the direct
care registered nurse.

(2) Require that the medical records of the patient be available to both the
patient's treating prescriber and the pharmacist.

(3) Require that the procedures to be performed by the pharmacist relate to a
condition for which the patient has first been seen by a physician.

(4) Except for procedures or functions provided by a health care facility, a
licensed correctional clinic, as defined in Section 4187, a licensed clinic in which
there is physician oversight, or a provider who contracts with a licensed health care

1 plan with regard to the care or services provided to the enrollees of that health care
2 service plan, require the procedures to be performed in accordance with a written,
3 patient-specific protocol approved by the treating or supervising physician. Any
4 change, adjustment, or modification of an approved preexisting treatment or drug
5 therapy shall be provided in writing to the treating or supervising physician within 24
6 hours.

7 (d) Prior to performing any procedure authorized by this section, a pharmacist
8 shall have done either of the following:

9 (1) Successfully completed clinical residency training.

10 (2) Demonstrated clinical experience in direct patient care delivery.

11 10. Code section 4059, states, in pertinent part:

12 (a) A person may not furnish any dangerous drug, except upon the prescription
13 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
14 doctor pursuant to Section 3640.7. A person may not furnish any dangerous
15 device, except upon the prescription of a physician, dentist, podiatrist,
16 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

17

18 11. Code section 4076 states, in pertinent part:

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

22 ...

23 (4) The name of the prescriber or, if applicable, the name of certified
24 nurse-midwife who functions pursuant to a standardized procedure or protocol
25 described in Section 2746.51, the nurse practitioner who functions pursuant to a
26 standardized procedure described in Section 2836.1, or protocol, the physician
27 assistant who functions pursuant to Section 3502.1., the naturopathic doctor who
28 functions pursuant to a standardized procedure or protocol described in Section
3640.5, or the pharmacist who functions pursuant to a policy, procedure, or protocol
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

...

12. Section 4113 of the Code states in relevant 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.

....

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1 15. Section 4210 of the Code states:

2 (a) A person who seeks recognition as an advanced practice pharmacist shall meet all
3 of the following requirements:

4 (1) Hold an active license to practice pharmacy issued pursuant to this chapter that is
5 in good standing.

6 (2) Satisfy any two of the following criteria:

7 (A) Earn certification in a relevant area of practice, including, but not limited to,
8 ambulatory care, critical care, geriatric pharmacy, nuclear pharmacy, nutrition support
9 pharmacy, oncology pharmacy, pediatric pharmacy, pharmacotherapy, or psychiatric
10 pharmacy, from an organization recognized by the Accreditation Council for Pharmacy
11 Education or another entity recognized by the board.

12 (B) Complete a postgraduate residency through an accredited postgraduate
13 institution where at least 50 percent of the experience includes the provision of direct
14 patient care services with interdisciplinary teams.

15 (C) Have provided clinical services to patients for at least one year under a
16 collaborative practice agreement or protocol with a physician, advanced practice
17 pharmacist, pharmacist practicing collaborative drug therapy management, or health
18 system.

19 16. Health and Safety (H&S) Code section 11165 states, in pertinent part:

20 ...

21 (d) For each prescription for a Schedule II, Schedule III, Schedule IV, or
22 Schedule V controlled substance, as defined in the controlled substances schedules in
23 federal law and regulations, specifically Sections 1308.12, 1308.13, 1308.14, and
24 1308.15, respectively, of Title 21 of the Code of Federal Regulations, the dispensing
25 pharmacy, clinic, or other dispenser shall report the following information to the
26 department or contracted prescription data processing vendor as soon as reasonably
27 possible, but not more than one working day after the date a controlled substance is
28 released to the patient or patient's representative, in a format specified by the
29 department:

30 (1) Full name, address, and, if available, telephone number of the ultimate user
31 or research subject, or contact information as determined by the Secretary of the
32 United States Department of Health and Human Services, and the gender, and date of
33 birth of the ultimate user.

34 (2) The prescriber's category of licensure, license number, national provider
35 identifier (NPI) number, if applicable, the federal controlled substance registration
36 number, and the state medical license number of a prescriber using the federal
37 controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) The International Statistical Classification of Diseases (ICD) Code contained in the most current ICD revision, or any revision deemed sufficient by the State Board of Pharmacy, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Prescribing date of the prescription.

(10) Date of dispensing of the prescription.

...

17. California Code of Regulations (CCR), title 16, section 1707.2, subdivision (b)(1)(A), states that a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting which the patient or agent is present whenever the prescription drug has not been dispensed to a patient.

18. CCR, title 16, section 1707.3 states that prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and medication record before each prescription drug is delivered. The review shall include screening for severe potential drug therapy problems.

19. CCR, title 16, section 1761, subdivision (a), states that no pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

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DEFINITIONS

20. **Selective Serotonin Reuptake Inhibitors (SSRIs)** are a type of antidepressant that work by increasing levels of serotonin within the brain. Serotonin is a neurotransmitter that is often referred to as the “feel good hormone.” SSRIs are typically used for the treatment of major depressive disorder, anxiety disorders, and other psychological conditions. Escitalopram and Fluoxetine are both SSRIs.

BRAND NAME	GENERIC NAME	DANGEROUS DRUG PER B & PC 4022	CONTROLLED SUBSTANCE PER H & SC	INDICATIONS FOR USE
Lexapro	Escitalopram	Yes	No	SSRI antidepressant, anxiolytic
Prozac	Fluoxetine	Yes	No	SSRI antidepressant, anxiolytic
Zestril	Lisinopril	Yes	No	Hypertension

COST RECOVERY

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

FACTUAL ALLEGATIONS

22. Respondent Fairbanks Pharmacy is a pharmacy located in Rancho Santa Fe, California. During the relevant time, Respondent Gramlich was employed at Fairbanks Pharmacy as the Pharmacist-In-Charge.

Fluoxetine 20 mg and Escitalopram 10 mg Dispensed to Patient TG

23. TG is a patient who had Down Syndrome and resided at a senior living facility in the San Diego area. The facility required all residents to use the services of Respondent Pharmacy during the spring of 2018. Due to this agreement, Respondent Pharmacy would routinely fill and deliver prescriptions to patients at the facility.

1 24. On June 10, 2018, the Board received a complaint alleging that on May 3, 2018,
2 Respondent Fairbanks Pharmacy dispensed two SSRIs, fluoxetine and escitalopram, together in
3 the same bubble pill pack (also called a blister pack), to TG. The medication list from the facility
4 did not show the date and physician who issued the prescription, the quantity to dispense, or
5 initials of the pharmacist who received the approval for the prescription. Respondent Gramlich
6 was listed as the prescriber; however, he was not authorized to write or issue prescriptions.

7 25. Respondent Gramlich failed to review TG's prescription profile when the prescription
8 for escitalopram 10 mg and fluoxetine 20 mg were filled on or about June 2, 2018. TG's
9 prescription for 20 mg of fluoxetine was discontinued by Dr. Y on December 20, 2017. TG's
10 prescription for 10 mg of escitalopram was supposed to replace the previous fluoxetine
11 prescription. Had Respondent Gramlich reviewed TG's prescription profile, he would have
12 discovered that prescriptions for 20 mg of fluoxetine were filled on May 3, 2018 and May 22,
13 2018 based on prescriptions issued by Dr. H. Respondent Gramlich should have questioned the
14 prescriptions for two different SSRIs by two doctors. Instead, Respondent Gramlich filled TG's
15 fluoxetine prescription in addition to escitalopram, even though the medications were duplicative
16 and prescribed by two different physicians.

17 26. Respondent Gramlich did not caution TG about the potential risks of taking two
18 SSRIs at once. Because of the combination of these two drugs, which TG took for two months,
19 TG suffered from stomach cramps and headaches and became irritable, anxious, angry and
20 confused. When questioned about why both SSRIs were dispensed to TG, Respondent Gramlich
21 responded that the pharmacy did not have the prescribing doctor's name at the time both
22 medications were ordered by the facility. However, this statement was false because the name of
23 the prescribing physicians was printed on top of the bubble pill pack.

24 27. On or about March 25, 2018, Dr. H prescribed 10 mg escitalopram to TG, which was
25 subsequently dispensed at a different pharmacy on March 29, 2018. On or about May 25, 2018,
26 this prescription was transferred to Respondent Fairbanks Pharmacy. On June 22, 2018, Dr. H
27 called in an additional prescription for 20 mg escitalopram, which was processed on June 28,
28 2018 by Respondent Fairbanks Pharmacy.

28. The prescribing doctor, Dr. H, intended for the prescription for 10 mg escitalopram to be discontinued when TG received the prescription for 20 mg escitalopram, but the prescription was ambiguous. Respondent Gramlich failed to clarify this ambiguity with Dr. H, or to notify TG to stop taking the 10 mg escitalopram that was dispensed on June 22, 2018. Consequently, TG took 30 mg of escitalopram instead of the intended dose of 20 mg.

Other Prescriptions Dispensed to TB

29. Respondent Pharmacy filled several other prescriptions for TG. On or about April 30, 2018, Respondent Fairbanks Pharmacy filled prescriptions for clotrimazole cream; 20 mg of fluoxetine; 100 mg of allopurinol; 5 mg of lisinopril; and 20 mg of simvastatin. On or about May 3, 2018, Respondent Fairbanks Pharmacy filled a prescription for 5 mg of lisinopril. On or about May 17, 2018, Respondent Fairbanks Pharmacy filled a prescription for 100 mg of allopurinol. On or about June 5, 2018, Respondent Fairbanks Pharmacy filled a prescription for 20 mg of simvastatin. For each of these prescriptions, Respondent Gramlich was listed as the prescriber; however, he was not authorized to write or issue prescriptions. Additionally, for each of the prescriptions that were filled on April 30, 2018, the medication list from the facility did not have annotations which showed the date and physician who issued the prescription, the quantity to dispense, or the initials of pharmacist who received the approval for the prescription, as required. Additionally, Respondent Gramlich failed to request the prescriptions from the physician.

Other Prescriptions Dispensed

30. On or about February 28, 2019, the Board conducted an inspection of Respondent Fairbanks Pharmacy. Following the Board's inspection, the Board investigator reviewed a CURES Report of the prescriptions prescribed between June 30, 2017 and December 30, 2018. The review of CURES showed that most of the prescriptions were for the administration of vaccines. However, the following prescriptions, which were not for vaccines, were processed, filled, and dispensed with Respondent Gramlich identified as the prescriber:

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Patient	Drug	Rx #	Initial Fill	Refill	Refill
MS	Bi-est 80/20 5mg/ml	100702	11/3/2017	1/29/2018	6/27/2018
KD	Dextroamphetamine 10 mg	100948	12/4/2017		
CS	Gentamicin 0.03% ophthalmic drops	103870	6/19/2018		
HL	Amlodipine- denazepiril 5/20 mg	103581	6/25/2018		
HL	Omeprazole 20 mg	103582	6/25/2018		
CA	Cyanocobalamin 1,000 mcg	100376	9/28/2017		

31. On or about November 3, 2017, Respondent Fairbanks Pharmacy filled a prescription for 30 mg of Bi-Est 80/20. The prescription was prescribed by Dr. G for patient MS. However, the prescription was processed under the name of Respondent Gramlich instead of the actual prescriber.

32. On or about December 1, 2017, Respondent Fairbanks Pharmacy filled a prescription for 10 mg of dextroamphetamine. The prescription was prescribed by Dr. M for patient KD. However, the prescription was processed under the name of Respondent Gramlich instead of the actual prescriber.

33. On or about June 19, 2018, Respondent Fairbanks Pharmacy filled a prescription for 5 ml of gentamicin 0.3% ophthalmic drops for patient CS. Respondent Gramlich was listed as the prescriber; however, he was not authorized to write or issue prescriptions.

34. On or about May 31, 2018, Respondent Fairbanks Pharmacy filled prescriptions for 5/20 mg of benazepril, as well as 20 mg of omeprazole, for Patient HL. The prescription was processed under the name of Respondent Gramlich instead of the actual prescriber, and Respondent Gramlich failed to confirm the identity of HL's current physician. On or about June 25, 2018, Respondent Fairbanks Pharmacy filled a prescription for 5/20 mg of benazepril. This prescription was prescribed by Dr. M for patient HL. For each of these prescriptions, the medication list from the facility did not have annotations which showed the date and physician who approved the prescription, the quantity to dispense, and the initials of pharmacist who received the approval for the prescription, as required.

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1 **Qualifications of Respondent Gramlich**

2 35. On or about September 28, 2017, Respondent Gramlich prescribed and administered
3 1000 mcg of Vitamin B-12 to a patient, pursuant to Respondent Fairbanks Pharmacy's
4 Collaborative Practice Agreement, which provides in part that a pharmacist "[u]nder protocol and
5 professional judgment may perform the injection."

6 36. During its investigation, the Board determined that Respondent Gramlich did not
7 complete a clinical residency training, and was unable to provide proof that he previously worked
8 as a paramedic. Respondent Gramlich also stated that he did not pursue a postgraduate residency
9 program, but instead received clinical experience in direct patient care training. The doctor who
10 provided clinical training, Dr. L, is a naturopathic doctor, not a physician.

11 37. Pursuant to Code section 4210, subdivision (a)(2)(C), clinical training can only be
12 provided by a physician, advanced practice pharmacist, pharmacist practicing collaborative drug
13 therapy management, or health system. Consequently, the training received by Respondent
14 Gramlich from Dr. L was not valid, and did not qualify Respondent Gramlich for the issuance of
15 an Advance Practice Pharmacist license.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Failure to Transmit CURES Data as Required)**

18 38. Respondents are subject to discipline under Health & Safety Code section 11165,
19 subdivision (d), and Code section 4113, in that they failed to submit CURES data of controlled
20 substance prescriptions filed at Fairbanks Pharmacy within the required reporting parameter. The
21 circumstances are as follows:

22 39. On March 4, 2019, the Board obtained a CURES report from May 25, 2017 to March
23 4, 2019, which showed that a total of 998 prescriptions for controlled substances were
24 transmitted. The CURES report of Respondent Pharmacy for the controlled substances dispensed
25 from January 1, 2018 to December 31, 2018, were reported to the Department of Justice after the
26 Board's inspection on December 7, 2018, and not within the required reporting parameter.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violating State Laws and Regulations Governing Pharmacy)**

3 40. Respondents are subject to discipline under Code section 4301, subdivisions (j) and
4 (o), in conjunction with Code sections 4052.2(a), 4059(a), 4076(a)(4), and 4210(a)(2)(C); Health
5 & Safety Code section 11165(d); and, CCR, title 16, sections 1707.2, 1707.3 and 1761(a); in that
6 Respondent Gramlich acted with unprofessional conduct, in that he violated state laws and
7 regulations governing pharmacy when he prescribed prescriptions in an unauthorized manner, as
8 set forth in paragraphs 22 through 34, above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Erroneous or Uncertain Prescriptions)**

11 41. Respondents are subject to discipline under Code sections 4301, subdivision (o), and
12 CCR, title 16, section 1761, subdivision (a), in that Respondent Gramlich dispensed multiple
13 prescriptions which contained omissions and ambiguity, and failed to clarify ambiguities on
14 multiple prescriptions, as set forth in paragraphs 22 through 34, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unauthorized Furnishing of Dangerous Drugs)**

17 42. Respondents are subject to discipline under Code sections 4301, subdivision (j) and
18 (o), and 4059, subdivision (a), in that Respondent Gramlich dispensed numerous prescriptions
19 when he was not authorized to do so, as set forth in paragraphs 22 through 34, above.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Failure to Review Drug Therapy and Patient Medication Record)**

22 43. Respondents are subject to discipline under Code sections 4301, subdivision (o), and
23 CCR, sections 1707.2 and 1707.3, in that Respondent Gramlich failed to review patient TG's
24 Prescription Profile before delivering prescription drugs resulting in the dispensing of
25 discontinued medications, as set forth in paragraphs 22 through 34, above.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Provide Consultation)**

3 44. Respondents are subject to discipline under Code section 4301, subdivision (o), and
4 CCR, section 1707.2, subdivision (b)(1)(A), in that Respondent Gramlich failed to provide
5 consultation to patient TG on June 22, 2018, which resulted in TG taking both escitalopram and
6 fluoxetine, as set forth in paragraphs 22 through 34, above.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Dispensing of Prescription Label with the Wrong Prescriber)**

9 45. Respondents are subject to discipline under Code section 4301, subdivision (o), and
10 4076, subdivision (a)(4), in that Respondent Gramlich dispensed prescriptions with labels bearing
11 the wrong prescriber on two separate occasions, as set forth in paragraphs 31 through 32, above.

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Failure of the Pharmacist to Adhere to Approved Protocol)**

14 46. Respondents are subject to discipline under Code sections 4301, subdivision (o), and
15 4052.2, subdivision (a), in that Pharmacist Gramlich prescribed and administered Vitamin B-12
16 shots under a Collaborative Practice Agreement that was inadequate for the following reasons, as
17 set forth below and in paragraphs 35 through 37, above:

18 a. The Collaborative Practice Agreement did not indicate the requirement that the
19 supervising physician or primary physician be notified in writing within 24 hours of any
20 initiation, change, adjustment, or discontinuation of therapy.

21 b. The Collaborative Practice Agreement did not indicate the requirement that the
22 procedures to be performed by the pharmacist is related to a condition for which the patient has
23 been seen by a physician.

24 c. Respondent Gramlich completed his training in providing clinical services to patients
25 under the supervision of Dr. L, who is a naturopathic doctor.

26 d. Respondent Gramlich has not completed a clinical residency training or other
27 program which demonstrated clinical experience in direct patient care delivery. Therefore, he
28 was not qualified to administer vitamin B-12 injections.

OTHER MATTERS

75. Pursuant to Section 4307, if Pharmacy Permit Number PHY 55594 issued to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy is suspended, revoked or placed on probation, Respondent Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

76. Pursuant to Section 4307, if Pharmacy Permit Number PHY 55594 issued to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy is suspended, revoked or placed on probation, and Respondent Gramlich, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 55594 was revoked, suspended, or placed on probation, Respondent Gramlich shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

77. Pursuant to Section 4307, if Pharmacy Permit Number PHY 55594 issued to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy is suspended, revoked or placed on probation, and Charles Adam Covello, while acting as the manager, administrator, owner, member, officer, director, associate, or partner, had knowledge of or knowingly participated in any conduct for which Pharmacy Permit Number PHY 55594 was revoked, suspended, or placed on probation, Charles Adam Covello shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee of the Board.

78. Pursuant to Section 4307, if Pharmacist License Number RPH 53112 issued to Bernard J. Gramlich is suspended or revoked, Respondent Gramlich shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

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PRAYER

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

1. Revoking or suspending Original Permit Number PHY 55594, issued to Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 53112, issued to Bernard Gramlich;

3. Ordering Del Sur Pharmacy, a California Corporation, dba Fairbanks Pharmacy and Bernard Gramlich 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;

4. Ordering that Respondent Bernard Gramlich is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual or member of the personnel of record of a licensee pursuant to Code section 4307;

5. Ordering that Respondent Charles Adam Covello is prohibited from serving as an officer, director, associate, partner, manager, qualifying individual or member of the personnel of record of a licensee pursuant to Code section 4307; and,

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

DATED: 12/27/2021

Signature on File

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

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