

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

In the Matter of the Accusation Against:

**MD PHARMACEUTICALS CORP., dba
CARE ONE PHARMACY,
MARIA DONNER, CEO/100%
SHAREHOLDER/PRESIDENT/SECRETARY/TREASURER/
CFO/DIRECTOR,
Pharmacy Permit No. PHY 57363;**

**MINH TU LY,
Pharmacist License No. RPH 68160;**

and

**BRIAN SUNGTAE KIM,
Pharmacist License No. RPH 65658,**

Respondents.

Agency Case No. 7422

OAH No. 2023070154

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 May 3, 2024.

It is so ORDERED on April 3, 2024.

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 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
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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:

Case No. 7422

14 **MD PHARMACEUTICALS CORP., DBA**
15 **CARE ONE PHARMACY**
16 **395 E. Shivom Ct.**
Anaheim, CA 92808-1385

OAH No. 2023070154

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO MINH
TU LY ONLY**

17 **Pharmacy License No. PHY 57363,**

18 **MINH TU LY, PHARMACIST**
19 **16455 Mount Ararat Circle**
Fountain Valley, CA 92708

20 **Registered Pharmacist License No. RPH**
21 **68160,**

22 **and**

23 **BRIAN SUNGTAE KIM, PHARMACIST**
24 **2673 W. Greenbrier Avenue**
Anaheim, CA 92801

25 **Registered Pharmacist License No. RPH**
65658

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 Nicole R. Trama, Deputy Attorney
7 General.

8 2. Respondent Minh Tu Ly is represented in this proceeding by attorney Robert Keith
9 Weinberg, Esq., whose address is: 19200 Von Karman Avenue, Suite 380, Irvine, CA 92612-
10 8508.

11 3. On or about October 2, 2012, the Board issued Registered Pharmacist License
12 Number RPH 68160 to Minh Tu Ly (Respondent). The Registered Pharmacist License was in
13 full force and effect at all times relevant to the charges brought in Accusation No. 7422 and will
14 expire on March 31, 2024, unless renewed.

15 **JURISDICTION**

16 4. Accusation No. 7422 was filed before the Board, and is currently pending against
17 Respondent. The Accusation and all other statutorily required documents were properly served
18 on Respondent on March 14, 2023. Respondent timely filed a Notice of Defense contesting the
19 Accusation.

20 5. A copy of Accusation No. 7422 is attached as Exhibit A and incorporated herein by
21 reference.

22 **ADVISEMENT AND WAIVERS**

23 6. Respondent has carefully read, fully discussed with counsel, and understands the
24 charges and allegations in Accusation No. 7422. Respondent has also carefully read, fully
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
26 Order.

27 7. Respondent is fully aware of its legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

1 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
2 to the issuance of subpoenas to compel the attendance of witnesses and the production of
3 documents; the right to reconsideration and court review of an adverse Decision; and all other
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

7 **CULPABILITY**

8 9. Respondent admits the truth of each and every charge and allegation in Accusation
9 No. 7422.

10 10. Respondent agrees that his Pharmacist License is subject to discipline and agrees to
11 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

12 **CONTINGENCY**

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

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

25 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. 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 Pharmacist License No. RPH 68160 issued to Respondent Minh Tu ly is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other

1 requirements, Respondent shall state in each report under penalty of perjury whether there has
2 been compliance with all the terms and conditions of probation.

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

8 **3. Interview with the Board**

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

14 **4. Cooperate with Board Staff**

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

21 **5. Continuing Education**

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

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

25 During the period of probation, Respondent shall notify all present and prospective
26 employers of the Decision in case number 7422 and the terms, conditions and restrictions
27 imposed on Respondent by the Decision, as follows:
28

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

12 Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of
13 Respondent undertaking any new employment, Respondent shall cause (a) his direct supervisor,
14 (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
15 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the
16 Board in writing acknowledging that the listed individual(s) has/have read the Decision in case
17 number 7422, and terms and conditions imposed thereby. If one person serves in more than one
18 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the Respondent's
19 responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the
20 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
21 of probation, Respondent shall cause the person(s) taking over the role(s) to report to the Board in
22 writing within fifteen (15) days of the change acknowledging that he or she has read the Decision
23 in case number 7422, and the terms and conditions imposed thereby.

24 If Respondent works for or is employed by or through an employment service, Respondent
25 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board
26 of the Decision in case number 7422, and the terms and conditions imposed thereby in advance of
27 Respondent commencing work at such licensed entity. A record of this notification must be
28 provided to the Board upon request.

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

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

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

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

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

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

8. Restrictions on Supervision and Oversight of Licensed Facilities –

During the period of probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge, designated representative-in-charge, responsible manager or other compliance supervisor of any entity licensed by the Board, nor serve as a consultant. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$10,000. Respondent shall make said payments as follows: Within thirty (30) days of the effective date of the Decision, and

1 on the first of each month thereafter, Respondent shall pay \$500.00 per month until the costs are
2 paid in full.

3 There shall be no deviation from this schedule absent prior written approval by the Board or
4 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
5 probation.

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

9 **10. Probation Monitoring Costs**

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

14 **11. Status of License**

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

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

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

24 Following the effective date of this Decision, should Respondent cease practice due to
25 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
26 Respondent may relinquish his license, including any indicia of licensure issued by the Board,
27 along with a request to surrender the license. The Board or its designee shall have the discretion
28 whether to accept the surrender or take any other action it deems appropriate and reasonable.

1 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to
2 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
3 become a part of the Respondent's license history with the Board.

4 Upon acceptance of the surrender, Respondent shall relinquish his pocket and/or wall
5 license, including any indicia of licensure not previously provided to the Board within ten (10)
6 days of notification by the Board that the surrender is accepted if not already provided.
7 Respondent may not reapply for any license from the Board for three (3) years from the effective
8 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
9 of the date the application for that license is submitted to the Board, including any outstanding
10 costs.

11 **13. Practice Requirement – Extension of Probation**

12 Except during periods of suspension, Respondent shall, at all times while on probation, be
13 employed as a registered pharmacist in California for a minimum of one-hundred (100) hours per
14 calendar month. Any month during which this minimum is not met shall extend the period of
15 probation by one month. During any such period of insufficient employment, Respondent must
16 nonetheless comply with all terms and conditions of probation, unless Respondent receives a
17 waiver in writing from the Board or its designee.

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

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

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

3 **14. Violation of Probation**

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

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

17 **15. Completion of Probation**

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

20 **16. Ethics Course**

21 Within sixty (60) calendar days of the effective date of this Decision, Respondent shall
22 enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its
23 designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent
24 shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent
25 shall submit a copy of the certificate of completion to the Board or its designee. Failure to timely
26 enroll in an approved ethics course, to initiate the course during the first year of probation, to
27 successfully complete it before the end of the second year of probation, or to timely submit proof
28 of completion to the Board or its designee, shall be considered a violation of probation.

17. **No Ownership or Management of Licensed Premises**

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert Keith Weinberg, Esq. I understand the stipulation and the effect it will have on my Pharmacist License. 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: _____

MINH TU LY
Respondent

I have read and fully discussed with Respondent Minh Tu Ly the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

ROBERT KEITH WEINBERG, ESQ.
Attorney for Respondent

17. **No Ownership or Management of Licensed Premises**

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DATED: 2/8/24


MINH TU LY
Respondent

I have read and fully discussed with Respondent Minh Tu Ly the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

ROBERT KEITH WEINBERG, ESQ.
Attorney for Respondent

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DATED: _____

MINH TU LY
Respondent

I have read and fully discussed with Respondent Minh Tu Ly the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 02-08-2024


ROBERT KEITH WEINBERG, 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
GREGORY J. SALUTE
Supervising Deputy Attorney General

NICOLE R. TRAMA
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: 2/8/2024

Respectfully submitted,

ROB BONTA
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

Nicole R. Trama

NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7422

1 ROB BONTA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
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8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

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14 **MD PHARMACEUTICALS CORP., DBA**
15 **CARE ONE PHARMACY**
16 **MARIA DONNER, CEO/ 100%**
17 **SHAREHOLDER/ PRESIDENT/**
SECRETARY/ TREASURER/ CFO/
DIRECTOR
18 **9055 Garfield Avenue**
Fountain Valley, CA 92708

ACCUSATION

19 **Pharmacy License No. PHY 57363,**

20 **MINH TU LY, PHARMACIST**
21 **16455 Mount Ararat Circle**
Fountain Valley, CA 92708

22 **Registered Pharmacist License No. RPH 68160,**

23 **and**

24 **BRIAN SUNGTAE KIM, PHARMACIST**
25 **2673 W. Greenbrier Avenue**
Anaheim, CA 92801

26 **Registered Pharmacist License No. RPH 65658**

27 Respondents.
28

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 (Board), Department of Consumer Affairs.

4 2. On or about September 12, 2019, the Board issued Pharmacy License Number PHY
5 57363 to MD Pharmaceuticals Corp., dba Care One Pharmacy (Respondent Care One), with
6 Maria Donner as the Chief Executive Officer, 100% Shareholder, President, Secretary,
7 Treasurer/Chief Financial Officer and Director. The Pharmacy License expired on December 13,
8 2021, pursuant to a Discontinuance of Business, and has not been renewed.

9 3. On or about October 2, 2012, the Board issued Registered Pharmacist License
10 Number RPH 68160 to Minh Tu Ly, Pharmacist (Respondent Ly). The Registered Pharmacist
11 License was in full force and effect at all times relevant to the charges brought herein and will
12 expire on March 31, 2024, unless renewed.

13 4. On or about August 4, 2011, the Board issued Registered Pharmacist License Number
14 RPH 65658 to Brian Sungtae Kim, Pharmacist (Respondent Kim). The Registered Pharmacist
15 License was in full force and effect at all times relevant to the charges brought herein and will
16 expire on February 25, 2025, unless renewed.

17 **JURISDICTION**

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

26 8. Code section 4300.1 states:

27 The expiration, cancellation, forfeiture, or suspension of a board-issued license
28 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.

STATUTORY PROVISIONS

9. Code section 4022 states:

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

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

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

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

10. Code section 4081 states in part:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, 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, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician, dentist, podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section 4187, 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.

(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section.

11. Code section 4113, subdivision (c) states:

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.

12. Code section 4301 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 procured by fraud or misrepresentation or 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, 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.

...

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, 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.

14. Code section 4332 states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

15. 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.

REGULATORY PROVISIONS

16. 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 intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such 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.

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

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

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

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

(a) 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.

(b) Even after conferring with the prescriber, a pharmacist shall not compound 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 medical purpose.

COST RECOVERY

19. 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 4 **DRUGS**

5 20. Adderall is the brand name for mixed amphetamine salts, a Schedule II controlled
6 substance pursuant to Health and Safety Code section 11055(d)(1) and is a dangerous drug as
7 defined by Business and Professions Code section 4022.

8 21. Norco is the brand name for hydrocodone/acetaminophen, a Schedule II controlled
9 substance pursuant to Health and Safety Code section 11055(b)(1)(l)(ii) and 21 C.F.R.
10 1308.12(b)(1)(vi) and is a dangerous drug as defined by Business and Professions Code section
11 4022.

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

15 23. Soma is the brand name for carisoprodol and is a Schedule IV controlled substance
16 pursuant to 21 CFR 1308.14(c)(7) and a dangerous drug as defined by Business and Professions
17 Code section 4022.

18 24. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
19 to Health and Safety Code section 11057(d)(1) and a dangerous drug as defined by Business and
20 Professions Code section 4022.

21 **FACTUAL ALLEGATIONS**

22 25. Respondent Care One was a retail pharmacy located in Fountain Valley, California.
23 From September 12, 2019 to September 20, 2019, Respondent Kim was the Pharmacist-in-Charge
24 (PIC) at Respondent Care One. From September 20, 2019 to June 1, 2020, Respondent Ly was
25 the PIC at Respondent Care One.

26 26. Between September 12, 2019 and September 23, 2020, Respondent Care One
27 dispensed 1,029 prescriptions, including 332 controlled substance prescriptions, under the
28 prescribing authority of Dr. DJ. These prescriptions included 136 prescriptions for oxycodone 30

1 mg for a total of 10,574 tablets. Respondent Care One dispensed these prescriptions in the
2 presence of the following significant factors of irregularity or “red flags” indicating the
3 prescriptions were not legitimately issued:

4 a. Oxycodone 30 mg was Dr. DJ’s most commonly prescribed medication, representing
5 13.22% of his total prescribing.

6 b. 32.26% of Dr. DJ’s prescriptions were written for controlled substances, including
7 commonly abused controlled substances such as alprazolam 2 mg, hydrocodone/acetaminophen
8 10/325 mg, promethazine/codeine syrup, carisoprodol 350 mg, and generic Adderall 30 mg.
9 These medications treated a variety of conditions including pain, anxiety, cough, muscle spasms,
10 and Attention-Deficit Hyperactivity Disorder.

11 c. Dr. DJ frequently prescribed controlled substances in the highest available dose. For
12 example, Dr. DJ’s prescribing profile contained 136 prescriptions for oxycodone 30 mg (and only
13 14 prescriptions for the lower strengths), 42 prescriptions for alprazolam 2 mg (and only 8
14 prescriptions for the lower strengths), 41 prescriptions for hydrocodone/acetaminophen 10/325
15 mg (and only 2 prescriptions for the lower strengths), and 17 prescriptions for
16 dextroamphetamine/amphetamine 30 mg (and only 1 prescription for the lower strength).

17 d. Dr. DJ’s patients had addresses that were unusually far from Respondent Care One.
18 Specifically, 146 patients received prescriptions from Dr. DJ, and of those 126 patients had
19 addresses more than 20 miles from Respondent Care One.

20 e. In several instances, patients with the same last name and/or same address received
21 similar prescriptions from Dr. DJ at Respondent Care One.

22 f. Respondent Care One processed similar prescriptions for oxycodone from Dr. DJ
23 within minutes of each other, assigning them consecutive or nearly consecutive prescription
24 numbers.

25 g. There were numerous instances when patients of Dr. DJ received combinations of an
26 opioid and alprazolam, an opioid and promethazine/codeine syrup, or an opioid and carisoprodol.

27 h. In multiple instances, Dr. DJ initiated opioid therapy at very high doses. For
28 example, at least 22 patients who received the highest strength of oxycodone (30 mg) from

Respondent Care One appeared to be opioid naïve or not opioid tolerant, based on Respondent's records and CURES.

27. In addition to the controlled substance prescriptions dispensed under the prescribing authority of Dr. DJ, Respondents also dispensed several prescriptions for non-controlled drugs that contained irregularities, uncertainties, and ambiguities. Specifically, between September 13, 2019 and September 23, 2020, Respondent Care One dispensed 1,509 prescriptions for high-cost medications including combination products and kits, specifically, NuDiclo SoluPAK, Xyzbac tablets, Yosprala DR 81-40 mg, NuDroxiPAK, NuTriaRx CreamPAK, Prodigen capsule, Sil-K 2"x5.5" pads, NuDermRxPAK, Pedizol PAK, Inflammacin Kit, Allzital 25-350 mg tablet, and NuSurgePAK Surgical Prep Kit. Of the 1,509 prescriptions dispensed, 1,439 prescriptions (or 95%) were dispensed in a three month period between September 13, 2019 and December 20, 2019.¹ There were numerous irregularities in these prescriptions, including but not limited to the following:

a. Patients frequently received concurrent prescriptions for multiple kits with duplicate ingredients. For example, 49 patients received concurrent prescriptions for NuDiclo SoluPAK and NuDroxiPAK (thereby receiving both an oral and topical anti-inflammatory and two products containing topical capsaicin); 13 patients received NuDiclo SoluPAK and Inflammacin Kit (thereby receiving both oral and topical diclofenac and two topical capsaicin products); 3 patients received concurrent prescriptions for NuDiclo SoluPAK, NuDroxiPAK, and Inflammacin (thereby receiving two oral and one topical anti-inflammatory and two capsaicin containing products); 3 patients received concurrent prescriptions for omeprazole and Yosprala DR 81-40 mg (which also contains omeprazole); 30 patients received concurrent prescriptions for NuTriaRx CreamPAK and NuDermRxPAK (thereby receiving a bottle of dimethicone 5% in both prescriptions); 5 patients received concurrent prescriptions for NuTriaRx CreamPAK and NuSurgePAK Surgical Prep Kit (thereby receiving dimethicone 5% and silicone tape in both kits); 12 patients received concurrent prescriptions for Sil-K pads and NuTriaRx CreamPAK; and

¹ Respondent Kim was documented as the verifying pharmacist for 1,405 (93.11%) of the prescriptions for the medications at issue.

3 patients received concurrent prescriptions for Sil-K pads, NuTriaRx CreamPAK, and NuSurgePAK Surgical Prep Kit (thereby receiving topical silicone treatments in all three kits).

b. The duration of use for some of these prescriptions was not what would be expected for the type of medication dispensed. For example, of the 97 patients who received Xyzbac (a multivitamin), none received more than four prescriptions, and while NuSurgePAK Surgical Prep Kit was marketed as a set of medications to be used in preparation for and following surgery, 13 patients received more than one prescription of this Kit, dispensed one or two months apart, with 1 of the patients receiving three of these kits, and another patient receiving five of these kits.

c. Respondent Care One's dispensing profiles for patients who received Yosprala DR 81-40 were inconsistent with expected diagnoses for a patient receiving daily low dose aspirin. For example, 75 of the 80 patients who received Yosprala DR 81-40 mg (a medication indicated for prevention of a heart attack and stroke after an initial cardiac event), did not receive any other medications typically prescribed to patients who have experienced a cardiovascular event, including medications to lower blood pressure and cholesterol.

d. Multiple prescriptions had irregular dosing. For example, all 173 prescriptions for NuDroxiPAK dispensed at Respondent Care One had directions to take up to 600 mg of celecoxib daily even though the prescribing information for celecoxib indicates it should be dosed with a maximum maintenance dose of 400 mg per day. In another example, 91 prescriptions for Sil-K pads were dispensed with a quantity of eight patches to be a 30-day supply, even though these prescriptions had directions indicating that the patches should be applied for 8-12 hours per day, with the same patch to be reapplied for seven days. Therefore, four patches would be a 28-day supply; however, the patients were receiving almost double that in each prescription.

e. The directions for all 38 prescriptions for NuSurgePAK surgical Prep Kit only addressed the use of mupirocin ointment even though the kit also contained other drugs, including chlorhexidine 4% solution, dimethicone 5% cream, and silicone tape.

28. A review of the purchasing and dispensing records at Respondent Care One from September 12, 2019 to September 23, 2020, showed that Respondent Care One had dispensing records in excess of its acquisition or purchasing records. The following discrepancies were

1 noted: 4,800 grams of calcipotriene 0.005% cream; 56 Sil-K pads; 19 Inflammacin Kits; and 400
2 Allzital 25-325 mg tablets.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Failing to Comply with Corresponding Responsibility**
5 **for Controlled Substance Prescriptions)**

6 29. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
7 (j) and (o), for violating Health and Safety Code section 11153, subdivision (a), and Code of
8 Federal Regulations, Title 21, section 1306.04, subdivision (a), for failing to comply with
9 corresponding responsibility to ensure that controlled substances were dispensed for a legitimate
10 medical purpose. As described above, Respondents repeatedly furnished prescriptions for
11 controlled substances even though obvious and systemic “red flags” were present to indicate
12 those prescriptions were not issued for a legitimate medical purpose.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**
15 **Irregularities, Uncertainties, Ambiguities or Alterations)**

16 30. Respondents are subject to disciplinary action under Code section 4301, subdivision
17 (o), for violating title 16, California Code of Regulations, sections 1761, subdivisions (a) and (b)
18 because Respondents dispensed dangerous drugs based on prescriptions which contained
19 significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as described
20 above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Maintain Records)**

23 31. Respondents are subject to disciplinary action under Code section 4301, subdivision
24 (o), for violating Business and Professions Code section 4081, subdivision (a) because
25 Respondents failed to maintain all records of disposition and/or acquisition, as described above.

26 ///

27 ///

28 ///

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory)

32. Respondents are subject to disciplinary action under Code section 4301, subdivision (o), for violating title 16, California Code of Regulations, sections 1718 because Respondents failed to maintain a current inventory, as described above.

OTHER MATTERS

33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 57363, issued to MD Pharmaceuticals Corp., to do business as Care One Pharmacy, Respondent MD Pharmaceuticals Corp., to do business as Care One Pharmacy shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 57363, issued to MD Pharmaceuticals Corp., to do business as Care One Pharmacy is reinstated if it is revoked.

34. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 57363, issued to MD Pharmaceuticals Corp., to do business as Care One Pharmacy, while Maria Donner has been an officer and owner and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Maria Donner shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 57363, issued MD Pharmaceuticals Corp., to do business as Care One Pharmacy is reinstated if it is revoked.

35. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number RPH 68160, issued to Minh Ly, Respondent Ly shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 68160 is placed on probation or until Pharmacist License Number RPH 68160 is reinstated if it is revoked.

36. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number RPH 65658, issued to Brian Sungtae Kim, Respondent Kim shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a

licensee for five years if Pharmacist License Number RPH 65658 is placed on probation or until Pharmacist License Number RPH 65658 is reinstated if it is revoked.

DISCIPLINARY CONSIDERATIONS

37. To determine the degree of discipline, if any, Complainant further alleges the following:

a. Effective April 27, 2022, the Board issued a Decision and Order in the prior disciplinary case entitled, *In the Matter of the First Amended Accusation Against M&S Pharmaceuticals, Inc., DBA OC Wellness and Specialty Pharmacy and Brian Sungtae Kim*, Case Number 6979, revoking Respondent Kim's pharmacist license. However, the revocation was stayed, and Respondent Kim was placed on probation for a period of five years with certain terms and conditions.

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 Pharmacy License Number PHY 57363, issued to MD Pharmaceuticals Corp., dba Care One Pharmacy;
2. Revoking or suspending Registered Pharmacist License Number RPH 68160, issued to Minh Tu Ly, Pharmacist;
3. Revoking or suspending Registered Pharmacist License Number RPH 65658, issued to Brian Sungtae Kim, Pharmacist;
4. Prohibiting MD Pharmaceuticals Corp., to do business as Care One Pharmacy from servicing as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 57363 is placed on probation or until Pharmacy Permit Number PHY 57363 is reinstated if Pharmacy Permit Number PHY 57363 issued to MD Pharmaceuticals Corp., to do business as Care One Pharmacy is revoked;
5. Prohibiting Maria Donner from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 57363 is placed on probation or until Pharmacy Permit Number PHY 57363 is reinstated if

Pharmacy Permit Number PHY 57363 issued to MD Pharmaceuticals Corp., to do business as Care One Pharmacy, is revoked;

6. Prohibiting Minh Ly from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 68160 is placed on probation or until Pharmacist License Number RPH 68160 is reinstated if Pharmacist License Number RPH 68160 issued to Minh Ly is revoked

7. Prohibiting Brian Sungtae Kim from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 65658 is placed on probation or until Pharmacist License Number RPH 65658 is reinstated if Pharmacist License Number RPH 65658 issued to Brian Sungtae Kim is revoked;

8. Ordering Respondents 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,

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

DATED: 2/26/2023

Sodergren,
Anne@DCA

Digitally signed by Sodergren,
Anne@DCA
Date: 2023.02.26 20:29:54
-08'00'

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

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