

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

In the Matter of the Accusation Against:

**FRUITVALE AVENUE PHARMACY INC.,
Original Permit No. PHY 53737; and**

**SHARON PARK,
Pharmacist License No. RPH 67769; and**

**TIEN MINH VO,
Pharmacist License No. RPH 59546; and**

**KALPESH PATEL,
Pharmacist License No. RPH 49167**

Respondents

Agency Case No. 6243

OAH No. 2019120191

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 December 9, 2020.

It is so ORDERED on November 9, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 LAURA PEDICINI
Deputy Attorney General
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8
9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **FRUITVALE AVENUE PHARMACY INC.**
15 **2693 Fruitvale Avenue**
16 **Oakland, CA 94601-2034**

17 **Original Permit No. PHY 53737,**

18 **SHARON PARK**
19 **11962 Stoney Peak Drive, #1235**
20 **San Diego, CA 92128**

21 **Pharmacist License No. RPH 67769,**

22 **TIEN MINH VO**
23 **10 Amber**
24 **Aliso Viejo, CA 92656**

25 **Pharmacist License No. RPH 59546,**

26 **and**

27 **KALPESH PATEL**
28 **82 Calle Viajera**
Guaynabo, PR 99969

Pharmacist License No. RPH 49167

Respondents.

Case No. 6243

OAH No. 2019120191

**STIPULATED SURRENDER OF
PHARMACY LICENSE AND ORDER AS
TO RESPONDENT FRUITVALE
AVENUE PHARMACY, INC.**

AND

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT KALPESH PATEL**

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 Xavier Becerra, Attorney General of the State of California, by Laura Pedicini, Deputy Attorney
7 General.

8 2. Respondents Fruitvale Avenue Pharmacy, Inc. (Respondent Fruitvale Pharmacy) and
9 Kalpesh Patel (Respondent Patel) are represented in this proceeding by attorney Natalia Mazina,
10 whose address is: 100 Pine Street, Suite 1250, San Francisco, CA 94111-5235

11 3. On or about July 8, 2015, the Board issued Original Permit No. PHY 53737 to
12 Respondent Fruitvale Avenue Pharmacy. The Original Permit was in full force and effect at all
13 times relevant to the charges brought here; it expired on July 1, 2018, and has not been renewed.

14 4. On or about September 25, 1996, the Board of Pharmacy issued Pharmacy License
15 Number RPH 49167 to Respondent Patel. The Pharmacist License was in full force and effect at
16 all times relevant to the charges brought here and will expire on May 31, 2022, unless renewed.

17 **JURISDICTION**

18 5. Accusation No. 6243 was filed before the Board, and is currently pending against
19 Respondents. The Accusation and all other statutorily required documents were properly served
20 on Respondents on May 13, 2019. Respondents timely filed their Notices of Defense contesting
21 the Accusation.

22 6. A copy of Accusation No. 6243 is attached as exhibit A and incorporated here by
23 reference.

24 **ADVISEMENT AND WAIVERS**

25 7. Respondents have carefully read, fully discussed with counsel, and understand the
26 charges and allegations in Accusation No. 6243. Respondents have also carefully read, fully
27 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
28 Order.

1 the parties, and the Board shall not be disqualified from further action by having considered this
2 matter.

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

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

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

15 **DISCIPLINARY ORDER**

16 **FRUITVALE AVENUE PHARMACY, INC. PHY 53737**

17 IT IS HEREBY ORDERED that Original Permit No. PHY 53737 issued to Respondent
18 Fruitvale Avenue Pharmacy Inc. is surrendered and accepted by the Board of Pharmacy.

19 1. The surrender of Respondent Fruitvale Pharmacy's Original Permit No. PHY 53737
20 and the acceptance of the surrendered Permit by the Board shall constitute the imposition of
21 discipline imposed against Respondent Fruitvale Pharmacy. This stipulation constitutes a record
22 of discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

23 2. Respondent Fruitvale Pharmacy shall lose all rights and privileges as a Pharmacy in
24 California as of the effective date of the Board's Decision and Order.

25 3. Respondent Fruitvale Pharmacy shall cause to be delivered to the Board any pocket
26 licenses and, if any were issued, any wall certificates related to Original Permit No. PHY 53737
27 on or before the effective date of the Decision and Order.

28 4. Respondent Fruitvale Pharmacy may only seek a new or reinstated license from the

1 Board by way of a new application for licensure. Respondent Fruitvale Pharmacy understands
2 and agrees that if they ever file an application for licensure or a petition for reinstatement in the
3 State of California, the Board shall treat it as a new application for licensure and it shall not be
4 eligible to petition for reinstatement of licensure. Respondent Fruitvale Pharmacy must comply
5 with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the
6 time the petition is filed, and all the charges contained in Accusation No. 6243 shall be deemed to
7 be true, correct, and admitted by Respondent Fruitvale Pharmacy.

8 5. Should Respondent Fruitvale Pharmacy ever apply or reapply for a new license or
9 certification, or petition for reinstatement of a license, by any other health care licensing agency
10 in the State of California, all of the charges and allegations contained in Accusation No. 6243
11 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
12 of Issues or any other proceeding seeking to deny or restrict licensure.

13 6. Respondent Fruitvale Pharmacy may not apply for any new license for the Board for
14 three (3) years from the effective date of the surrender. Respondent Fruitvale Pharmacy shall
15 meet all requirements applicable to the license sought as of the date the application for that
16 license is submitted to the Board.

17
18 **KALPESH PATEL RPH 49167**

19 IT IS FURTHER ORDERED that Pharmacist License No. RPH 49167 issued to
20 Respondent Kalpesh Patel is revoked. However, the revocation is stayed and Respondent Patel is
21 placed on probation for two (2) years based on the following terms and conditions.

22 **1. Obey All Laws**

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

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

- 26 • an arrest or issuance of a criminal complaint for violation of any provision of the
27 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
28 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 Kalpesh Patel'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 Patel shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, Respondent Patel shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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

3. Interview with the Board

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

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1 4. **Cooperate with Board Staff**

2 Respondent Patel shall cooperate with the Board's inspection program and with the Board's
3 monitoring and investigation of Respondent Patel's compliance with the terms and conditions of
4 his probation. Failure to cooperate shall be considered a violation of probation.

5 5. **Continuing Education**

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

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

9 During the period of probation, Respondent Patel shall notify all present and prospective
10 employers of the decision in case number 6243 and the terms, conditions and restrictions imposed
11 on Respondent by the decision, as follows:

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

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 Respondent Patel undertaking any new employment, Respondent Patel shall cause (a) Entity
26 direct supervisor, (b) Entity pharmacist-in-charge, designated representative-in-charge,
27 responsible manager, or other compliance supervisor, and (c) the owner or owner representative
28 of Entity employer, to report to the Board in writing acknowledging that the listed individual(s)

1 has/have read the decision in case number 6243, and terms and conditions imposed thereby. If
2 one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so
3 state. It shall be Respondent Patel's responsibility to ensure that these acknowledgment(s) are
4 timely submitted to the Board. In the event of a change in the person(s) serving the role(s)
5 described in (a), (b), or (c) during the term of probation, Respondent Patel shall cause the
6 person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the
7 change acknowledging that he or she has read the decision in case number 6243, and the terms
8 and conditions imposed thereby.

9 If Respondent Patel works for or is employed by or through an employment service,
10 Respondent Patel must notify the person(s) described in (a), (b), and (c) above at every entity
11 licensed by the Board of the decision in case number 6243, and the terms and conditions imposed
12 thereby in advance of respondent commencing work at such licensed entity. A record of this
13 notification must be provided to the Board upon request.

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

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

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

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

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

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

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

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

11 9. **Reimbursement of Board Costs**

12 As a condition precedent to successful completion of probation, Respondent Patel shall pay
13 to the Board its costs of investigation and prosecution in the amount of \$7,500.00. Respondent
14 Patel shall be permitted to pay these costs in a payment plan approved in writing by the Board or
15 its designee.

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

19 The filing of bankruptcy by Respondent Patel shall not relieve Respondent Patel of his
20 responsibility to reimburse the Board its costs of investigations and prosecution.

21 10. **Probation Monitoring Costs**

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

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1 **11. Status of License**

2 Respondent Patel shall, at all times while on probation, maintain an active, current license
3 with the Board, including any period during which suspension or probation is tolled. Failure to
4 maintain an active, current license shall be considered a violation of probation.

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

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

10 Following the effective date of this decision, should Respondent Patel cease practice due to
11 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
12 Respondent Patel may tender his license to the Board for surrender. The Board or its designee
13 shall have the discretion whether to grant the request for surrender or take any other action it
14 deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,
15 Respondent Patel will no longer be subject to the terms and conditions of probation. This
16 surrender constitutes a record of discipline and shall become a part of Respondent Patel's license
17 history with the Board.

18 Upon acceptance of the surrender, Respondent Patel shall relinquish his pocket and wall
19 licenses to the Board within ten (10) days of notification by the Board that the surrender is
20 accepted. Respondent Patel may not reapply for any license from the Board for three (3) years
21 from the effective date of the surrender. Respondent Patel shall meet all requirements applicable
22 to the license sought as of the date the application for that license is submitted to the Board,
23 including any outstanding costs.

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

25 Except during periods of suspension, Respondent Patel shall, at all times while on
26 probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar
27 month. At least ten days in advance of each new quarter, Respondent Patel shall submit a
28 quarterly work schedule for approval to his assigned probation monitor. The work schedule shall

1 provide the dates and hours Respondent shall be employed as a pharmacist in California on a
2 monthly basis, sufficient to meet or exceed his 40 hour per calendar month requirement. Any
3 month during which the 40 hour minimum is not met shall extend the period of probation by one
4 month. Moreover, Respondent Patel shall not deviate from his quarterly work schedule once it is
5 approved by his probation monitor. During any such period of insufficient employment,
6 Respondent Patel must nonetheless comply with all terms and conditions of probation, unless
7 Respondent Patel receives a waiver in writing from the Board or its designee. Respondent Patel
8 understands and agrees that he may not satisfy the employment requirement through remote
9 employment in Puerto Rico. However, he may work for an Accountable Care Organization
10 (ACO) performing medication therapy management (MTM) and setting up drug adherence
11 programs, as long as the work requires a pharmacist's license, and as long as Respondent Patel is
12 physically present in California while performing his duties.

13 If Respondent Patel does not practice as a pharmacist in California for the minimum
14 number of 40 hours in any calendar month, for any reason (including vacation), Respondent Patel
15 shall notify the Board in writing within ten (10) days of the conclusion of that calendar month.
16 This notification shall include at least: the date(s), location(s), and hours of last practice; the
17 reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which
18 Respondent Patel will resume practice at the required level. Respondent Patel shall further notify
19 the Board in writing within ten (10) days following the next calendar month during which
20 Respondent Patel practices as a pharmacist in California for the minimum of hours. Any failure
21 to timely provide such notification(s) shall be considered a violation of probation.

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

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1 **12. Violation of Probation**

2 If Respondent Patel has not complied with any term or condition of probation, the Board
3 shall have continuing jurisdiction over Respondent Patel, and probation shall be automatically
4 extended, until all terms and conditions have been satisfied or the Board has taken other action as
5 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
6 probation, and to impose the penalty that was stayed.

7 If Respondent Patel violates probation in any respect, the Board, after giving Respondent
8 Patel notice and an opportunity to be heard, may revoke probation and carry out the disciplinary
9 order that was stayed. If a Petition to Revoke Probation or an Accusation is filed against
10 Respondent Patel during probation, the Board shall have continuing jurisdiction and the period of
11 probation shall be automatically extended until the Petition to Revoke Probation or Accusation is
12 heard and decided and the charges and allegations in First Amended Accusation No. 6232 shall
13 be deemed true and correct.

14 **13. Completion of Probation**

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

17 **14. Remedial Education**

18 Within sixty (60) days of the effective date of this decision, Respondent Patel shall submit
19 to the Board or its designee, for prior approval, an appropriate program of remedial education
20 related to pharmacy operations, pharmacy law, corresponding responsibility, and the role of a
21 Pharmacist in Charge (PIC). The program of remedial education shall consist of at least 10 hours
22 per year, of which 50 percent must be live webinar or in-person, and shall be completed at
23 Respondent Patel's own expense. All remedial education shall be in addition to, and shall not be
24 credited toward, continuing education (CE) courses used for license renewal purposes for
25 pharmacists.

26 Failure to timely submit for approval or complete the approved remedial education shall be
27 considered a violation of probation. The period of probation will be automatically extended until
28

1 such remedial education is successfully completed and written proof, in a form acceptable to the
2 Board, is provided to the Board or its designee. Following the completion of each course, the
3 Board or its designee may require Respondent Patel, at his own expense, to take an approved
4 examination to test his knowledge of the course. If Respondent Patel does not achieve a passing
5 score on the examination, that course shall not count towards satisfaction of this term.
6 Respondent Patel shall take another course approved by the Board in the same subject area.

7 **15. Ethics Course**

8 Within sixty (60) calendar days of the effective date of this decision, Respondent Patel shall
9 enroll in a course in ethics, at his own expense, approved in advance by the Board or its designee,
10 that complies with Title 16 California Code of Regulations section 1773.5. Respondent Patel
11 shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent
12 Patel shall submit a copy of the certificate of completion to the Board or its designee. Failure to
13 timely enroll in an approved ethics course, to initiate the course during the first year of probation,
14 to successfully complete it before the end of the second year of probation, or to timely submit
15 proof of completion to the Board or its designee, shall be considered a violation of probation.

16 **16. No New Ownership or Management of Licensed Premises**

17 Respondent Patel shall not acquire any new ownership, legal or beneficial interest nor serve
18 as a manager, administrator, member, officer, director, trustee, associate, or partner of any
19 additional business, firm, partnership, or corporation licensed by the Board for a period of three
20 (3) years from the effective date of this decision. If Respondent Patel currently owns or has any
21 legal or beneficial interest in, or serves as a manager, administrator, member, officer, director,
22 trustee, associate, or partner of any business, firm, partnership, or corporation currently or
23 hereinafter licensed by the Board, Respondent Patel may continue to serve in such capacity or
24 hold that interest, but only to the extent of that position or interest as of the effective date of this
25 decision. Violation of this restriction shall be considered a violation of the terms of this
26 stipulation and shall constitute unprofessional conduct and grounds for further disciplinary action.

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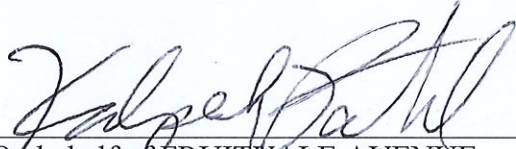
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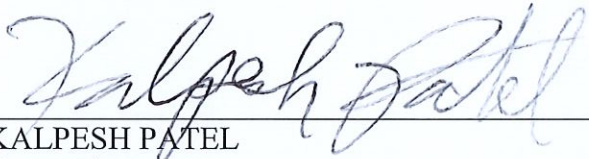
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3 ACCEPTANCE

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

9
10 DATED: 6/30/2020 
11 On behalf of FRUITVALE AVENUE
12 PHARMACY INC.
Respondent

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

18
19 DATED: 6/30/2020 
20 KALPESH PATEL
Respondent

21
22 I have read and fully discussed with Respondents the terms and conditions and other
23 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
24 and content.

25
26 DATED: June 30, 2020 
27 NATALIA MAZINA
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,
XAVIER BECERRA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General

LAURA PEDICINI
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: July 1, 2020 _____

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



LAURA PEDICINI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 6243

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 LAURA PEDICINI
Deputy Attorney General
4 State Bar No. 200934
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 6243

12 **FRUITVALE AVENUE PHARMACY INC.**
13 **KALPESH PATEL, OWNER**
14 **2693 Fruitvale Avenue**
Oakland, CA 94601-2034

A C C U S A T I O N

15 **Original Permit No. PHY 53737,**

16
17 **KALPESH PATEL**
5 Calle Castana
18 **Guaynabo, PR 00968**

19 **Pharmacist No. RPH 49167,**

20 **TIEN VO**
21 **10 Amber**
Aliso Viejo, CA 92656

22 **Pharmacist No. RPH 59546,**

23
24 **SHARON PARK**
3025 W. Christofferson Pkwy D-205
25 **Turlock, CA 95832**

26 **Pharmacist No. RPH 67769,**

27 **Respondents.**
28

1 Complainant Anne Sodergren alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation solely in her official capacity as the Interim
4 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

5 2. On or about July 8, 2015, the Board of Pharmacy issued Original Permit Number
6 PHY 53737 to Fruitvale Avenue Pharmacy Inc. (Respondent Fruitvale). Kalpesh Patel was
7 designated owner of Fruitvale Pharmacy with 100 percent ownership shares. The Original Permit
8 was in full force and effect at all times relevant to the charges brought within this Accusation; it
9 expired on July 1, 2018 and was cancelled on August 9, 2018.

10 3. On or about May 11, 2007, the Board of Pharmacy issued Pharmacist License
11 Number RPH 59546 to Tien Vo (Respondent Vo). The Pharmacist License was in full force and
12 effect at all times relevant to the charges brought in this Accusation and will expire on August 31,
13 2020, unless renewed.

14 4. On or about August 23, 2012, the Board of Pharmacy issued Pharmacist License
15 Number RPH 67769 to Sharon Park (Respondent Park). The Pharmacist License was in full force
16 and effect at all times relevant to the charges brought in this Accusation and will expire on August
17 31, 2020, unless renewed.

18 5. On or about September 25, 1996, the Board of Pharmacy issued Pharmacist License
19 Number RPH 49167 to Kalpesh Patel (Respondent Patel). The Pharmacist License was in full
20 force and effect at all times relevant to the charges brought in this Accusation and will expire on
21 May 31, 2020, unless renewed.

22 **JURISDICTION**

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

26 7. Section 4011 of the Business and Professions Code (Code) states, in pertinent part:
27 "The board shall administer and enforce this chapter and the Uniform Controlled
28 Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code)."

1 8. Section 4300 of the Code states:

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

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

6 “(1) Suspending judgment.

7 “(2) Placing him or her upon probation.

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

9 “(4) Revoking his or her license.

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

12 “(7) Compliance with laws and regulations governing the practice of pharmacy.

13 . . .

14 “(e) The proceedings under this article shall be conducted in accordance with Chapter 5
15 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
16 shall have all the powers granted therein. The action shall be final, except that the propriety of the
17 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
18 Procedure.”

19 9. Section 4300.1 of the Code provides that “[t]he expiration, cancellation, forfeiture, or
20 suspension of a board-issued license by operation of law or by order or decision of the board or a
21 court of law, the placement of a license on a retired status, or the voluntary surrender of a license
22 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any
23 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
24 suspending or revoking the license.”

25 12. Section 4307(a) of the Code states that:

26 Any person who has been denied a license or whose license has been
27 revoked or is under suspension, or who has failed to renew his or her license while it
28 was under suspension, or who has been a manager, administrator, owner member,
officer, director, associate, or partner of any partnership, corporation, firm, or
association whose application for a license has been denied or revoked, is under

1 suspension or has been placed on probation, and while acting as the manger,
2 administrator, owner, member, officer, director, associate, or partner had knowledge
3 or knowingly participated in any conduct for which the license was denied, revoked,
4 suspended, or placed on probation, shall be prohibited from serving as a manger,
5 administrator, owner, member, officer, director, associate, or partner of a licensee as
6 follows:

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

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

12

13 **STATUTORY PROVISIONS**

14 10. Section 4022 of the Code states

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

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

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

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

24 11. Section 4063 of the Code states:

25 "No prescription for any dangerous drug or dangerous device may be refilled except upon
26 authorization of the prescriber. The authorization may be given orally or at the time of giving the
27 original prescription. No prescription for any dangerous drug that is a controlled substance may be
28 designated refillable as needed."

12. Section 4081 of the Code states, relevant 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

1 inspection by authorized officers of the law, and shall be preserved for at least three years from
2 the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-
3 party logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility,
4 physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment
5 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption
6 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
7 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who
8 maintains a stock of dangerous drugs or dangerous devices.”

9 13. Section 4301 of the Code states:

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

13 . . .

14 “(c) Gross negligence.

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

17 . . .

18 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
19 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
20 whether the act is a felony or misdemeanor or not.”

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

22 “A prescription for a controlled substance shall only be issued for a legitimate medical
23 purpose by an individual practitioner acting in the usual course of his or her professional practice.
24 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
25 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
26 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
27 an order purporting to be a prescription which is issued not in the usual course of professional
28 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of

1 controlled substances, which is issued not in the course of professional treatment or as part of an
2 authorized narcotic treatment program, for the purpose of providing the user with controlled
3 substances, sufficient to keep him or her comfortable by maintaining customary use.”

4 15. Health and Safety Code section 11162.1 states, in relevant part:

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

6 . .

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

9 . . .

10 (4) A feature printed in thermochromic ink.

11 . . .

12 (8) Prescription blanks shall contain a statement printed on the bottom of the prescription
13 blank that the ‘Prescription is void if the number of drugs prescribed is not noted.’”

14 16. Health and Safety Code section 11164 states, in relevant part:

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

18 “(a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
19 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
20 as specified in Section 11162.1 . . .”

21 **REGULATORY PROVISIONS**

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

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

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

27 “(a) No pharmacist shall compound or dispense any prescription which contains any
28 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any

1 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
2 validate the prescription.

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

6 19. California Code of Regulations, title 16, section 1793.1, subdivision (a), states:

7 “Only a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist,
8 may:

9 “(a) Receive a new prescription order orally from a prescriber or other person authorized by
10 law.”

11 **DRUGS**

12 20. Hydrocodone/Ataminophen (APAP), also known by the brand name Norco, is a
13 Schedule II controlled substance under Health and Safety Code, section 11055, subdivision
14 (b)(1)(I) and a dangerous drug under Business and Professions Code section 4022. It is used for
15 pain.

16 21. Fentanyl is a Schedule II controlled substance under Health and Safety Code,
17 section 11055, subdivision (c)(8) and a dangerous drug under Business and Professions Code
18 section 4022. It is a synthetic opioid used to treat pain.

19 22. Methadone is a Schedule II controlled substance under Health and Safety Code,
20 section 11055, subdivision (c)(14) and a dangerous drug under Business and Professions Code
21 section 4022. It is a narcotic used to treat pain.

22 23. Oxycodone is a Schedule II controlled substance under Health and Safety Code,
23 section 11055, subdivision (b)(1)(M) and a dangerous drug under Business and Professions Code
24 section 4022. It is used to treat pain.

25 24. Promethazine with codeine, also known by the brand name Phenergan with
26 codeine, is a Schedule V controlled substance under Health and Safety Code, section 11055 and a
27 dangerous drug under Business and Professions Code, section 4022. It is used to treat coughs.

28 25. Efavirenz/emtricitabine/tenofovir, also known by the brand name Atripla, is a

1 dangerous drug under Business and Professions, section 4022. It is an anti-retroviral combination
2 drug which can be used to treat HIV infections.

3 26. Abacavir/dolutegravir/lamivudine, also known by the brand name Triumeq, is a
4 dangerous drug under Business and Professions Code, section 4022. It is an anti-retroviral
5 combination drug which can be used to treat HIV infections.

6 27. Ritonavir, also known by the brand name Norvir, is a dangerous drug under
7 Business and Professions Code, section 4022. It is an anti-retroviral drug which can be used to
8 treat HIV infections.

9 28. Darunavir, also known by brand name Prezista, is a dangerous drug under Business
10 and Professions Code, section 4022. It is an anti-retroviral drug and is often used to treat HIV
11 infections.

12 29. Sulfamethoxazole and trimethoprim, also known by brand name Bactrim DS, is a
13 dangerous drug under Business and Professions Code, section 4022. It is an antibiotic that can be
14 used to treat or prevent infections.

15 30. Etravirine, also known by the brand name Intelence, is a dangerous drug under
16 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
17 treat HIV infections.

18 31. Elvitegravir/cobicistat/emtricitabine/tenofovir, also known by the brand name
19 Stribild, is a dangerous drug under Business and Professions Code, section 4022. It is an anti-
20 retroviral drug and is often used to treat HIV infections.

21 32. Rilprvirine, also known by the brand name Edurant, is a dangerous drug under
22 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
23 treat HIV infections.

24 33. Dolutegravir, also known by the brand name Tivicay, is a dangerous drug under
25 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
26 treat HIV infections.

27 34. Emtricitabine/tenovir, also known by the brand name Truvada, is a dangerous drug
28 under Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used

1 to treat HIV infections.

2 35. Atazanavir, also known by the brand name Reyataz, is a dangerous drug under
3 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
4 treat HIV infections.

5 36. Abacavir/lamivudine, also known by the brand name Epzicom, is a dangerous drug
6 under Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used
7 to treat HIV infections.

8 37. Lamivudine/zidovudine, also known by the brand name Combivir, is a dangerous
9 drug under Business and Professions Code, section 4022. It is an anti-retroviral drug and is often
10 used to treat HIV infections.

11 38. Abacavir, also known by the brand name Ziagen, is a dangerous drug under
12 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
13 treat HIV infections.

14 39. Rilpivirine/tenofovir disoproxil fumarate/emtricitabine also known by the brand
15 name Complera or Eviplera, is a dangerous drug under Business and Professions Code, section
16 4022. It is an anti-retroviral drug and is often used to treat HIV infections.

17 40. Dapsone, also known by the brand name Aczone, is a dangerous drug under
18 Business and Professions Code, section 4022. It is used to treat skin disorders.

19 41. Lamivudine, also known by the brand name Epivir, is a dangerous drug under
20 Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used to
21 treat HIV infections.

22 42. Lopinavir/ritonavir, also known by the brand name Kaletra, is a dangerous drug
23 under Business and Professions Code, section 4022. It is an anti-retroviral drug and is often used
24 to treat HIV infections.

25 43. Insulin glargine, also known by the brand name Lantus, is a dangerous drug under
26 Business and Professions Code, section 4022. It is an insulin drug used to treat diabetes.

27 44. Leucovorin is a dangerous drug under Business and Professions Code, section
28 4022. It is folic acid and is used as a chemotherapy protective drug.

1 45. Fosamprenavir, also known by the brand name Lexiva, is a dangerous drug under
2 Business and Professions Code section 4022. It is often used to treat HIV infections.

3 46. Novolog is a dangerous drug under Business and Professions Code, section 4022.
4 It is an insulin drug used to treat diabetes.

5 47. Prochlorperazine, also known by the brand name Compro, is a dangerous drug
6 under Business and Professions Code, section 4022. It is an antipsychotic medication.

7 48. Sevelamer, also known by the brand name as Renvela or Renagel, is a dangerous
8 drug under Business and Professions Code, section 4022. It is used to control phosphorus levels
9 in patients receiving kidney dialysis.

10 49. Efavirenz, also known by the brand name Sustiva, is a dangerous drug under
11 Business and Professions Code, section 4022. It is often used to treat HIV infections.

12 50. Abacavir/Dolutegravir/Lamivudine, also known by the brand name Triumeq, is a
13 dangerous drug under Business and Professions Code, section 4022. It is an anti-retroviral drug
14 and is often used to treat HIV infections.

15 COST RECOVERY

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

22 FACTUAL BACKGROUND

23 52. On or about July 8, 2015, Respondent Fruitvale's current pharmacy permit became
24 effective.¹ Respondent Patel acted as Fruitvale Pharmacy's pharmacist-in-charge (PIC) from

25 ¹ On May 6, 2015, in case number 4579, the Board filed Second Amended Accusation
26 against Fruitvale Avenue Pharmacy Inc. and Iroegbu Clifford Esomonu, a pharmacist working at
27 Fruitvale Pharmacy. At the time of the prior action, Fruitvale Pharmacy was operating under
28 Pharmacy License number 50064. The Second Amended Accusation alleged 22 causes for
discipline against Fruitvale Pharmacy and Esomonu arising from Fruitvale Pharmacy's failure to
transmit Controlled Substances Utilization Review and Evaluation System data to the Department
(continued...)

1 approximately July 8, 2015 to October 4, 2015. Respondent Vo acted as the PIC from
2 approximately October 5, 2015 to December 20, 2015. Respondent Park acted as the PIC from
3 approximately December 21, 2015 to March 25, 2016.

4 53. Alameda Health System (AHS) is a public health care system with several hospitals
5 and wellness centers in Alameda County. Many of AHS's patients filled their prescriptions at
6 Fruitvale Pharmacy until October 2015, when AHS added a special HIV prescription service. At
7 that point, many AHS patients who had previously used Fruitvale Pharmacy transferred their
8 prescriptions to AHS.

9 54. Between November 2015 and February 2016, AHS personnel, including Dr. AS, filed
10 complaints with the Board against Respondent Fruitvale. AHS personnel noticed that Fruitvale
11 Pharmacy had been refilling prescriptions from AHS without authorization from AHS physicians,
12 that Fruitvale Pharmacy was refusing to fill prescriptions for patients if they did not have all of
13 their prescriptions filled at Fruitvale Pharmacy, that Fruitvale Pharmacy was continuing to fill
14 prescriptions after discontinuation notices had been sent to the pharmacy, that an individual from
15 Fruitvale Pharmacy was contacting patients who decided to switch pharmacies and asking them
16 why, and that Fruitvale Pharmacy was continuing to fill prescriptions for patients who had
17 informed Fruitvale Pharmacy that they wished to use a different pharmacy.

18 55. After receiving these complaints, the Board inspected Fruitvale Pharmacy twice on
19 March 22, 2016, and February 15, 2017. The Board's inspectors spoke with the pharmacists,
20 collected documents, reviewed Respondent Fruitvale's policies and procedures, and spoke with
21 other personnel.

22 56. During the course of their inspections, the inspectors discovered that between
23 approximately July 8, 2015, and February 15, 2017, Dr. AS and her agents had sent orders to

24 _____
25 (...continued)

26 of Justice and Esomonu's filling of approximately 350 fraudulent prescriptions, many of which
27 were for large quantities of controlled substances. As a result of this action, Fruitvale Pharmacy
28 surrendered its pharmacy permit and Esomonu surrendered his pharmacist license. The
surrenders became effective on July 8, 2015. Respondent Patel purchased Fruitvale Pharmacy's
business and he obtained a new pharmacy permit. Fruitvale Pharmacy operated during the time
relevant to the charges brought in this Accusation.

1 Respondent Fruitvale to discontinue medications and that some of these patients also submitted
2 consent forms to Respondent Fruitvale indicating that they wished to fulfill their prescriptions at
3 other pharmacies. Despite receiving these notifications, Respondent Fruitvale continued to fill
4 and dispense prescriptions for approximately 14 patients.

5 57. The inspectors discovered that between January 1, 2015, and December 31, 2016,
6 Respondent Fruitvale refilled prescriptions early for approximately 48 patients by refilling the
7 prescriptions every 24 days instead of on a monthly basis of 30-31 days. This resulted in patients
8 receiving 14 or 15 refills per year, an excessive amount of refills beyond the standard 12 monthly
9 refills per year. These prescriptions were for Arithromycin, Atripla, Combivir, Complera,
10 Dapsone, Edurant, Epivir, Epzicom, Intelence, Kaletra, Lantus, Leucovorin, Lexiva, Norvir,
11 Novolog, Prezista, Prochlorperazine, Renagel, Reyataz, Simvastatin, Bactrim DS, Staudine,
12 Stribild, Sustiva, Tivicay, Triumeq, Truvada, and Ziagen.

13 58. The inspectors discovered that between July 8, 2015, and February 15, 2017,
14 Respondent Fruitvale refilled 629 prescriptions from AHS for dangerous drugs even though the
15 refills had not been authorized by the prescriber at AHS.

16 59. The inspectors discovered that between July 8, 2015, and February 15, 2017,
17 Respondent Fruitvale had allowed C.E., a previously licensed pharmacist who surrendered his
18 license after an accusation was filed against him, to work as a pharmacy clerk and to orally take
19 approximately 33 new prescriptions over the phone. C.E. had previously worked as a licensed
20 pharmacist at Fruitvale Pharmacy and after he surrendered his license in July 2015, C.E.
21 continued to work at Fruitvale Pharmacy until some point in 2016.

22 60. The inspectors discovered that on January 4, 2017; February 2, 2017; and February 4,
23 2017, Respondent Fruitvale filled three prescriptions for controlled substances even though the
24 prescriptions did not have the required watermark, the thermochromic ink feature, and a statement
25 that the prescription would be void if the number of drugs prescribed was not noted. Two
26 prescriptions were for Norco and methadone, and the third prescription was for fentanyl and
27 oxycodone.
28

1 61. The inspectors discovered that between July 8, 2015 and February 15, 2017,
2 Respondent Fruitvale dispensed controlled substances where the underlying prescriptions had
3 multiple cues of irregularity and uncertainty related the patients and prescriber. Respondent
4 Fruitvale dispensed approximately 1,425 controlled substance prescriptions written by Dr. Hai
5 Van Nguyen,² even though the prescriptions had similar prescribing patterns, the prescriptions
6 were filled in groups, and Dr. Nguyen had been disciplined by the California Medical Board. 498
7 of these prescriptions were for promethazine with codeine syrup and 927 of these prescriptions
8 were for hydrocodone/acetaminophen.

9 62. The inspectors discovered that Respondent Fruitvale could not account for 124 bottles
10 of Atripla, 27 bottles of Truvada, 10 bottles of Norvir, 13 bottles of Prezista, and 34 bottles of
11 Reyataz.

12 **CAUSES OF DISCIPLINE AGAINST RESPONDENT FRUITVALE**

13 **FIRST CAUSE FOR DISCIPLINE**
14 **(Unprofessional Conduct: Moral, Turpitude, Dishonesty, Deceit, or Corruption)**
15 **(Bus. & Prof. Code, § 4301, subd. (a))**

16 63. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
17 engaged in unprofessional conduct by committing acts involving moral turpitude, dishonesty,
18 fraud, deceit, or corruption. (Bus. & Prof. Code, § 4301, subd. (a).) Respondent Fruitvale filled
19 discontinued prescriptions, prescriptions for customers who indicated that they no longer wished
20 to use Respondent Fruitvale’s services, and prescriptions for 48 patients on an early basis. The
21 circumstances are explained in paragraphs 53 to 58, above.

22 **SECOND CAUSE FOR DISCIPLINE**
23 **(Unprofessional Conduct: Refilled Prescription for Dangerous Drug or Device, Prescriber)**
24 **(Bus. & Prof. Code, §§ 4301, subd. (j), 4063)**

25 64. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
26 engaged in unprofessional conduct by refilling prescriptions for dangerous drugs without
27

28 ² On March 20, 2014, the Medical Board of California filed Accusation No. 12 2011
216564 against Dr. Nguyen’s medical license. The Accusation alleged numerous causes for
discipline including several causes for discipline for prescribing dangerous drugs without
appropriate prior examination and indication. The Medical Board placed Dr. Nguyen’s license
and placed restrictions on his ability to prescribe controlled substances.

1 prescriber authorization. (Bus. & Prof. Code, §§ 4301, subd. (j), 4063.) The circumstances are
2 explained in paragraphs 53 to 56 and paragraph 59, above.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct: Prescriptions Taken by an Unlicensed Pharmacist)**
5 **(Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a))**

6 65. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
7 engaged in unprofessional conduct by allowing an unlicensed individual to orally receive 33 new
8 prescription orders. (Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1,
9 subd. (a).) The circumstances are explained in paragraphs 53 to 56 and paragraph 60, above.

10 **FOURTH CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct: Dispensing Controlled Substances on Prescriptions Lacking**
12 **Required Features)**
13 **(Bus. & Prof. Code, § 4301, subd. (j); Health & Saf. Code, § 11162.1, subd. (a)(2)(4)(8))**

14 66. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
15 engaged in unprofessional conduct by filling three prescriptions for controlled substances that
16 were missing certain required features. (Bus. & Prof. Code, § 4301, subd. (j); Health & Saf.
17 Code, § 11162.1, subd. (a)(2)(4)(8).) Specifically, the prescriptions were missing a required
18 watermark, a feature in thermochromic ink, and a required statement. The circumstances are
19 explained in paragraphs 53 to 56 and paragraph 61, above.

20 **FIFTH CAUSE FOR DISCIPLINE**
21 **(Unprofessional Conduct: Failure to Verify Legitimacy of Prescriptions for Controlled**
22 **Substances)**
23 **(Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a))**

24 67. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
25 engaged in unprofessional conduct by excessively furnishing controlled substances. (Bus. & Prof.
26 Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a).) Between July 8, 2015, and
27 February 15, 2017, Respondent Fruitvale dispensed 1,425 controlled substances for a doctor who
28 had similar prescribing patterns for individual patients, filled the prescriptions for controlled
substances in groups, and filled prescriptions issued by a doctor who had been subject to
discipline. The circumstances are further explained in paragraphs 53 to 56 and paragraph 62,
above.

//

1 **SIXTH CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct: Failure to Maintain Records of Disposition)**
3 **(Bus. & Prof. Code, §§ 4081, subd. (a), 4301, subd. (j); Cal. Code Regs., tit. 16, § 1718)**

4 68. Respondent Fruitvale’s Pharmacy License is subject to disciplinary action because it
5 engaged in unprofessional conduct by failing to maintain records of the sale, acquisition, receipt,
6 shipment, or disposition of dangerous drugs. (Bus. & Prof. Code, §§ 4081, subd. (a), 4301, subd.
7 (j); Cal. Code Regs., tit. 16, § 1718.) Respondent Fruitvale could not account for 124 bottles of
8 Atripla, 27 bottles of Truvada, 10 bottles of Norvir, 13 bottles of Prezista, and 34 bottles of
9 Reyataz. The circumstances are further explained in paragraphs 53 to 56 and paragraph 63,
above.

10 **CAUSES OF DISCIPLINE AGAINST RESPONDENT VO**

11 **SEVENTH CAUSE FOR DISCIPLINE**
12 **(Unprofessional Conduct: Moral, Turpitude, Dishonesty, Deceit, or Corruption)**
13 **(Bus. & Prof. Code, § 4301, subd. (a))**

14 69. Respondent Vo’s Pharmacist License is subject to disciplinary action because while
15 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by committing
16 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, §
17 4301, subd. (a).) Respondent Vo filled discontinued prescriptions, prescriptions for customers
18 who indicated that they no longer wished to use Respondent Fruitvale’s services and prescriptions
for patients on an early basis. The circumstances are explained in paragraphs 53 to 58, above.

19 **EIGHTH CAUSE FOR DISCIPLINE**
20 **(Unprofessional Conduct: Refilled Prescription for Dangerous Drug or Device, Prescriber)**
21 **(Bus. & Prof. Code, §§ 4301, subd. (j), 4063)**

22 70. Respondent Vo’s Pharmacist License is subject to disciplinary action because while
23 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by refilling
24 prescriptions for dangerous drugs without prescriber authorization. (Bus. & Prof. Code, §§ 4301,
25 subd. (j), 4063.) While Respondent Vo was PIC, Respondent Fruitvale dispensed approximately
26 235 prescription refills without prescriber authorization. The circumstances are explained in
paragraphs 53 to 56 and paragraph 59, above.

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NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct: Prescriptions Taken by an Unlicensed Pharmacist)
(Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a))

71. Respondent Vo’s Pharmacist License is subject to disciplinary action because while acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by allowing an unlicensed individual to orally receive approximately 10 new prescription orders. (Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a).) The circumstances are explained in paragraphs 53 to 56 and paragraph 60, above.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct: Failure to Verify Legitimacy of Prescriptions for Controlled Substances)
(Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a))

72. Respondent Vo’s Pharmacist License is subject to disciplinary action because while acting as the PIC of Respondent, he engaged in unprofessional conduct by excessively furnishing controlled substances. (Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a).) While Respondent Vo was PIC, Respondent Fruitvale dispensed controlled substances for a doctor who had similar prescribing patterns for individual patients, filled the prescriptions for controlled substances in groups, and filled prescriptions issued by a doctor who had been subject to discipline. The circumstances are further explained in paragraphs 53 to 56 and paragraph 62, above.

CAUSES OF DISCIPLINE AGAINST RESPONDENT PARK

ELEVENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct: Moral, Turpitude, Dishonesty, Deceit, or Corruption)
(Bus. & Prof. Code, § 4301, subd. (a))

73. Respondent Park’s Pharmacist License is subject to disciplinary action because while acting as the PIC of Respondent Fruitvale, she engaged in unprofessional conduct by committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, § 4301, subd. (a).) Respondent Park filled discontinued prescriptions, prescriptions for customers who indicated that they no longer wished to use Respondent Fruitvale’s services, and prescriptions for patients on an early basis. The circumstances are explained in paragraphs 53 to 58, above.

1 **TWELFTH CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct: Refilled Prescription for Dangerous Drug or Device, Prescriber)**
3 **(Bus. & Prof. Code, §§ 4301, subd. (j), 4063)**

4 74. Respondent Park's Pharmacist License is subject to disciplinary action because while
5 acting as the PIC of Respondent Fruitvale, she engaged in unprofessional conduct by refilling
6 prescriptions for dangerous drugs without prescriber authorization. (Bus. & Prof. Code, §§ 4301,
7 subd. (j), 4063.) While Respondent Park was PIC, Respondent Fruitvale dispensed approximately
8 215 prescription refills without prescriber authorization. The circumstances are explained in
9 paragraphs 53 to 56 and paragraph 59, above.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct: Prescriptions Taken by an Unlicensed Pharmacist)**
12 **(Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a))**

13 75. Respondent Park's Pharmacist License is subject to disciplinary action because while
14 acting as the PIC of Respondent Fruitvale, she engaged in unprofessional conduct by allowing an
15 unlicensed individual to orally receive approximately 11 new prescription orders. (Bus. & Prof.
16 Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a).) The circumstances are
17 explained in paragraphs 53 to 56 and paragraph 60, above.

18 **FOURTEENTH CAUSE FOR DISCIPLINE**
19 **(Unprofessional Conduct: Failure to Verify Legitimacy of Prescriptions for Controlled**
20 **Substances)**
21 **(Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a))**

22 76. Respondent Park's Pharmacist License is subject to disciplinary action because while
23 acting as the PIC of Respondent, she engaged in unprofessional conduct by excessively furnishing
24 controlled substances. (Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd.
25 (a).) While Respondent Park was PIC, Respondent Fruitvale dispensed controlled substances for
26 a doctor who had similar prescribing patterns for individual patients, filled the prescriptions for
27 controlled substances in groups, and filled prescriptions issued by a doctor who had been subject
28 to discipline. The circumstances are further explained in paragraphs 53 to 56 and paragraph 62,
above.

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1 **CAUSES OF DISCIPLINE AGAINST RESPONDENT PATEL**

2 **FIFTEENTH CAUSE FOR DISCIPLINE**
3 **(Unprofessional Conduct: Moral, Turpitude, Dishonesty, Deceit, or Corruption)**
4 **(Bus. & Prof. Code, § 4301, subd. (a))**

5 77. Respondent Patel’s Pharmacist License is subject to disciplinary action because while
6 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by committing
7 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, §
8 4301, subd. (a).) Respondent Patel filled discontinued prescriptions and prescriptions for
9 customers who indicated that they no longer wished to use Respondent Fruitvale’s services. The
10 circumstances are explained in paragraphs 53 to 58, above.

11 **SIXTEENTH CAUSE FOR DISCIPLINE**
12 **(Unprofessional Conduct: Refilled Prescription for Dangerous Drug or Device, Prescriber)**
13 **(Bus. & Prof. Code, §§ 4301, subd. (j), 4063)**

14 78. Respondent Patel’s Pharmacist License is subject to disciplinary action because while
15 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by refilling
16 prescriptions for dangerous drugs without prescriber authorization. (Bus. & Prof. Code, §§ 4301,
17 subd. (j), 4063.) While Respondent Patel was PIC, Respondent Fruitvale dispensed
18 approximately 157 prescription refills without prescriber authorization. The circumstances are
19 explained in paragraphs 53 to 56 and paragraph 59, above.

20 **SEVENTEENTH CAUSE FOR DISCIPLINE**
21 **(Unprofessional Conduct: Prescriptions Taken by an Unlicensed Pharmacist)**
22 **(Bus. & Prof. Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a))**

23 79. Respondent Patel’s Pharmacist License is subject to disciplinary action because while
24 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by allowing an
25 unlicensed individual to orally receive approximately 12 new prescription orders. (Bus. & Prof.
26 Code, § 4301, subd. (j); Cal. Code Regs., tit. 16, § 1793.1, subd. (a).) The circumstances are
27 explained in paragraphs 53 to 56 and paragraph 60, above.

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1 **EIGHTEENTH CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct: Failure to Verify Legitimacy of Prescriptions for Controlled**
3 **Substances)**
4 **(Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, § 11153, subd. (a))**

5 80. Respondent Patel's Pharmacist License is subject to disciplinary action because while
6 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by excessively
7 furnishing controlled substances. (Bus. & Prof. Code, § 4301, subd. (d); Health & Saf. Code, §
8 11153, subd. (a).) While Respondent Patel was PIC, Respondent Fruitvale dispensed controlled
9 substances for a doctor who had similar prescribing patterns for individual patients, filled the
10 prescriptions for controlled substances in groups, and filled prescriptions issued by a doctor who
11 had been subject to discipline. The circumstances are further explained in paragraphs 53 to 56
12 and paragraph 62, above.

13 **NINETEENTH CAUSE FOR DISCIPLINE**
14 **(Unprofessional Conduct: Failure to Maintain Records of Disposition)**
15 **(Bus. & Prof. Code, §§ 4081, subd. (a), 4301, subd. (j); Cal. Code Regs., tit. 16, § 1718)**

16 81. Respondent Patel's Pharmacist License is subject to disciplinary action because while
17 acting as the PIC of Respondent Fruitvale, he engaged in unprofessional conduct by failing to
18 maintain records of the sale, acquisition, receipt, shipment, or disposition of dangerous drugs.
19 (Bus. & Prof. Code, §§ 4081, subd. (a), 4301, subd. (j); Cal. Code Regs., tit. 16, § 1718.)
20 Respondent Fruitvale could not account for 124 bottles of Atripla, 27 bottles of Truvada, 10
21 bottles of Norvir, 13 bottles of Prezista, and 34 bottles of Reyataz. The circumstances are further
22 explained in paragraphs 53 to 56 and paragraph 63, above.

23 **OTHER MATTERS**

24 82. Pursuant to Code section 4307, if discipline is imposed on Original Permit No. PHY
25 53737 issued to Fruitvale Avenue Pharmacy Inc., Fruitvale Avenue Pharmacy Inc. shall be
26 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
27 or partner of a licensee for five years if Pharmacy Permit Number 53737 is placed on probation or
28 until Pharmacy Permit Number PHY 53737 is reinstated if it is revoked.

83. Pursuant to Code section 4307, if discipline is imposed on Original Permit No. PHY
53737 issued to Fruitvale Avenue Pharmacy Inc. while Kalpesh Patel was an owner and had
knowledge of or knowingly participated in any conduct for which the license was disciplined,

1 Kalpesh Patel shall be prohibited from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
3 53737 is placed on probation or until Pharmacy Permit Number PHY 53737 is reinstated if it is
4 revoked.

5 PRAYER

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

8 1. Revoking or suspending Original Permit Number PHY 53737, issued to Fruitvale
9 Avenue Pharmacy Inc.;

10 2. Revoking or suspending Pharmacist Number RPH 59546, issued to Tien Vo.;

11 3. Revoking or suspending Pharmacist Number RPH 67769, issued to Sharon Park.;

12 4. Revoking or suspending Pharmacist Number RPH 49167, issued to Kalpesh Patel.;

13 5. Prohibiting Fruitvale Avenue Pharmacy Inc. from serving as a manager,
14 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
15 Pharmacy Permit Number 53737 is placed on probation or until Pharmacy Permit Number PHY
16 53737 is reinstated if Pharmacy Permit Number PHY 53737 is revoked;

17 6. Prohibiting Kalpesh Patel from serving as a manager, administrator, owner, member,
18 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
19 53737 is placed on probation or until Pharmacy Permit Number PHY 53737 is reinstated if
20 Pharmacy Permit Number PHY 53737 is revoked;

21 8. Ordering Fruitvale Avenue Pharmacy Inc., Tien Vo, Sharon Park, and Kalpesh Patel
22 to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this
23 case, pursuant to Business and Professions Code section 125.3; and

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

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DATED: May 10, 2019 _____

Anne Sodergren

Anne Sodergren
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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