

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
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. 5529

12 **JAY AMIN**
13 **41620 Alligator Pond Road**
14 **Bermuda Dunes, CA 92203**

A C C U S A T I O N

15 **Registered Pharmacist License No. RPH**
16 **65778**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 17, 2011, the Board of Pharmacy issued Registered Pharmacist
23 License Number RPH 65778 to Jay Amin (Respondent). The Registered Pharmacist License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 December 31, 2016, unless renewed.

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4301 of the Code states:

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

17

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

21 (g) Knowingly making or signing any certificate or other document that
22 falsely represents the existence or nonexistence of a state of facts.

23 (h) The administering to oneself, of any controlled substance, or the use of
24 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
25 dangerous or injurious to oneself, to a person holding a license under this chapter,
26 or to any other person or to the public, or to the extent that the use impairs the
27 ability of the person to conduct with safety to the public the practice authorized by
28 the license.

26

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

1

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

7

8 7. Section 4059 of the Code states:

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

14

15 8. Section 4060 of the Code states:

16 No person shall possess any controlled substance, except that furnished to a
17 person upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
19 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
20 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
21 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
22 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
23 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
24 section shall not apply to the possession of any controlled substance by a
25 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
26 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
27 practitioner, or physician assistant, when in stock in containers correctly labeled
28 with the name and address of the supplier or producer.

 Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

9. Section 4113, subdivision (c) of the Code 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."

10. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

1 **COST RECOVERY**

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

6 **DRUGS**

7 12. Azithromycin is an antibiotic and is a dangerous drug pursuant to Business and
8 Professions Code section 4022.

9 13. Phenergan with codeine, the brand name for promethazine with codeine syrup, is a
10 controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1), and is
11 a dangerous drug pursuant to Business and Professions Code section 4022.

12 14. Xanax, the brand name for alprazolam, is a controlled substance pursuant to Health
13 and Safety Code section 11057, subdivision (d) and is a dangerous drug pursuant to Business and
14 Professions Code section 4022.

15 **FACTUAL ALLEGATIONS**

16 15. Respondent was employed as a Pharmacist-in-Charge (PIC) at CVS Pharmacy Store
17 Number 9153 from March 24, 2014 through May 18, 2015. During the time that Respondent
18 worked as PIC, pharmacy technician T.W. worked at CVS Store Number 9153. T.W. also
19 worked at two other CVS stores.

20 16. On or about May 4, 2015, CVS Pharmacy received a complaint alleging that T.W.
21 generated fraudulent promethazine with codeine prescriptions. CVS Pharmacy investigated the
22 incident and learned that T.W. obtained multiple prescriptions for promethazine with codeine
23 allegedly written by Dr. K.P. During an interview with T.W. by CVS Pharmacy, T.W. admitted
24 that she obtained prescriptions for narcotics without seeing or speaking to the alleged prescriber,
25 Dr. K.P., who was her former employer. She stated that she received authorization for the
26 prescriptions from "Connie" at Dr. K.P.'s office. When asked what she did with the drugs that
27 she obtained, she admitted to consuming them and also sharing drugs. Specifically, T.W.
28 admitted sharing approximately 20 tablets of Xanax with Respondent in February and April 2015.

1 She stated that she shared it with Respondent because he asked her for some because he was
2 experiencing stress. T.W. admitted that she knew that Respondent did not have a prescription for
3 Xanax. In addition, she admitted to obtaining a prescription for promethazine with codeine for
4 Respondent because he told her he was ill and asked her to get him a prescription from Dr. K.P.
5 T.W. stated that she called Dr. K.P.'s office and asked the nurse to call in a prescription for
6 Respondent because he was ill. She admitted that Respondent was never seen by Dr. K.P. for the
7 prescription he received.

8 17. Respondent was also interviewed by CVS Pharmacy. He admitted that he knew that
9 T.W. previously worked for a doctor's office and he asked her to help him out by calling in a
10 prescription for his cough. Respondent stated that T.W. had a prescription for promethazine with
11 codeine called into CVS for him. Respondent admitted that he was never a patient of Dr. K.P.,
12 never visited Dr. K.P.'s office, never spoke with Dr. K.P., and that he knew his actions were
13 wrong and was against CVS policy.

14 18. Respondent also admitted that he wrote a prescription for azithromycin for himself
15 because he was not feeling well and did not want to miss work to see a doctor. He admitted that
16 he wrote the prescription on the call-in prescription pad, then gave it to a technician to type up
17 and fill, then he verified it since he was the only pharmacist on duty. Respondent wrote that
18 Physician Assistant (PA) C.B. had authorized the prescription, when in fact, he had not.

19 19. In addition, Respondent admitted to "borrowing" medication, specifically alprazolam
20 (Xanax), from T.W. even though he did not have a prescription for it. He stated he borrowed the
21 medication because he felt stressed and had personal issues at home.

22 20. CVS reported the findings of their investigation to the Board. Thereafter, the Board
23 initiated an investigation and determined that on May 5, 2015, Respondent had written and
24 dispensed a fraudulent prescription (RX 405716) for 30 tablets of azithromycin 500 mg. In
25 addition, the investigation revealed that on December 16, 2014, Respondent obtained a
26 prescription (RX No. 896490) for promethazine with codeine even though he never saw or spoke
27 to Dr. K.P. about the prescription. Neither Dr. K.P., nor any of his staff, prescribed, authorized,
28

1 or phoned-in the prescription for promethazine with codeine for Respondent; therefore, the
2 prescription Respondent obtained was fraudulent.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Dishonest Act)**

5 21. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit,
7 or corruption, as detailed in paragraphs 15 through 20 which are incorporated herein by reference,
8 and as follows:

9 a. Respondent created and obtained a prescription for azithromycin for himself without
10 the authorization or permission of the physician/physician assistant;

11 b. Respondent aided and abetted prescription fraud when he obtained from T.W. a
12 fraudulent prescription for a controlled substance, promethazine with codeine, under Dr. K.P.'s
13 prescriber information, even though Respondent knew he was not a patient of Dr. K.P. and did
14 not receive a good faith medical exam from the physician.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Controlled Substances in Dangerous Manner)**

17 22. Respondent has subjected his license to disciplinary action under section 4301,
18 subdivision (h) of the Code in that Respondent illegally administered to himself controlled
19 substances to the extent or in a manner as to be dangerous or injurious to himself or the public, as
20 evidenced by Respondent's admissions that he consumed alprazolam without a prescription in
21 which he "borrowed" from T.W., and when consumed the fraudulent prescription for
22 promethazine with codeine, as detailed in paragraphs 15 through 20, above, and which are
23 incorporated herein by reference.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Violating Statutes Regulating Controlled Substances)**

26 23. Respondent has subjected his license to disciplinary action under section 4301,
27 subdivision (j) of the Code for violation of Health and Safety Code section 11170 in that
28 Respondent illegally obtained and administered to himself alprazolam and promethazine with

1 codeine, as detailed in paragraphs 15 through 20, above, and which are incorporated herein by
2 reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Violating Laws Governing Pharmacy)**

5 24. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (o) of the Code for violation of Code sections 4059 and 4060 in that Respondent
7 furnished a dangerous drug (azithromycin) to himself without a valid prescription and he illegally
8 possessed controlled substances without a prescription, as detailed in paragraphs 15 through 20,
9 above, and which are incorporated herein by reference.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Making and Signing a Document that Falsely Represents Facts)**

12 25. Respondent has subjected his license to disciplinary action under section 4301,
13 subdivisions (g) of the Code in that Respondent knowingly made or signed a document that
14 falsely represented a state of facts, when Respondent wrote a prescription for azithromycin for
15 himself falsely representing that it was authorized by the Physician Assistant C.B., as detailed in
16 paragraphs 15 through 20, above, and which are incorporated herein by reference.

17 **PRAYER**

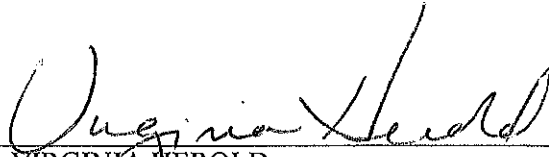
18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
19 and that following the hearing, the Board of Pharmacy issue a decision:

- 20 1. Revoking or suspending Registered Pharmacist License Number RPH 65778, issued
21 to Jay Amin;
- 22 2. Ordering Jay Amin to pay the Board of Pharmacy the reasonable costs of the
23 investigation and enforcement of this case, pursuant to Business and Professions Code section
24 125.3;
- 25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 10/6/15



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2015801573
81116342.doc