

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

In the Matter of the Accusation Against:

RYAN HOWARD NITKIN
7044 Newton Place
Rancho Cucamong, CA 91701

**Pharmacy Technician Registration No. TCH
122975**

Respondent.

Case No. 5293

OAH No. 201507019

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 11, 2016.

It is so ORDERED on February 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804
E-mail: Cristina.Felix@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5293

12 **RYAN HOWARD NITKIN**
13 **7044 Newton Place**
Rancho Cucamonga, CA 91701

OAH No. 201507019

14 **Pharmacy Technician Registration No. TCH**
15 **122975**

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 Respondent.

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Cristina Felix, Deputy Attorney
23 General.

24 2. Ryan Howard Nitkin (Respondent) is represented in this proceeding by attorney John
25 Alan Cohan, Esq., whose address is 16133 Ventura Blvd., Suite 700, Encino, CA 91436.

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1 3. On or about April 9, 2012, the Board of Pharmacy issued Pharmacy Technician
2 Registration No. TCH 122975 to Ryan Howard Nitkin (Respondent). The Pharmacy Technician
3 Registration was in full force and effect at all times relevant to the charges brought in Accusation
4 No. 5293 and will expire on October 31, 2017, unless renewed.

5 JURISDICTION

6 4. Accusation No. 5293 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on May 15, 2015.
9 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 5293 is attached as Exhibit A and incorporated by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 5293. Respondent also has carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Surrender of License¹ and
15 Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
20 the attendance of witnesses and the production of documents; the right to reconsideration and
21 court review of an adverse decision; and all other rights accorded by the California
22 Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

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¹ License herein shall mean license and/or registration.

1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 5293, if
3 proven at a hearing, constitute cause for imposing discipline upon his Pharmacy Technician
4 Registration.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation and that those charges constitute cause for discipline.
8 Respondent hereby gives up his right to contest that cause for discipline exists based on those
9 charges.

10 10. Respondent understands that by signing this stipulation he enables the Board to issue
11 an order accepting the surrender of his Pharmacy Technician Registration without further process.

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 surrender, without notice to or
16 participation by Respondent or his counsel. By signing the stipulation, Respondent understands
17 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
18 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
19 Decision and Order, the Stipulated Surrender 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 Surrender of License and Order, including Portable Document Format
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

25 13. This Stipulated Surrender of License and 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 Surrender of License and Order

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

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

5 **ORDER**

6 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 122975,
7 issued to Respondent Ryan Howard Nitkin, is surrendered and accepted by the Board of
8 Pharmacy.

9 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
10 of the surrendered license by the Board shall constitute the imposition of discipline against
11 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
12 Respondent's license history with the Board of Pharmacy.

13 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
14 as of the effective date of the Board's Decision and Order.

15 3. Respondent shall cause to be delivered to the Board his registration and, if one was
16 issued, his wall certificate on or before the effective date of the Decision and Order.

17 4. If he ever applies for licensure or petitions for reinstatement in the State of California,
18 the Board shall treat it as a new application for licensure. Respondent may not apply for any
19 license, permit, or registration from the board for three (3) years from the effective date of this
20 decision. Respondent stipulates that should he or she apply for any license from the board on or
21 after the effective date of this decision, all allegations set forth in the accusation shall be deemed
22 to be true, correct and admitted by respondent when the board determines whether to grant or
23 deny the application. Respondent shall satisfy all requirements applicable to that license as of the
24 date the application is submitted to the board, including, but not limited to certification by a
25 nationally recognized body prior to the issuance of a new license. Respondent is required to
26 report this surrender as disciplinary action.

27 5. Respondent shall pay the agency its costs of investigation and enforcement in the
28 amount of \$10,799.50 prior to issuance of a new or reinstated license.

1 6. If Respondent should ever apply or reapply for a new license or certification, or
2 petition for reinstatement of a license, by any other health care licensing agency in the State of
3 California, all of the charges and allegations contained in Accusation, No. 5293 shall be deemed
4 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
5 other proceeding seeking to deny or restrict licensure.

6 ACCEPTANCE

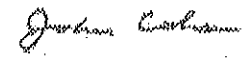
7 I have carefully read the above Stipulated Surrender of License and Order and have fully
8 discussed it with my attorney, John Alan Cohan, Esq. I understand the stipulation and the effect
9 it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of
10 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
11 Decision and Order of the Board of Pharmacy.

12
13 DATED: 12/16/2015


14 RYAN HOWARD NITKIN
Respondent

15 I have read and fully discussed with Respondent Ryan Howard Nitkin the terms and
16 conditions and other matters contained in this Stipulated Surrender of License and Order. I
17 approve its form and content.

18
19 DATED: 12/16/2015


20 JOHN ALAN COHAN, ESQ.
Attorney for Respondent

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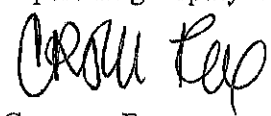
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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 12/16/2015

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General



CRISTINA FELIX
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5293

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS RINALDI
Supervising Deputy Attorney General
3 CRISTINA FELIX
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
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Attorneys for Complainant
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BOARD OF PHARMACY
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10

11 In the Matter of the Accusation Against:

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12 **RYAN HOWARD NITKIN**
7044 Newton Place
13 Rancho Cucamonga, CA 91701

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
122975

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about April 9, 2012, the Board issued Pharmacy Technician Registration
23 Number TCH 122975 to Ryan Howard Nitkin (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2015, unless renewed.

26 **JURISDICTION**

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

1 4. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
2 chapter [Pharmacy Law, (Business and Profession Code, Sec 4000 et seq.)) and the Uniform
3 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
4 Safety Code)."

5 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[a]ny
6 license issued may be suspended or revoked."

7 6. Section 4300.1 of the Code states, in pertinent part:

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

13 **STATUTORY PROVISIONS**

14 7. Section 4021 of the Code states, in pertinent part:

15 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code."

17 8. Section 4022 of the Code states, in pertinent part:

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

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

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

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

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1 9. Section 4060 of the Code states, in pertinent part:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
4 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

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

16 10. Section 4301 of the Code states:

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

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

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

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

5 ...”

6 11. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:

7 “Except as otherwise provided in this division, every person who possesses (1) any
8 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
9 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
10 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
11 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
12 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
13 licensed to practice in this state, shall be punished by imprisonment in a county jail for not more
14 than one year, except that such person shall instead be punished pursuant to subdivision (h) of
15 Section 1170 of the Penal Code if that person has one or more prior convictions for an offense
16 specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of
17 the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290
18 of the Penal Code.”

19 12. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:

20 “Except as authorized by law and as otherwise provided in subdivision (b) or Section
21 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
22 Business and Professions Code, every person who possesses any controlled substance which is
23 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
24 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
25 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
26 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
27 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
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1 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
2 than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code.

3 **REGULATORY PROVISIONS**

4 13. California Code of Regulations, title 16, section 1770, states:

5 "For the purpose of denial, suspension, or revocation of a personal or facility license
6 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
7 crime or act shall be considered substantially related to the qualifications, functions or duties of a
8 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
9 licensee or registrant to perform the functions authorized by his license or registration in a
10 manner consistent with the public health, safety, or welfare."

11 **COST RECOVERY**

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

16 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

17 15. Alprazolam is a generic name for brand names: Xanax, Invirase, Crixivan, Serzone
18 and Alprazolam Intensol. It is a Schedule IV controlled substance pursuant to Health and Safety
19 Code section 11057(d) and is categorized as a dangerous drug pursuant to Code section 4022.

20 16. Hydrocodone, with trade names of Lorcet, Lortab, Norco and Vicodin, are Schedule
21 III controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are
22 categorized as dangerous drugs pursuant to Code section 4022.

23 **FACTUAL BACKGROUND**

24 17. On and between August 1, 2012 and December 21, 2012, Respondent was employed
25 as a pharmacy technician at Walgreens (the Pharmacy).

26 18. On or about December 20, 2012, the Pharmacy's loss prevention agent received a call
27 from the Pharmacy's manager regarding a theft by Respondent. On or about December 21, 2012,
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1 the loss prevention officer interviewed Respondent, and Respondent admitted to stealing a soft
2 drink and approximately 120 hydrocodone pills in the past, which he kept at his residence.

3 19. San Bernardino Police Department officers responded to the Pharmacy's theft report
4 and came in contact with Respondent. With Respondent's consent, the officers arrived and
5 searched Respondent's residence and car. After the inspection, the officers found approximately
6 271 Hydrocodone tablets and more than 200 Alprazolam tablets at Respondent's residence.
7 Respondent admitted to taking Hydrocodone from the pharmacy on two occasions. Respondent
8 was subsequently arrested for violating Penal Code section 459 [burglary] and Health & Safety
9 Code section 11351 [possession of a controlled substance for sale].

10 20. The Board subsequently requested an audit from the Pharmacy from June 19, 2012 to
11 June 9, 2013, and the Pharmacy was missing the following drugs: approximately 10,920 tablets
12 of Hydrocodone/Acetaminophen 10/325 mg, and 2,160 tablets of Hydrocodone/Acetaminophen
13 7.5/750 mg.

14 21. On or about September 13, 2013, the Pharmacy completed its inventory of
15 Alprazolam losses and reported the loss to the Federal Drug Enforcement Administration. The
16 Pharmacy's filed "Report of Theft or Loss of Controlled Substances" (DEA Form 106)
17 acknowledged the loss of 275 Hydrocodone/Acetaminophen 10/325 mg tablets due to employee
18 pilferage.

19 22. On or about June 22, 2014, the Pharmacy completed its inventory of Alprazolam
20 losses and reported the loss to the Federal Drug Enforcement Administration. The Pharmacy's
21 filed "Report of Theft or Loss of Controlled Substances" (DEA Form 106) acknowledged losses
22 of 61 Alprazolam 1 mg tablets, and 163 Alprazolam 2 mg tablets due to employee pilferage.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unlawful Possession of Controlled Substances: Hydrocodone/Acetaminophen)

3 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
4 on the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
5 Code section 11350, subdivision (a), in that on or between August 1, 2012 and December 21,
6 2012, Respondent possessed and removed from the Pharmacy 275 Hydrocodone/Acetaminophen
7 tablets without a valid prescription. On or about December 21, 2012, Respondent admittedly
8 possessed and removed from the Pharmacy approximately 120 Hydrocodone/Acetaminophen
9 tablets without a valid prescription, and approximately 271 Hydrocodone/Acetaminophen tablets
10 were found at Respondent's residence. Complainant refers to and by this reference incorporates
11 the allegations set for above in paragraphs 17 through 22, inclusive, as though set forth fully.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unlawful Possession of Controlled Substances: Alprazolam)

14 24. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
15 on the grounds of unprofessional conduct, for violating Code section 4060 and Health and Safety
16 Code section 11377, subdivision (a), in that on or between August 1, 2012 and December 21,
17 2012, Respondent possessed and removed from the Pharmacy more than 200 Alprazolam tablets
18 without a valid prescription. On or about December 21, 2012, more than 200 Alprazolam tablets
19 were found at Respondent's residence. Complainant refers to and by this reference incorporates
20 the allegations set for above in paragraphs 17 through 22, inclusive, as though set forth fully.

21 THIRD CAUSE FOR DISCIPLINE

22 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

23 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
24 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral
25 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
26 incorporates the allegations set for above in paragraphs 17 through 22, inclusive, as though set
27 forth fully.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct/ Violation of Licensing Chapter)

26. Respondent is subject to disciplinary action under section 4301, subdivision (o), in that Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 17-22, inclusive, as though set forth fully.

PRAAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 122975, issued to Ryan Howard Nitkin;
2. Ordering Ryan Howard Nitkin to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/9/15

Virginia Herold

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

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