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

In the Matter of the Accusation Against:

Case No. 5487

CLIVE L. LIN 1571 North Easthill Drive Bountiful, UT 84010

STIPULATED SURRENDER OF LICENSE AND ORDER

Pharmacist License No. RPH 41552,

Respondent.

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 at 5:00 p.m. on June 30, 2017.

It is so ORDERED on May 31, 2017.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

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1	KAMALA D. HARRIS		
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9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 5487	
12	CLIVE L. LIN	STIPULATED SURRENDER OF	
13	1571 North Easthill Drive Bountiful, UT 84010	LICENSE AND ORDER	
14	Pharmacist License No. RPH 41552		
15	Respondent.		
16	enamentary contract policy to contract		
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	(Board), Department of Consumer Affairs. She brought this action solely in her official capacity		
22	and is represented in this matter by Kamala D. Harris, Attorney General of the State of California		
23	by Leslie E. Brast, Deputy Attorney General.		
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25	Wishek, whose address is 765 University Avenue, Sacramento, California 95825.		
26	3. On or about April 23, 1988, the Board issued Pharmacist License No. RPH 41552 to		
27	Respondent. The Pharmacist License was in full force and effect at all times relevant to the		
28	charges brought in Accusation No. 5487 and will		
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JURISDICTION

4. Accusation No. 5487 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 15, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5487 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5487. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

- 8. Respondent understands that the charges and allegations in Accusation No. 5487, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges and surrenders his Pharmacist License No. RPH 41552 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of his Pharmacist License without further process.

III

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 41552, issued to Respondent Clive L. Lin, is surrendered and accepted by the Board of Pharmacy.

- 1. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.
- 2. Respondent shall lose all rights and privileges as a registered pharmacist in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.
- 5. If Respondent ever applies or reapplies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 5487 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board, including, but not limited to taking and passing the California Pharmacist Licensure Examination prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 6. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$6,000.00 prior to issuance of a new or reinstated license.
- 7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 5487 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any

other proceeding seeking to deny or restrict licensure. 1 2 **ACCEPTANCE** I have carefully read the above Stipulated Surrender of License and Order and have fully 3 discussed it with my attorney, M. Bradley Wishek. I understand the stipulation and the effect it 4 will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order 5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the 6 Board of Pharmacy. 7 3/14/2017 DATED: 8 9 Respondent 10 I have read and fully discussed with my client, Respondent Clive L. Lin, the terms and 11 conditions and other matters contained in this Stipulated Surrender of License and Order. I 12 approve its form and content. 13 DATED: M. BRADLEY WISHEK 14 Attorney for Respondent 15 **ENDORSEMENT** 16 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted 17 for consideration by the Board of Pharmacy of the Department of Consumer Affairs. 18 Dated: 5/8/17 19 Respectfully submitted, 20 KAMALA D. HARRIS Attorney General of California 21 FRANK H. PACOE Supervising Deputy Attorney General 22 23 LESLIE E. BRAST 24 Deputy Attorney General Attorneys for Complainant 25 26 27 SF2015401789 41631026.doc

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2	Attorney General of California JOSHUA A. ROOM		
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7	Attorneys for Complainant		
8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against: Case No. 5487		
12	CLIVE L. LIN 601 Toscanna Court		
13	Brentwood, CA 94513 ACCUSATION		
14	Pharmacist License No. RPH 41552 Respondent.		
15	ACSPONICE,		
16	Complainant alleges:		
17	<u>PARTIES</u>		
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as		
19	the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.		
20	2. On or about April 23, 1988, the Board of Pharmacy issued Pharmacist License		
21	Number RPH 41552 to Clive L. Lin (Respondent). The Pharmacist License was in full force and		
22	effect at all times relevant to the charges brought herein and will expire on August 31, 2017, unless		
23	renewed.		
24	JURISDICTION		
25	3. This Accusation is brought before the Board, under the authority of the following		
26	laws. All section references are to the Business and Professions Code (Code) unless otherwise		
27	indicated.		
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	1 (CLIVE L. LIN) ACCUSATION		

- 4. Code section 4300 provides that every license issued by the Board may be suspended or revoked.
 - 5. Code section 4300.1 states:

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

STATUTORY AND REGULATORY PROVISIONS

6. Code section 4059 states:

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

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7. Code section 4060 states:

"A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

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"This section does not authorize 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.

8. Code section 4301 states:

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

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- "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- "(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

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

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- 9. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.
 - 10. Health and Safety Code section 11173 states, in pertinent part, that:
- "(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

"(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.

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11. California Code of Regulations, Title 16, section 1714, provides, in pertinent part:

"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

12. Code Section 4022 states:

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

- "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
- "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ______," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 13. Sonata is a brand name for Zaleplon, a sedative used to treat insomnia, and is a dangerous drug per Business and Professions code section 4022 and controlled substance per Health and Safety Code section 11057(d)(31).
- 14. Lioresal is a brand name for Baclofen, a muscle relaxer and antispastic agent used to treat multiple sclerosis, and is a dangerous drug per Business and Professions Code section 4022.

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- 15. Mupirocin is an antibiotic that is a dangerous drug per Business and Professions Code section 4022.
- 16. Remeron is a brand name for Mirtazapine, an antidepressant used to treat major depressive disorder, and is a dangerous drug per Business and Professions Code section 4022.
- 17. Robaxin is a brand name for methocarbamol, a muscle relaxer used to treat pain or injury, and is a dangerous drug per Business and Professions Code section 4022.
- 18. Septra DS is a brand name for sulfamethoxazole with trimethoprim, an antibiotic and is a dangerous drugs per Business and Professions Code section 4022.
- 19. Seroquel is a brand name for quetiapine, an antipsychotic medication used to treat schizophrenia and bipolar disorder, and is a dangerous drug per Business and Professions Code section 4022.
- 20. Zoloft is a brand name for sertraline, an antidepressant used to treat major depressive disorder, and is a dangerous drug per Business and Professions Code section 4022.

COST RECOVERY

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

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- 22. Between approximately October 17, 2005 and September 5, 2014, Respondent served as the Pharmacist in Charge (PIC) at Raley's Pharmacy #336, in Brentwood, California.
- 23. On or about September 4, 2014, Respondent admitted to Raley's Pharmacy staff that he had been taking Zaleplon from the pharmacy without having a prescription on file and without paying for the product.
- 24. An audit summary revealed that from May 2013 to September 30, 2014, Raley's Pharmacy had a shortage of approximately 5,119 dosage units of Zaleplon 10mg.

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- 25. Between at least on or about September 17, 2012 and October 9, 2014, Respondent created 17 fraudulent prescriptions for Sonata (Zaleplon). Respondent purported to be Dr. Donald Siao and orally transmitted the prescriptions for various patients, to various pharmacies.
- 26. Between at least on or about January 5, 2013 and January 7, 2015, Respondent created fraudulent prescriptions for Sonata, Lioresal, Robaxin, Septra DS, Zoloft; Seroquel, Mupirocin, and Remeron and furnished them to himself, I.C. and E.C.

FIRST CAUSE FOR DISCIPLINE

(Theft of Controlled Substances)

27. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (f) and/or (o), and/or Health and Safety Code section 11173, subdivision (a), in that Respondent diverted Zaleplon from Raley's Pharmacy, as described in paragraphs 22-26, above.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

28. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j) and (o), and/or 4060, in that he diverted Zaleplon from Raly's Pharmacy without having a valid prescription, and created fraudulent prescriptions for Zaleplon, as described in paragraphs 22-26 above.

THIRD CAUSE FOR DISCIPLINE

(False Representation)

29. Respondent is subject to disciplinary action under Code section 4301, subdivisions (g), (j) and/or (o), and/or Health and Safety Code section 11173, subdivisions (a) and (c), in that he created fraudulent prescriptions, as described in paragraphs 25-26, above.

FOURTH CAUSE FOR DISCIPLINE

(Unlawful Furnishing of Controlled Substances)

30. Respondent is subject to disciplinary action under Code sections 4301, subdivisions (j) and/or (o), and/or 4059, subdivision (a), in that Respondent Pharmacist furnished controlled

¹ Initials used to maintain patient confidentiality.

substances and/or dangerous drugs from pharmacy to himself or another, as described in paragraphs, 25-26, above.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Security of Controlled Substances)

31. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j) and/or (o), and/or California Code of Regulations, title 16, section 1714, subdivision (d), in that Respondent, while acting as Pharmacist in charge, failed to maintain adequate security at the managed pharmacy, as described in paragraphs 22-26, above.

DISCIPLINARY CONSIDERATIONS

- 32. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that:
- a. On or about November 7, 2014, Complainant issued Respondent Citation No. C1 2014 63189 for violating Code section 4301, subdivision (g) (knowingly making/signing certificate or document that falsely represents facts-altered controlled substances log to appear balanced owed on two prescriptions were received and dispensed within required 72 hours); Health & Safety Code section 11200, subdivision (c) (refilling Schedule II prescription); and California Code of Regulations, title 16, sections 1714 (violating operational standards- allowing staff to store food in refrigerator with hazardous drugs/vaccines); 1745, subdivision (d) (partial filling of Schedule II prescription); and 1716 (deviating from requirements of a prescription). This citation is now final and is incorporated by reference as if fully stated herein.
- b. On or about November 28, 2011, Complainant issued Respondent Citation No. C1 2011 50404, for violating California Code of Regulations, title 16, section 1711, subdivisions (d), (e) and (f), when Respondent failed to initiate a quality assurance report after the discovery of two medication errors at the pharmacy he was in charge of. This citation is now final and is incorporated by reference as if fully stated herein.

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PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged. 2 and that following the hearing, the Board of Pharmacy issue a decision: 3 4 Revoking or suspending Pharmacist License Number RPH 41552, issued to Clive L. Lin; 5 2. Ordering Clive L. Lin to pay the Board of Pharmacy the reasonable costs of the 6 investigation and enforcement of this case, pursuant to Business and Professions Code section 7 125.3; 8 3. Taking such other and further action as deemed necessary and proper. 9 10 11 12 13 VIRGINIA HEROLD 14 Executive Officer Board of Pharmacy 15 Department of Consumer Affairs State of California 16 Complainant 17 SF2015401789 18 41475293.doc 19 20 21 22 23 24 25 26 27 28 8