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

In the Matter of the Accusation Against:

Case No. 5529

JAY AMIN 7401 East Speedway Blvd. Apt. 6202 Tucson, AZ 85710

Registered Pharmacist License No. RPH 65778

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 on January 22, 2016.

It is so ORDERED on December 23, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

1	KAMALA D. HARRIS				
2	Attorney General of California JAMES M. LEDAKIS				
3	Supervising Deputy Attorney General NICOLE R. TRAMA				
4	Deputy Attorney General State Bar No. 263607				
5	600 West Broadway, Suite 1800 San Diego, CA 92101				
	P.O. Box 85266				
6 7	San Diego, CA 92186-5266 Telephone: (619) 645-2143 Facsimile: (619) 645-2061				
8	Attorneys for Complainant				
9	BEFORE THE BOARD OF PHARMACY				
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
11					
12	In the Matter of the Accusation Against: Case No. 5529				
13	JAY AMIN				
	7401 East Speedway Blvd. Apt. 6202 Tucson, AZ 85710 STIPULATED SURRENDER OF				
14 15	Registered Pharmacist License No. RPH 65778				
16	Respondent.				
17					
18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-				
19	entitled proceedings that the following matters are true:				
20	<u>PARTIES</u>				
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.				
22	She brought this action solely in her official capacity and is represented in this matter by Kamala				
23	D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney				
24	General.				
25	2. Jay Amin (Respondent) is representing himself in this proceeding and has chosen not				
26	to exercise his right to be represented by counsel.				
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3. On or about August 17, 2011, the Board of Pharmacy issued Registered Pharmacist License No. RPH 65778 to Jay Amin (Respondent). The Registered Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5529 and will expire on December 31, 2016, unless renewed.

JURISDICTION

4. Accusation No. 5529 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 19, 2015.

Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5529 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- Respondent has carefully read, and understands the charges and allegations in
 Accusation No. 5529. Respondent also has carefully read, 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 be represented by counsel, at his own expense; 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. 5529, if proven at a hearing, constitute cause for imposing discipline upon his Registered Pharmacist License.

- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Pharmacist License without further process.

<u>RESERVATION</u>

11. 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

- 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. 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.
- 13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 14. 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.

15. 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:

ORDER

IT IS HEREBY ORDERED that Registered Pharmacist License No. RPH 65778, issued to Respondent Jay Amin, is surrendered and accepted by the Board of Pharmacy.

- 1. The surrender of Respondent's Registered 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 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. If Respondent ever applies 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. 5529 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$3,573.50 prior to issuance of a new or reinstated license.
- 6. 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. 5529 shall be deemed

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Exhibit A

Accusation No. 5529

1	KAMALA D. HARRIS Attorney General of California				
2	JAMES M. LEDAKIS				
3	Supervising Deputy Attorney General NICOLB R. TRAMA				
4	Deputy Attorney General State Bar No. 263607				
5	600 West Broadway, Suite 1800 San Diego, CA 92101				
6	P.O. Box 85266 San Diego, CA 92186-5266				
7	Telephone: (619) 645-2143 Facsimile: (619) 645-2061				
8	Attorneys for Complainant	. DE TUTE			
9	BEFORE THE BOARD OF PHARMACY				
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
11		7			
12	In the Matter of the Accusation Against:	Case No. 5529			
13	JAY AMIN 41620 Alligator Pond Road				
14	Bermuda Dunes, CA 92203	ACCUSATION			
15	Registered Pharmacist License No. RPH 65778				
16	Respondent.				
17		_			
18	Complainant alleges:				
19	PA	RTIES			
20	Virginia Herold (Complainant) brin	gs this Accusation solely in her official capacity			
21	as the Executive Officer of the Board of Pharm	acy, 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.				
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27					
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		(JAY AMIN) ACCUSATION			

JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."
 - 5. Section 4300.1 of the Code 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 PROVISIONS

6. Section 4301 of the Code 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:

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

(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.

7. Section 4059 of the Code 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.

8. Section 4060 of the Code states:

No person shall 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, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (S) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled 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.

COST RECOVERY

11. Section 125.3 of the Code provides, 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.

DRUGS

- 12. Azithromycin is an antibiotic and is a dangerous drug pursuant to Business and Professions Code section 4022.
- 13. Phenergan with codeine, the brand name for promethazine with codeine syrup, is a controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.
- 14. Xanax, the brand name for alprazolam, is a controlled substance pursuant to Health and Safety Code section 11057, subdivision (d) and is a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

- 15. Respondent was employed as a Pharmacist-in-Charge (PIC) at CVS Pharmacy Store Number 9153 from March 24, 2014 through May 18, 2015. During the time that Respondent worked as PIC, pharmacy technician T.W. worked at CVS Store Number 9153. T.W. also worked at two other CVS stores.
- 16. On or about May 4, 2015, CVS Pharmacy received a complaint alleging that T.W. generated fraudulent promethazine with codeine prescriptions. CVS Pharmacy investigated the incident and learned that T.W. obtained multiple prescriptions for promethazine with codeine allegedly written by Dr. K.P. During an interview with T.W. by CVS Pharmacy, T.W. admitted that she obtained prescriptions for narcotics without seeing or speaking to the alleged prescriber, Dr. K.P., who was her former employer. She stated that she received authorization for the prescriptions from "Connie" at Dr. K.P.'s office. When asked what she did with the drugs that she obtained, she admitted to consuming them and also sharing drugs. Specifically, T.W. admitted sharing approximately 20 tablets of Xanax with Respondent in February and April 2015.

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

- 17. Respondent was also interviewed by CVS Pharmacy. He admitted that he knew that T.W. previously worked for a doctor's office and he asked her to help him out by calling in a prescription for his cough. Respondent stated that T.W. had a prescription for promethazine with codeine called into CVS for him. Respondent admitted that he was never a patient of Dr. K.P., never visited Dr. K.P.'s office, never spoke with Dr. K.P., and that he knew his actions were wrong and was against CVS policy.
- 18. Respondent also admitted that he wrote a prescription for azithromycin for himself because he was not feeling well and did not want to miss work to see a doctor. He admitted that he wrote the prescription on the call-in prescription pad, then gave it to a technician to type up and fill, then he verified it since he was the only pharmacist on duty. Respondent wrote that Physician Assistant (PA) C.B. had authorized the prescription, when in fact, he had not.
- 19. In addition, Respondent admitted to "borrowing" medication, specifically alprazolam (Xanax), from T.W. even though he did not have a prescription for it. He stated he borrowed the medication because he felt stressed and had personal issues at home.
- 20. CVS reported the findings of their investigation to the Board. Thereafter, the Board initiated an investigation and determined that on May 5, 2015, Respondent had written and dispensed a fraudulent prescription (RX 405716) for 30 tablets of azithromycin 500 mg. In addition, the investigation revealed that on December 16, 2014, Respondent obtained a prescription (RX No. 896490) for promethazine with codeine even though he never saw or spoke to Dr. K.P. about the prescription. Neither Dr. K.P., nor any of his staff, prescribed, authorized,

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

FIRST CAUSE FOR DISCIPLINE

(Dishonest Act)

- 21. Respondent has subjected his license to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed acts involving dishonesty, fraud, deceit, or corruption, as detailed in paragraphs 15 through 20 which are incorporated herein by reference, and as follows:
- a. Respondent created and obtained a prescription for azithromycin for himself without the authorization or permission of the physician/physician assistant;
- b. Respondent aided and abetted prescription fraud when he obtained from T.W. a fraudulent prescription for a controlled substance, promethazine with codeine, under Dr. K.P.'s prescriber information, even though Respondent knew he was not a patient of Dr. K.P. and did not receive a good faith medical exam from the physician.

SECOND CAUSE FOR DISCIPLINE

(Use of Controlled Substances in Dangerous Manner)

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

THIRD CAUSE FOR DISCIPLINE

(Violating Statutes Regulating Controlled Substances)

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

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

FOURTH CAUSE FOR DISCIPLINE

(Violating Laws Governing Pharmacy)

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

FIFTH CAUSE FOR DISCIPLINE

(Making and Signing a Document that Falsely Represents Facts)

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

PRAYER

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

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

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1	3. Taking such other and further action as deemed necessary and proper.		
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5	DATED: 10/6/15 (herne Leid) VIRGINIA HEROLD		
6	Executive Officer		
7	Board of Pharmacy Department of Consumer Affairs State of California		
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(JAY AMIN) ACCUSATION