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

In the Matter of the Accusation Against: **CV HEALTH SERVICES, INC. DBA RXN THINGS** 5123 E. Beverly Blvd Los Angeles, CA 90022 Pharmacy Permit No. PHY 50157 and **JOSEPH VIVO** 5123 E. Beverly Blvd Los Angeles, CA 90022 Original Pharmacist License No. RPH 30634 Respondents.	Case No. 4576 OAH No. 2014060698 **STIPULATED SURRENDER OF LICENSE AND ORDER AS TO CV HEALTH SERVICES, INC. DBA RXNTHINGS**

DECISION AND ORDER

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

This decision shall become effective on March 4, 2015.

It is so ORDERED on February 25, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER, Board President

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
LESLIE A. WALDEN
Deputy Attorney General
State Bar No. 196882
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-3465
Facsimile: (213) 897-2804
Attorneys for Complainant

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

PARTIES

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

2. CV Health Services, Inc. dba Rxn Things; Joseph Vivo are represented in this proceeding by attorney Noah Jussim, whose address is: McGuireWoods, LLP, 1800 Century Park East, 8th Floor, Los Angeles CA 90067.

3. On or about September 14, 2010, the Board of Pharmacy issued Permit No. PHY 50157 to CV Health Services, Inc. dba Rxn Things through RPH Joseph Vivo(Respondent). The Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 4576. The License expired on January 22, 2013, and was subsequently cancelled on March 28, 2014.

JURISDICTION

4. Accusation No. 4576 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 15, 2013. Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation No. 4576 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. 4576. 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 its 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 its own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on its 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 admits the truth of each and every charge and allegation in Accusation No. 4576, agrees that cause exists for discipline and hereby surrenders its Permit No. PHY 50157 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation Entity enables the Board to issue an order accepting the surrender of their Permit without further process.

CONTINGENCY

10. 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 or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its 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.

11. 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.

12. 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.

13. 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 Permit No. PHY 50157, issued to Respondent CV Health Services, Inc. dba Rxn Things; Joseph Vivo is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Permit 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 licensed Pharmacy in California as of the effective date of the Board's Decision and Order.

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as an application for a new license. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 4576 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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. 4576 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.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Noah Jussim. I understand the stipulation and the effect it will have on my Permit. I enter into this Stipulated Surrender of License and Order voluntarily,

knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 1-14-2015

CV HEALTH SERVICES, INC. DBA RXN THINGS; JOSEPH VIVO
Respondent

I have read and fully discussed with Respondent CV Health Services, Inc. dba Rxn Things; Joseph Vivo the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 1/14/15

NOAH JUSSIM
Attorney for Respondent

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: 1/15/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General

LESLIE A. WALDEN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4576

KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General
LESLIE A. WALDEN
Deputy Attorney General
State Bar No. 196882
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-3465
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Complainant alleges:

PARTIES

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

2. On or about September 14, 2010, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 50157 to CV Health Services, Inc. dba RxnThings (Rxn). The Permit was

in full force and effect at all times relevant to the charges brought herein and will expire on September 1, 2013, unless renewed. On or about September 27, 1976, the Board of Pharmacy issued Original Pharmacist License Number RPH 30634 to Joseph Vivo (Vivo). The License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless renewed.

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

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

5. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

...

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

6. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

..."

7. Section 4110, subdivision (a) of the Code states:

"(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred."

...."

8. Section 4116, subdivision (a) of the Code states:

"(a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or

dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for any individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present."

...."

9. Section 4117 of the Code states:

"No person other than a pharmacist, an intern pharmacist, a pharmacy technician, an authorized officer of the law, a person authorized to prescribe, a registered nurse, a licensed vocational nurse, a person who enters the pharmacy for purposes of receiving consultation from a pharmacist, or a person authorized by the pharmacist in charge to perform clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy shall be permitted in that area, place, or premises described in the license issued by the board to a licensed hospital wherein controlled substances, dangerous drugs, or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged."

10. Section 4040, subdivision (b) of the Code states:

(b) "... a written order of the prescriber for a dangerous drug, except for any Schedule II controlled substance, that contains at least the name and signature of the prescriber, the name and address of the patient in a manner consistent with paragraph (2) of subdivision (a) of Section 11164 of the Health and Safety Code, the name and quantity of the drug prescribed, directions for use, and the date of issue may be treated as a prescription by the dispensing pharmacist as long as any additional information required by subdivision (a) is readily retrievable in the pharmacy. In the event of a conflict between this subdivision and Section 11164 of the Health and Safety Code, Section 11164 of the Health and Safety Code shall prevail."

...."

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11. California Code of Regulations, title 16, section 1717, states:

"...

"(c) Promptly upon receipt of an orally transmitted prescription, the pharmacist shall reduce it to writing, and initial it, and identify it as an orally transmitted prescription. If the prescription is then dispensed by another pharmacist, the dispensing pharmacist shall also initial the prescription to identify him or herself.

"All orally transmitted prescriptions shall be received and transcribed by a pharmacist prior to compounding, filling, dispensing, or furnishing.

"Chart orders as defined in Section 4019 of the Business and Professions Code are not subject to the provisions of this subsection."

..."

12. California Code of Regulations, title 16, section 1714, subdivision (b) states:

"...

"(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

...."

COSTS RECOVERY

13. Section 125.3 of the Code 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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STATEMENT OF FACTS

14. On or about July 13, 2012, the Board conducted a routine inspection of Rxn located at 5123 E. Beverly Blvd., Los Angeles, California. The following violations were found by the Board:

(a) Rxn pharmacy doors were found unlocked with controlled substances located inside and without a pharmacist present. Pharmacist in Charge (PIC) Vivo allowed Rxn to be accessed through a common adjoining door leading to an establishment called Atlantic Pharmacy. PIC Vivo allowed employees of Atlantic Pharmacy access to Rxn, which had controlled substances located inside and no pharmacist present. Atlantic Pharmacy employees were observed moving in and out of Rxn.

(b) PIC Vivo failed to make Rxn's records regarding the manufacture, sale, acquisition or disposition of dangerous drugs available for inspection in the pharmacy during business hours.

15. On or about July 23, 2012, The Board conducted a routine inspection of Medical Group Pharmacy (MGP) (PHY 50157) located at 14860 Roscoe Blvd., Suite 102, Panorama City, California. The following violations were found by the Board:

(a) PIC Vivo had been operating Rxn as a pharmacy out of MGP without a valid license from approximately March 2012 through July 13, 2012. Thirty-four patient profiles representing 488 prescriptions were filled during this time frame.

(b) Original oral prescription records for prescriptions previously filled by Rxn were found and were not reduced to writings, initialed or indentified as orally transmitted prescriptions.

FIRST CAUSE FOR DISCIPLINE

(Lack of Operational Standards and Security)

16. Respondents Rxn and Vivo are subject to disciplinary action under California Code of Regulations, title 16, section 1714, subdivision (b) in that Respondents failed to be maintain the security of the prescription department for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. The circumstances

surrounding these violations are set forth in paragraph 14(a) above, and are incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Security of are where Drugs are Stored)

17. Respondents Rxn and Vivo are subject to disciplinary action under section 4116, subdivision (a) of the Code in that Respondents failed to maintain security of the area where controlled substances, dangerous drugs, or dangerous devices were stored. The circumstances surrounding these violations are set forth in paragraph 14(a) above, and are incorporated herein as though set forth in full.

THIRD CAUSE FOR DISCIPLINE

(Failure to Restrict Admission to Area where Drugs are Stored)

18. Respondents Rxn and Vivo are subject to disciplinary action under section 4117 of the Code in that Respondents failed to restrict access to authorized individuals to that area where controlled substances, dangerous drugs, or dangerous devices are stored. The circumstances surrounding these violations are set forth in paragraph 14(a) above, and are incorporated herein as though set forth in full.

FOURTH CAUSE FOR DISCIPLINE

(Oral Prescriptions Not Reduced to Writing)

19. Respondents Rxn and Vivo are subject to disciplinary action under section 4040, subdivision (b) of the Code in conjunctions with California Code of Regulations, title 16, section 1717, subdivision (c) in that Respondents, upon receipt of transmitted of prescriptions, failed to reduce oral prescriptions to writings, initial them or indentify them as orally transmitted prescriptions. The circumstances surrounding these violations are set forth in paragraph 15(b) above, and are incorporated herein as though set forth in full.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Operate Pharmacy with a Valid License)

20. Respondents Rxn and Vivo are subject to disciplinary action under section 4110, subdivision (a) of the Code in that Respondents failed to conduct a pharmacy in the State of

California with a valid license issued by the Board. The circumstances surrounding these violations are set forth in paragraph 15(a) above, and are incorporated herein as though set forth in full.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Records of Dangerous Drugs)

21. Respondents Rxn and Vivo are subject to disciplinary action under section 4081, subdivision (a) of the Code in that Respondent's records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices were not held open for inspection by authorized officers of the law during business hours. The circumstances surrounding these violations are set forth in paragraph 14(b) above, and are incorporated herein as though set forth in full.

DISCIPLINE CONSIDERATIONS

22. To determine the degree of discipline, if any, to be imposed on Respondent Vivo, Complainant alleges that on or about December 20, 2012, the Board of Pharmacy issued to Vivo Citation No. CI 2012 55043 for a violation of section 4005 of the Code and California Code of Regulations, title 16, section 1701.4, subdivision (a)(4), and ordered Vivo to pay a fine in the amount of $1000.00. The circumstances surrounding this citation were such that on or about July 23, 2012, the Board conducted a routine inspection of Medical Group Pharmacy (PHY 50157) located at 14860 Roscoe Blvd., Suite 102, Panorama City, California, where Respondent Vivo transferred prescription refills to Rxn without maintaining documentation of the transfers. That Citation is now final and is incorporated by reference as if fully set forth.

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 Pharmacy Permit Number PHY 50157, issued to CV Health Services, Inc. dba Rxn Things; and Original Pharmacist License Number RPH 30634 issued to Joseph Vivo:

2. Ordering CV Health Services, Inc. dba Rxn Things and Joseph Vivo 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;

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

DATED: 9/19/13

Virginia Herold

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

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