

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

In the Matter of the First Amended
Accusation Against:

ARASH AKMAL,
Pharmacist License No. RPH 60763

Respondent.

Case No. 5230

OAH No. 2016010849

In the Matter of the Accusation Against:

PARS PHARMACY, INC. dba PARS
PHARMACY, ARASH AKMAL, OWNER

Pharmacy License No. PHY 50931

Respondent.

Case No. 5230

OAH No. 2017020374

ORDER DENYING RECONSIDERATION

Pursuant to section 11521 of the Government Code, respondent timely filed a Petition for Reconsideration of the Board's December 29, 2017, Decision After Rejection. In order to allow it time to consider the petition, the Board issued a 10-day stay of the effective date of the Decision After Rejection. Having now read and considered the petition, and good cause for the granting of the petition not having been shown, the petition is hereby denied.

The December 29, 2017, Decision After Rejection is the Board's final decision in this matter and will become effective at the end of the stay, that is, at 5:00 p.m. on February 8, 2018.

IT IS SO ORDERED this 8th day of February, 2018.



By

Amarylis "Amy" Gutierrez, Pharm.D.
Board President
California State Board of Pharmacy

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ORDER STAYING EFFECTIVE DATE

Respondents Arash Akmal and Pars Pharmacy, Inc. dba Pars Pharmacy timely requested reconsideration of the decision in the above-entitled matter pursuant to section 11521 of the Government Code. In order to allow the board additional time to consider the petition, in accordance with the provisions of section 11521 of the Government Code,

IT IS HEREBY ORDERED that the effective date of the Decision and Order, in the above-entitled matter is stayed until 5 p.m. on February 8, 2018.

IT IS SO ORDERED this 29th day of January 2018.



By

Amarylís "Amy" Gutierrez, Pharm.D.
Board President
California State Board of Pharmacy

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

In the Matter of the First Amended Accusation Against: ARASH AKMAL, <p style="text-align:right">Respondent.</p>	Case No. 5230 OAH No. 2016010849
In the Matter of the Accusation Against: PARS PHARMACY, INC. dba PARS PHARMACY, ARASH AKMAL, OWNER <p style="text-align:right">Respondent.</p>	Case No. 5230 OAH No. 2017020374

DECISION AFTER REJECTION

This consolidated hearing was heard by Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 28, 29 and 30, 2017. Susan Melton Wilson, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, California State Board of Pharmacy (Board). Arash Akmal (Akmal) and Pars Pharmacy, Inc. (Pars), (collectively, respondents) were represented by Rob D. Cucher, Attorney at Law. Akmal was present throughout the hearing.

Oral and documentary evidence was received at the hearing¹. The matter was submitted for decision on March 30, 2017. The administrative law judge issued a Proposed Decision on May 1, 2017.

On July 31, 2017, pursuant to section 11517 of the Government Code, the Board issued an Order Rejecting the Proposed Decision. The transcript was received and both parties timely submitted written argument. On November 30, 2017, the Board issued an Order extending time for issuance of its decision pursuant to Government Code section 11517, subdivision (c)(2)(E)(iv).

The Board, having reviewed and considered the record, including the transcript, and written arguments, now issues this decision.

¹ The parties agreed to a protective order for exhibits which contained extensive references to patient information and attempted to redact all patient information from the exhibits. The ALJ found additional exhibits with patient information and added them to the protective order.

SUMMARY

Complainant seeks to discipline respondents' pharmacist and pharmacy licenses on the basis of allegations that Akmal committed unprofessional conduct in his handling of prescriptions when he worked as a pharmacist in the employ of Walgreens, and as the owner and pharmacist-in-charge of Pars, and in his mismanagement of records at Pars. Complainant requests, among other things, that as a consequence of any discipline imposed on Akmal that he be prohibited from serving as a manager, administrator, owner, member, officer, director, or partner of any licensee.

Complainant met her burden of proof on all causes for discipline. The evidence showed that Akmal created prescriptions without authorization. Factual findings support, and Akmal also admitted, to filling prescriptions for maintenance medication at Walgreens prior to obtaining the approvals from the prescribing doctors. The evidence also showed unprofessional conduct while respondent worked at Pars Pharmacy. Based on an audit of Pars, complainant met her burden of proof regarding the discrepancies between prescriptions dispensed, items purchased, and inventory on hand.

Akmal provided evidence in mitigation and rehabilitation which established support of continued licensure for himself and Pars, with a lengthy period of probation with restrictive terms and conditions to protect the public.

FACTUAL FINDINGS

Jurisdiction and Scope of Consolidated Matters

1(a). Complainant filed the First Amended Accusation against Arash Akmal, pharmacist license number RPH 60763 (Akmal) in OAH Case Number 2016010849 (Board Case Number 5230), in her official capacity. Complainant also filed the Accusation against Pars Pharmacy, Inc, dba Pars Pharmacy, and its owner, also Akmal, pharmacy permit number PHY 50931, bearing the same board case number, but OAH Case No. 2017020374, in her official capacity.

1(b). All jurisdictional requirements have been satisfied. The parties requested that the matters be consolidated for hearing, and by order dated February 28, 2017, OAH granted the parties' request.

1(c). The causes of action against the pharmacy license of Pars and Akmal, as its owner, in the Accusation, OAH Case No. 2017020374, are also contained the First Amended Accusation against Akmal and his pharmacist license in OAH Case No. 2016010849. The First Cause for Discipline in the Accusation (Pars Pharmacy-Furnished Dangerous Drugs without a Valid Prescription), is the same as the Fourth Cause for Discipline in the First Amended Accusation. The Second Cause for Discipline in the Accusation (Pars Pharmacy - Forged Prescriptions) is the same as the Fifth Cause for Discipline in the First Amended Accusation. The Third Cause for Discipline in the Accusation (Pars Pharmacy - Failure to Maintain Records of

Acquisition and Discipline) is the same as the Sixth Cause for Discipline in the First Amended Accusation.

1(d). At the hearing, complainant withdrew portions of the allegations against Akmal in the First Amended Complaint regarding 24 prescriptions at several Walgreens pharmacies. Consistent with the complainant's withdrawal of these allegations against Akmal, the following language of the First Amended Accusation was stricken and/or amended:

page 9, paragraph 16.h.(2), line 18, "at least 26 prescriptions" was stricken and amended to "at least two prescriptions" and line 19, "Dr. V. Soni (24 prescriptions)" was stricken;

page 9, paragraph 16.h.(2), rows in the table were stricken beginning with line 23 (row heading of "Dr. Soni"), including all rows on page 10, and through page 11 and the row ending at line 24 (with "24" in the first column);

page 14, paragraph 18, line 11, "at least twenty-six (26) instances" was stricken and amended to "at least two instances";

page 14, paragraph 19.b., line 26, "Dr. V. Soni (24 prescriptions) and" was stricken; and

page 15, paragraph 20.c., line 22, "Dr. V. Soni (24 prescriptions) and" was stricken.

1(e). Complainant's motion to amend references to the Business and Professions Code in the Fifth Cause of Action of the First Amended Accusation against the pharmacist, and the Second Cause of Action in the Accusation against the pharmacy and its owner, was granted and the pleadings were amended as follows:

"Respondent is subject to disciplinary action under section 4301, subdivision (f) and (g), for violating section 4324, subdivision (a)" was amended to replace the word "and" between subdivisions (f) and (g) with the word "or." (Ex. 4, p. AGO-46.)

1(f). Consistent with complainant's withdrawal of Dr. Soni's prescriptions, Walgreens' prescription number 236922 is also withdrawn from the First Amended Accusation, in the list under paragraph 16 (c)(1). (Ex. 4, p. AGO-37.)

Licenses, Akmal's Background and Cooperation with the Board

2(a). On February 22, 2008, the Board issued Pharmacist License number RPH 60763 to Akmal. The license expires on May 31, 2017, unless renewed.

2(b). No prior disciplinary action has been taken against Akmal's pharmacist license.

3(a). On October 15, 2012, the Board issued Permit Number PHY 50931 (Permit) to Pars Pharmacy Inc., to do business as Pars Pharmacy. The Permit expired on October 1, 2017, unless renewed.

3(b). Akmal is and has been the President, and 100 percent shareholder of Pars since October 15, 2012.

3(c). Akmal has been the pharmacist-in-charge of Pars since October 15, 2012.

3(d). No disciplinary action has been taken against the Permit.

4(a). Akmal filled prescriptions for his close family and close family friend both as a pharmacist at Walgreens, and as the pharmacist-in-charge and owner of Pars. The prescriptions were for five individuals who were insured by Medicare: Iran S., the mother of Akmal's close friend, and Akmal's parents and in-law, Mahin A., Houshang A. and Hossein R. (the Akmal family or Akmal's family). The prescriptions at issue were for pharmaceuticals considered dangerous drugs under the pharmacy law.

4(b). All the prescriptions were for medications that had been historically provided to Akmal's family and family friend for chronic conditions.

5. Akmal obtained his bachelor of arts degree from the University of California, Irvine, and his pharmacy degree from the University of Southern California. He is married and has a two-year-old daughter.

6. After graduating from pharmacy school, marrying and having difficulty finding positions in Los Angeles, he moved to the Palm Springs area, and on January 2012 secured a position as a "floater" with Walgreens, working at temporary assignments in a variety of locations around Southern California. Akmal is very close to his family and at hearing, expressed with candor and familial compassion, that, as a pharmacist, his family entrusted him with their prescriptions and he would not expect them to rely upon anyone else but him.

7. Akmal cooperated with the Board's investigation.

Walgreens

8(a). The Board became involved as a result of a complaint made by Walgreens involving Akmal's sale of dangerous prescription drugs to the Akmal family and family friend during his short tenure as a floater. Walgreens terminated Akmal's employment on or about June 30, 2012, because it found he had filled fraudulent prescriptions. (RT, Vol. II, p. 112, line 21-25; Ex. 5.) Walgreens reported Akmal to the Board on July 12, 2012. (Ex. 5.)

8(b). The Board relied upon the investigation of Sarah Bayley, Pharm. D., a qualified pharmacist, who diligently and meticulously followed-up to the Walgreens investigation, by analyzing its data and contacting the doctors connected to the disputed prescriptions.

8(c). Ms. Bayley contacted Farid Shakibai, MD, about prescriptions documented as a telephone prescription by Akmal during his employment at Walgreens for Iran S. Akmal created a record and put it in Walgreens' records indicating that this prescription was authorized by Dr. Shakibai. There were two physical prescriptions prepared by Akmal on January 31, 2012, to reflect the purported oral prescriptions for five different medicines, including Lexapro 20mg for (#90), Lovaza (#360), Tricor 145mg (#90), Celebrex 200mg (#180); and Niaspan 500mg (#90); each was purportedly authorized for three refills. Dr. Shakibai denied having authorized these prescriptions; he wrote to Ms. Bayley, "Last visit I saw her was on 11-30-2010. Rx you faxed me is not my prescription or authorized by me. [F. Shakibai signature]." Akmal filled the Lovaza capsules originally on February 1, 2012, at Walgreens #5301 (Cathedral City, RX #1278381) and refilled it on April 24, 2012, at Walgreens #4756 (Palm Desert, RX #1268746). (Ex. 14, AGO-163-168.) Bayley testified that Dr. Shakibai told her that he had not authorized any prescriptions and that he doesn't write prescriptions after six months from a patient's visit. Bayley had no reason to fabricate the story and her notes to file were consistent with her testimony.

By history, Iran S. had been prescribed Lovaza for years prior to Akmal's tenure at Walgreens, continued with this medication after Akmal was fired from Walgreens, and continues to be prescribed this medication which Akmal fills as the pharmacist-in-charge and sole owner of Pars. That history, however, does not validate the prescription that was persuasively demonstrated as not authorized by Dr. Shakibai. Respondent suggested that the fact that Dr. Shakibai was the person who originally prescribed the Lovaza in 2009 somehow makes it more likely that the prescription was valid. It does not. As capably explained by Ms. Bayley, there are emergency circumstances where a prescription can be given to a patient in need to prevent harm to the patient, but those circumstances were not demonstrated here and do not explain that the prescription was prepared authorizing three refills.

8(d). At hearing, allegations related to twenty-four prescriptions attributed to Dr. Soni and filled at Walgreens were withdrawn as described above. In addition, Walgreens' claims that Akmal filled multiple prescriptions from Dr. Gharib for his family and Iran S. were denied by Dr. Gharib on November 16, 2013 (Ex. 14, p. AGO-143).

8(e). The Board relied upon Ms. Bayley's investigation. Ms. Bayley was the only person who testified on the Board's behalf. The complainant did not provide any direct testimony from Walgreens, the prescribing doctors, or the video Walgreens relied upon to reach its conclusion that Akmal was operating a stealth operation to defraud the pharmacy. Despite Ms. Bayley's diligence in reconciling Walgreens data regarding the prescriptions, she conceded that the Walgreens records were difficult to reconstruct and somewhat confusing.

8(f). Medi-Cal, a California program, declined to investigate Walgreens' allegations because the prescriptions filled by Akmal were charged to Medicare providers, which are part of a federal program. Walgreens reversed the charges to Medicare providers, but nevertheless, there is no evidence that Medicare conducted an investigation about the prescriptions.

8(g). No criminal charges were filed against Akmal as a result of his conduct at Walgreens.

9(a). Walgreens fired Akmal based upon its findings that Akmal had prepared and dispensed multiple fraudulent prescriptions to his family. Walgreens had not been able to obtain verifications from the prescribing doctors and had been told by one doctor's staff that the prescriptions were not attributable to the doctor.

9(b). Walgreens also has a policy, which Akmal stated he was not aware of, which barred its pharmacists from transacting business with their families. This Walgreens policy is not part of the pharmacy law. Akmal testified that he found out about the policy during his interview with Walgreens before they fired him.

9(c). Walgreens reversed \$21,900.00 to Medicare prescription drug providers on multiple prescriptions prepared by Akmal. Akmal testified that he was asked to execute an agreement requiring him to reimburse Walgreens for the reimbursed charges. He also claims that his refusal to do so was the reason Walgreens reported him to the Indio Police Department. Walgreens also reported Akmal to the Board after it fired him.

9(d). Akmal's interrogation by the Indio Police Department on June 28, 2012, was inconclusive for criminal conduct of the disputed prescriptions on June 7, 2012. In his interview with the Indio Police Department, Akmal insisted he refilled prescriptions for his family, but could not always get hold of the doctor, but refilled them anyway if they were important maintenance medication. Akmal believed it was consistent with pharmacy law to refill the medications required for maintenance so as not to disrupt the patient's medication regimen. He denied committing fraud, but persisted in his firmly held, but erroneous, belief that his actions did not create false or unlawful prescriptions.

9(e). Akmal's hearing statement that he did not intend to commit fraud is consistent with his representations to Ms. Bayley on November 8, 2013. His intent in this circumstance is, however, irrelevant, except as it bears on the penalty or consequence for his conduct as a mitigating or aggravating factor; unless intent is part of the statute, pharmacists are strictly liable for compliance with Pharmacy Law and board regulations. (*Sternberg v. Board of Pharmacy* (239 Cal. App. 4th 1159 (2015).) Akmal was consistently candid with Walgreens, the Indio Police Department and Ms. Bayley. He plainly did not understand that he was doing anything wrong. That is extremely concerning for a pharmacist under these circumstances.

9(f). The assertion that he was filling prescriptions for maintenance medications regularly prescribed for the patients does not affect whether a violation of Pharmacy Law occurred, but it is a factor to consider as a mitigating circumstance.

9(g). Akmal admitted to the Indio Police Department he wrote prescriptions based upon previous prescriptions his family and family friend he believed had legitimately obtained. Where a prescription was located at another pharmacy, in two circumstances he may have written it as a new prescription instead of following the practice of formally transferring the prescriptions from

another pharmacy by contacting the pharmacist-in-charge. As noted above, however, a belief does not prevent the violation from occurring.

9(h). At hearing, Akmal did not disagree with his statements to the police investigator regarding the prescriptions to his family, but the interpretation given to his statements. Akmal's interrogation confirmed that when he was confident of the validity of long-standing prescriptions, and the need to refill them for maintenance, he did so, even if he could not always secure the doctor's authorization. His confidence does not, however, make his actions lawful.

9(i). As to the transfer process from one pharmacy to another, he conceded in one or two circumstances he did write new prescriptions, instead of securing the transfer. Ms. Bayley credibly and accurately testified, based upon her experience as a pharmacist, that there were two ways to properly obtain authorization for prescription refills, including long-standing, and legitimate, prescriptions: call the doctor, who can be hard to reach; or call the previous pharmacy and secure a transfer, which is easier to do. Pharmacies have centralized data for prescriptions, so it is easier to call the pharmacy and secure the transfer, Akmal's statements are probative of his lack of rigor as to refill protocols.²

9(j). Akmal takes issue with Walgreens reporting him to the Indio Police Department, which resulted in his questioning by officers. Akmal filed a civil suit against Walgreens for, among other things, false imprisonment, which was dismissed. Akmal testified that he considered filing wrongful termination litigation against Walgreens, but decided against it after he acknowledged violating Walgreens internal policy for engaging in transactions with family members. Violations of the Pharmacy Law can be charged as criminal offenses; and are appropriately reported to law enforcement. Similarly, pharmacy employers have a duty to report certain conduct to the board³ and good public policy supports that conduct believed to be a violation of Pharmacy Law by an employer is appropriately reported to the board. Walgreens may have indeed asked Akmal to pay for reimbursements Walgreens made to Medicare for what it considered unlawful prescriptions, but Walgreens would only have returned money to Medicare if it genuinely believed the prescriptions, and therefore the payments, were unlawful..

10(a). The complainant established that Akmal furnished dangerous drugs without a valid prescription and falsified prescription records under Business and Professions Code section 4301, subdivisions (j) and (o) for violating section 4059, subdivision (a), with regard to the two prescriptions for Lovaza 1 mg capsules for Iran S. in the name of her physician, Dr. Shakibai.

² At hearing, respondent objected to the admission of the Indio Police Department investigation as irrelevant since the investigation was prompted by allegations based upon the Walgreens' investigation that have since been withdrawn or not proven. Complainant stated Akmal's statement to the police was for the purpose of impeachment. The ALJ sustained the objection in part on the grounds of relevancy, but allowed the report and related testimony admitted for impeachment purposes. Other than Akmal's interview, the police records were considered as hearsay, under the authority of *Lake v. Reed* (1997) 16 Cal.4th 448. The ALJ found Akmal's admissions to the police investigator materially consistent with his statements to Ms. Bayley and his testimony at hearing, and probative of his concerning misunderstanding that he could depart from the rigors of obtaining physician authorization for refilling maintenance medication.

³ See, for example Business and Professions Code section 4104.

Lovaza is the brand name for Omega-3-acid ethyl esters, fish oil, and is used to control high triglycerides. The complainant also established that Akmal falsified prescription records when he created a written prescription for the other drugs described in paragraph 8 above, even if he did not dispense those medications. Other pharmacists reviewing the prescription could have been induced to rely on it to dispense the other medications.

10(b). Walgreens' records state the prescription was written on January 31, 2012 and it was filled on February 1, 2012, and then refilled on April 24, 2012. (Ex. 14, AGO-164.) The first prescription was filled in Cathedral City and the second, in Palm Desert, consistent with Akmal's floater status at various Walgreens. According to Ms. Bayley, Walgreens could not provide scanned images for the April 2012 prescription refill.

10(c). There are two prescription numbers associated with the prescription attributed to Dr. Shakibai because both Walgreens pharmacies that filled it gave it a different number..

10(d). As discussed in paragraph 8 above, according to Ms. Bayley's investigation, she communicated directly to Dr. Shakibai on December 12, 2013, who denied writing or approving a prescription for any patient he did not see within six months prior to the prescription. His records stated he had not seen Iran S. since November 30, 2010. Dr. Shakibai confirmed his representation to Ms. Bayley in writing. (Ex. 14, pp. AGO-160-166.)

10(e). It was established that Dr. Shakibai did not authorize the Lovaza prescription for Iran S. on January 31, 2012. Dr. Shakibai gave oral and written statements to Ms. Bayley to that effect. . Dr. Shakibai had no reason to be untruthful, neither did Ms. Bayley, who was candid about any errors she made and acknowledging any exculpatory evidence. Akmal admitted to preparing prescriptions without a doctor's authorization. Even if Walgreens maintained the unlawful prescription attributed Dr. Shakibai for Iran S.'s Lovaza, Walgreens' failure to invalidate the prescription does not make it a lawful prescription. Even if Walgreens subsequently transferred that prescription to Pars, that does not make the prescription lawful. (Ex. G.) As the person who created the falsified prescription in the first place, Akmal should not have filled it on any occasion, and each time he did so was unlawful.

11. The complainant charges Akmal with writing and dispensing unauthorized prescriptions (with 3 refills each) for Iran S. on January 31, 2012, for other dangerous drugs. (First Amended Accusation, paragraph 16(h), p. AGO-39.) Dr. Shakibai confirmed in writing he did not authorize the other dangerous drugs: Lexapro 20mg, (escitalopram), for depression and anxiety; Tricor 145 mg, (fenofibrate), for high cholesterol and triglycerides; Celebrex 200 mg, (celecoxib), for arthritic pain; and Niaspan (niacin), for high cholesterol. (Ex. 14, pp. AGO-166-168.) These prescriptions were written by Akmal on a Walgreens' prescription pad, but not filled. Akmal prepared an unauthorized prescription without authority, even if he did not aggravate his error by also dispensing the other drugs.

12. Based upon his own admission to filling prescriptions without prior authorization, complainant met her burden of proof that, in certain instances, including the two identified as Dr. Shakibai's, Akmal filled prescriptions based upon history, or made new prescriptions instead of securing the transfer of prescriptions. Akmal may have been lawfully able to provide a small

amount of maintenance medication pending doctor approval, but he did not dispense pursuant to that authority here.

13(a). Complainant met her burden of proof that Akmal forged prescriptions, committed fraud or was involved in acts involving dishonesty, fraud or deceit, with respect to Iran S. and family members Mahin A., Hossein S., and Houshang A.

13(b). Ms. Bayley, fulfilled her due diligence by repeatedly contacting the prescribing doctors, only spoke directly to Dr. Gharib, and Dr. Soni, who would not write a written statement that Ms. Bayley requested. As such, Iran S.'s prescription number 236922 was not material to the charges relating to June 7, 2012.

13(c). Ms. Bayley never received a response directly from Dr. Hedvat (Hossein), Dr. Rezapour (Mahin, Houshang), or Dr. Torabzadeh (Iran S.) (Ex. 14.) Ms. Bayley relied upon her conversations with risk management from the University of California, Irvine, but never had direct communications with or obtained any direct confirmation from Dr. Torabzadeh regarding the disputed prescriptions.

13(d). Akmal admitted writing prescription refills for his family and for Iran S. based upon previous prescriptions without prescriber authorization. Akmal's statement to the police that he attempted to call all doctors, and refilled maintenance prescriptions when he could not reach the doctor reflects a lack of respect for Pharmacy Law. If all one had to do was to try to comply with the pharmacy law before doing whatever one thought appropriate, chaos would reign.

13(e). Akmal was questioned by the police about the June 7, 2012, prescriptions. In conjunction with Akmal's admissions to the police, and confirmation of those admissions during the hearing, that he refilled maintenance prescription medication when he could not obtain the authorization of the doctors, complainant met her burden of proof to establish that some of the June 7, 2012, prescriptions were falsified during his tenure at Walgreens]for the Akmal family and Iran S. Akmal's conduct in preparing prescriptions suggesting that they had been authorized, and then dispensing medications pursuant to the unauthorized prescriptions, were dishonest acts. As a pharmacist, he knew or should have known that he did not have authority to prepare the prescription in that fashion. It was not established that Akmal falsely represented that the new orders were made by someone other than himself.

Pars Pharmacy

14. After he was terminated from Walgreens in June 2012, Akmal started his own pharmacy, Pars, and from October 15, 2012, through the present, he has been 100 percent owner and designated pharmacist-in-charge. Pars is a small retail pharmacy located in Orange County, California.

15(a). Ms. Bayley conducted an audit of Pars for the period of October 15, 2012, to November 8, 2013.

15(b). Ms. Bayley's audit was part of her investigation of Akmal's conduct filling and prescribing medication for his family and family friend at Walgreens. Ms. Bayley targeted 10 medications frequently dispensed to the Akmal family and Iran S. Akmal was aware of the audit and the scope of Ms. Bayley's audit and assisted her by providing the records as well as the stock on hand for the medications.

15(c). Ms. Bayley identified 11 prescriptions, prescription numbers 10035 through 10046, for Iran S., which she determined were filled by Akmal as pharmacist-in-charge of Pars without proper authorization from Dr. Soni, because Pars failed to provide her with original prescriptions. (Ex. 17, p. AGO-236.) Ms. Bayley had determined during her investigation that 49 other prescriptions from Dr. Soni, she originally considered fraudulent, were not, after Pars produced the original prescriptions.

15(d). Ms. Bayley identified two prescriptions without proper verification from Dr. Torabzedah for Iran S., for Lovaza, prescription number 10594, dispensed July 10, 2013, and prescription number 10594, dispensed, September 19, 2013.

16(a). Complainant met her burden of proof that Pars and Akmal, furnished dangerous drugs without a valid prescription, and/or falsified numerous prescriptions for Iran S. Pars prescriptions numbered 10035 through 10046, all filled on September 19, 2013, for patient Iran S. were not valid records of an oral prescription, nor were they valid as written prescriptions to support the earlier dispensing of medications. A pharmacist must have a prescription to dispense a dangerous drug; the prescription can be oral, written, or electronically transmitted. For an oral prescription, the pharmacist must transcribe the prescription with key elements before filling or dispensing the medication. As a pharmacist's record of an oral prescription, Akmal's records lacked indicia that they had been received as an oral prescription and who had participated in the oral conversation to authorize the oral prescription, and they lacked the pharmacist's handwritten initials. As written prescriptions, they could not have validated Akmal's dispensing because they did not exist at the time of the furnishing.

16(b). Ms. Bayley testified about the standard of practice for accepting oral prescriptions (for non-controlled substances), consistent with pharmacy law and regulations. For a new prescription, a pharmacist must speak to the doctor and obtain the doctor's authorization before filling and disbursing written prescriptions. To create a clear record, the pharmacist physically writes the prescription for oral prescriptions in keeping with long-standing custom and practice, noting who authorized the oral prescription, when, and how. Board regulation requires the pharmacist to "initial" the memorialized oral prescription, which must be done by hand. This is consistent with the heavily regulated nature of the pharmacy industry, where any person reviewing the history for the auditing or for patient safety, should clearly be able to see what happened. Akmal created written records, but they were insufficient. The records he created do not reflect that it was an oral prescription, the individual who had authorized the prescription during the oral conversation, and the initials of the pharmacist who received the oral prescription.

16(d). The "hard copy" prescriptions provided by Akmal do not memorialize the key elements of the oral nature of the prescriptions that Akmal furnished. Akmal's documentation

also lacked indicia that an identified prescriber orally authorized the prescription *before* the prescription was filled.

16(e). Ms. Bayley accurately and credibly testified that the standard of practice for oral prescription orders is for the pharmacist to reduce the oral prescription to writing. Her interpretation of the standard of practice for pharmacists, and an inspector who sees a variety of pharmacy records on a monthly basis, is also consistent with law and regulation. Section 4071 of the Business and Professions Code states,

Notwithstanding any other provision of law, a prescriber may authorize his or her agent on his or her behalf to orally or electronically transmit a prescription to the furnisher. **The furnisher** shall make a reasonable effort to determine that the person who transmits the prescription is authorized to do so and **shall record the name of the authorized agent of the prescriber who transmits the order.** [Emphasis added.]

California Code of Regulations, title 16, section 1717, subdivision (c), 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. [Emphasis added.]

California Code of Regulations, title 16, section 1717.4, subdivision (h), says, “Any person who transmits, maintains or receives any prescription or prescription refill, orally, in writing or electronically, shall ensure the security, integrity, authenticity, and confidentiality of the prescription and any information contained therein.”

16(f). Akmal’s testimony about pharmaceutical record-keeping for oral prescriptions is incorrect. His testimony was that he thought his record “looks fine,” and that he “didn’t see anything wrong.” His efforts to have the physician’s office staff verify shows effort; though it does not make the prescriptions lawful, it is considered in mitigation. Akmal did not need a signature from the doctor’s office, he himself needed to accurately reflect the key details and circumstances of the oral prescription in addition to standard prescription information.

17(a). Complainant failed to meet her burden of proof that Pars and Akmal furnished dangerous drugs without a valid prescription or committed fraud in the disbursement of two prescriptions from Dr. Torabzadeh for Iran S., for Lovaza, prescription number 10594 from Dr. Torabzadeh, dispensed July 10, 2013, and prescription number 10594, dispensed, September 19, 2013.

17(b). Akmal produced documentation to the Board in April 2015 supporting Dr. Torabzadeh’s electronic prescription for Lovaza, which appears to track the history of prescription number 10594. Prescription number 10023, was issued for Iran S. with one refill, with a request date of April 21, 2013. Complainant finds the documentation questionable because the two exhibits differ slightly in form. It is unknown why two electronic refills were sent the same day, but there is no material difference between the documents: both provide the written date of the prescription as April 21, 2013, both confirm one refill and an electronic authorization. One prescription provides the days (90) and quantity of the prescription (360), with a specific request date of April 21, 2013, 7:09:52 p.m. confirmed by fax with the notation, electronic refill response approved with changes (Ex. E). The other prescription provides just the days, and no fax confirmation and time, but contains a handwritten notation (most likely for the pharmacy) that it includes one new and one refill prescription (Ex. H). Each copy provides instruction to take one capsule by mouth, four times daily.

17(c). All the prescriptions for Iran S. for Lovaza by Dr. Torabzadeh during the audit period were also confirmed on an RX history report. The September 19, 2013, prescription confirmed an original and three refills, and was authorized by Mary from Dr. Torabzadeh’s office (Ex. F). Ms. Bayley incorrectly identified zero refills as no prescription could be filled, which was rebutted by Akmal and supported by the records.

18(a). Complainant met her burden of proof that Pars failed to adequately maintain records of acquisition and disbursement during the audit period which covered the period October 15, 2012 through November 8, 2013 (approximately 55 weeks).

18(b). During the audit period that ended November 8, 2013, complainant found a discrepancy between total purchases and dispensing, meaning the prescriptions were dispensed, but not purchased from a supplier. Ms. Bayley discovered errors in her calculations as she prepared for hearing and candidly disclosed them; additional calculation errors were identified during the hearing. Nevertheless, even after her errors were corrected, significant discrepancies remained during the audit period that are alarming.

18(c). The following discrepancies in the inventory reflected that Pars dispensed (and sold or was paid for), more medication than it had purchased from its suppliers. As amended at hearing, the audit found discrepancies between the purchasing and disbursement records for the following dangerous drugs:

Drug/ Qty	Total Purchased/ Avg Weekly (55 weeks)	Total Dispensed	Stock on hand	Difference
Advair Diskus, 250/50 mcg (60 doses per box)	3960 Avg. week: $3960/55 = 72$	5040 Avg. week: $5040/55 = 91.6$	0	-1080 (18 boxes)
Crestor, 10 mg (90 tablets per bottle)	1710 Avg. week: $1710/55 = 31.1$	1980 Avg. week: $1980/55 = 36$	0	-270 (3 bottles)

Cymbalta 60 mg (30 capsules per bottle)	1710 Avg. week: 1710/55=31.1	1980 Avg. week: 1980/55=36	4	-266 (8.8 bottles)
Lidoderm (lidocaine) 5% patch (30 patches per box)	1950 Avg week: 1950/55= 35.6	2340 Avg. week: 2340/55=42.6	0	-390 (13 boxes)
Lotemax ophthalmic gel (loteprednol), .05 ml	115 Avg. week: 115/55=2.1	130 Avg. week: 130/55=2.4	0	-15 (3 boxes)
Spiriva (tiotropium) 18 mcg handihaler (30 doses per box)	870 Avg. week: 870/55=15.8	990 Avg week: 990/55=18	0	-120 (3 boxes)

[Ex. 28]

18(d). As of November 8, 2013, the last day of the audit period, there was a total of four capsules on hand of Cymbalta, but no stock on hand for any of the other pharmaceuticals. Ms. Bayley did not count prescriptions which were not processed, including any phone orders that were placed aside. Accurate inventories are important because of the need to closely monitor drugs for their safety and availability. Given their immediate impact on consumers' health, if there is ever a recall, they must be quickly identified to prevent harm. Finally, inventories are crucial to effective monitoring in a closely regulated area like the practice of pharmacy. As indicated by Ms. Bayley, a significant shortage of product (more dispensed/sold than received) can indicate that a pharmacy is engaging in some kind of billing fraud. Given all those possibilities, accurate inventories are very significant.

18(e). On November 9, 2013, the day after the audit period, through November 15, 2013, Akmal reconciled the discrepancies above by ordering sufficient supplies from his wholesalers. Ms. Bayley accurately explained that this does not cure the deficiencies discovered in the audit, because it is the audit period that is relevant.

According to Akmal's testimony, he placed the orders to cure the discrepancies, which he attributed to pending orders that had been billed but not ordered. Akmal explained that a common example is like a refill that the pharmacy can order 2 weeks before the expiration date of the prescription. He explained that they might bill for the order as soon as its available to verify insurance, but delay ordering the maintenance medication because they know the patient will only come in a few days before the prescription expires.

18(f). Akmal denied knowing the results of Ms. Bayley's audit when he reconciled his discrepancies. Ms. Bayley came to Pars for a total of 2.5 hours on November 8, 2013, and had no recollection of contacting Akmal afterward to discuss the results of her audit. The figures, however, would have been very reasonable for Akmal to extract. Ms. Bayley told him the drugs she was auditing; he counted the stock on hand. Ms. Bayley did not have the records of purchase

from the wholesaler on the inspection date and obtained them later, but the information would have been readily available in the pharmacy's records.

18(g). Akmal's explained at hearing that he prioritized his disbursement of prescriptions based upon the necessity and his line of credit with his wholesalers. He maintained that he placed orders with his wholesalers within a reasonable time after he filled the prescription. All the orders were "reconciled" no later than November 15, 2013, a week after the close of Ms. Bayley's audit. But the purchases Akmal made to "reconcile" the stock represent a grossly disproportionate increase in the pharmacy's average purchase, and it more likely that the reconciliation was a means to disguise overbilling.

18(h). Akmal's explanation is absurd under the circumstances. Even with the corrected figures before and during the hearing, which admittedly resulted in smaller discrepancies, the remaining discrepancies are notably significant and serious. Looking at the change over the weekly average dispensed during Ms. Bayley's 55-week audit period and compare them to the single, 1-week period during which Akmal "corrected" the discrepancies, his ordering reflects a minimum increase in his sales of any of the drugs at 600%:

	Average weekly dispensed from 10/15/12 to 11/8/13	Ordered for purpose of "Reconciling" between 11/9/13 and 11/15/13	% Increase from weekly average
Advair	91.64	1080	1179%
Crestor	36	270	750%
Cymalta	36	266	761%
Lidoderm	42.55	390	917%
Lotemax	2.36	15	635%
Spiriva	18	120	667%

Akmal's willingness to offer such explanation for the discrepancies also severely undermines his credibility. The cost of the drugs to the patients, insurers, and public could be significant, as well as the benefit to him as owner of the pharmacy.

Aggravation/Mitigation/Rehabilitation

19(a). Akmal made mistakes at Walgreens and Pars, and, in order to ensure the public is adequately protected, he must have a significant period of probation with conditions designed to enable the board to monitor him and thereby protect the public. The violations relating to the inventory are so significant that they warrant this discipline even in the absence of the other violations.

19(b). Akmal was not charged or convicted of any crime, or Medicare fraud. There is evidence that he benefited personally from the dispensing drugs for his own profit. As discussed above, the prescriptions for which he falsified the prescription or distributed drugs were already part of the medication regiment of the Akmal family or Iran S., and often previously or subsequently authorized by their doctors.

19(c). The investigation against Akmal was extensive and far reaching, and exposed extreme misconduct, particularly related to the overages. During his short tenure at Walgreens, Akmal violated its policy against filling prescriptions for family members, a policy that is not relevant to the pharmacy law. It was, however, as amended, significantly fewer prescriptions that were unauthorized or falsified.

19(d). The passage of time is an important factor in mitigation. Akmal's tenure at Walgreens concluded in 2012, the audit for Pars was conducted in 2013, and Akmal has been operating a pharmacy without any known complaints from pharmacists or patients for over four-and-a-half years. Akmal has been under a cloud of suspicion since the consolidated matter was filed and publicized. Nevertheless, and he has been making every effort to move his pharmacy practice forward, and satisfy the concerns of insurance companies and doctors who question him about the complainant's actions.

19(e). Akmal is a committed and compassionate family man, with a young family to support. As the pharmacist-in-charge and owner of a small independent pharmacy, Akmal is able to provide important public service. His business is growing; he is just reaching the point where he can hire staff to assist him.

19(f). Akmal's conduct related to falsifying and filling prescriptions without authorization for the Akmal family and his family friend. The medications prescribed were long-standing prescriptions for chronic conditions, and the doctors prescribing them, or their successors, continued to prescribe them. The patients' prior exposure to the medications mitigates the misconduct in that the potential consumer harm was somewhat lowered because the patients would hopefully be familiar with the prescriptions and hopefully look for changes made to a prescription recommended by a physician, or any changes to their well-being if the prescription was no longer effective. In aggravation, despite so much attention to this issue, Akmal continues to be unaware of the standard of practice in the pharmacy industry and to consider any error on his part, and he denies that his actions resulted in fraudulent prescriptions. At Pars, Akmal failed to maintain a complete accounting for the prescriptions for dangerous drugs he filled and had alarming discrepancies that may reflect overbilling.

19(g). Akmal has taken steps to learn from his experience at Walgreens and has tried to remediate his practices in recording oral prescriptions to ensure the appropriate authorization is secured. He is working closely with the prescribing doctors and is servicing his clients and their medical providers and insurers, including Medicare providers. As a small, independent pharmacy, Pars provides a service to the community.

19(h). In aggravation, Akmal admitted to creating prescriptions without authorization, which means he falsified records. Based on his conduct at Walgreens, it is unclear whether Akmal fully appreciates the limits of his discretion to prescribe maintenance medication pending receipt of a doctor's authorization. Akmal also was lax in his attention to the specific policies of Walgreens against prescribing to family members, which, without more, did not violate the pharmacy law, but demonstrated a lack of attention to protocols. In addition, his inability to appreciate the gaps in his knowledge, and to take responsibility for them, is concerning. Finally, the large discrepancies at Pars in the few drugs audited, and his representation that he fixed his

inventory by ordering more, remains concerning. He must be more rigorous in his pharmacy management.

Costs Investigation and Prosecution

20(a). The administrative law judge (ALJ) found that the Board has incurred \$14,700.00 in the form of Attorney General charges, (exhibit 26), and \$28,316.50 in investigation charges, (exhibit 25), though March 24, 2017, or a total of \$43,016.50, in connection with its investigation and enforcement of this matter. When the scope of the investigation is considered, the costs are reasonable.

20(b). Akmal has been the pharmacist-in-charge and sole owner of Pars since October, 2012. He supports his family with his business earnings, has worked hard to develop his business, and has just started to reach the point in his business where he can hire other people to assist him.

20(c). In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Ca1.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners*, supra at p. 45).

20(d). In this case, the ALJ found the costs of investigation are reasonable given the scope of the investigation conducted, but were nevertheless disproportionately large to prove Akmal and Pars engaged in misconduct.

20(e). Akmal and Pars asserted their jointly-held right to a fair hearing, and provided some vigorous and colorable defenses to the complainant's multiple causes for discipline against them.

20(f). The ALJ found that charging Akmal and Pars with the full cost of the investigation would be punitive. Akmal is self-employed as a pharmacist and is supporting a young family. His business has been slow to grow. Further, Pars, and Akmal, individually, and as pharmacist-in-charge, will be responsible for paying any costs incurred to comply with probation, and to charge them the full costs of investigation and enforcement would be burdensome and punitive.

20(g). Accordingly, the ALJ ordered that the costs of investigation and enforcement would be reduced by sixty percent to \$17,206.60, which are the reasonable costs in this matter. Respondent will be permitted to make installment payments during the term of his probation. The Board has evaluated the appropriate factors and concurs that this cost award remains appropriate.

Discipline

21(a). Based upon the evidentiary record, and after consideration of the factors in mitigation and aggravation, the public will be adequately protected with an order revoking respondents' license and permit, stayed with a five-year period of probation, which is consistent with the disciplinary guidelines for serious violations.

21(b). A five-year period of probation is sufficient time to evaluate and monitor respondents' conduct and protect the public under terms that permit the board to closely monitor their respective practices.

The provision for the pharmacy permit surrender was amended to also provide for reasonable notification to the Board in the event the permit is surrendered and for proper notification and service to the prescribing doctors and patients. Pars shall stop operating the date of surrender.

LEGAL CONCLUSIONS

Burden of Proof & Board Priority

1(a). Complainant has the burden to prove by clear and convincing evidence the Causes against respondents. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

1(b). The Board's responsibility, and its highest priority, in exercising its disciplinary authority, is to protect the public. (Bus. & Prof. Code §§ 4001.1, 4313.)

Causes Related to Akmal's Conduct at Walgreens

2. There are sufficient grounds to discipline Akmal's pharmacist license based on the First Cause for Discipline in the First Amended Accusation unprofessional conduct, pursuant to Business and Professions Code⁴ section 4301, subdivision (j) (violation of any statutes regulating dangerous drugs), subdivision (o) (violating or attempting to violate state statutes or regulations governing pharmacy) for his violation of section 4059, subdivision (a) (furnishing a dangerous drug without a prescription), by reason of factual findings 1-4, and 8-13. Complainant met her burden of proof that Akmal furnished a dangerous drug on at least two occasions without

⁴ Unless otherwise stated, all further statutory references are to the Business and Professions Code.

a valid prescription by use of falsified prescriptions that he knew had not been authorized by a physician.

3. There are sufficient grounds to discipline Akmal's pharmacist license based on the Second Cause for Discipline in the First Amended Accusation for unprofessional conduct pursuant to section 4301, subdivisions (f) (the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption), and (g) (knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts), based upon his authorizing and dispensing new prescriptions to the Akmal family, and the prescriptions he prepared for Iran S. on January 31, 2012, using the name of Dr. Shakabai, by reason of factual findings 1-4, and 8-13.

4. There are sufficient grounds to discipline Akmal's pharmacist license based on the Third Cause for Discipline in the First Amended Accusation for acts involving dishonesty, fraud, or deceit pursuant to section 4301, subdivision (f), by reason of factual findings 1-4 and 8-13, based upon: (a) Akmal's admissions to the Indio police department as well as at the hearing that he prepared prescriptions without a prescriber's authority on or about June 7, 2012; (b) his pattern and practice of falsifying prescriptions for family members, and (c) his preparation of, and his dispensing pursuant to, at least two fraudulent prescriptions for Iran S. using the name of Dr. Shakabai. Section 4301, subdivision (f), does not require a finding of an intent to substantially benefit himself, or substantially injure another, but his unauthorized acts saved him work of obtaining the prescription lawfully, raised his esteem in his family and friend's eyes, and potentially provided them a benefit of not seeing a prescriber.

Causes Related to Akmal's Conduct at Pars

5. There are sufficient grounds to discipline Akmal as a pharmacist and as pharmacist-in-charge and owner of Pars and Pars, based on the First Cause for Discipline in the Accusation against Pars and Akmal, and the Fourth Cause for Discipline in the First Amended Accusation and Akmal, pursuant to section 4301, subdivisions (j) and (o), for unprofessional conduct for violating the law, or attempting to violate the law, or conspiring to violate the law, by furnishing dangerous drugs without a valid prescription at Pars, by reason of factual findings 14-16.

6. There are sufficient grounds to discipline Pars and Akmal, as a pharmacist and as pharmacist-in-charge and owner of Pars, based on the Second Cause for Discipline in the Accusation against Pars and Akmal, and the Fifth Cause for Discipline in the First Amended Accusation against Akmal, pursuant to section 4301, subdivisions (f) or (g), for dispensing medications to Iran S. without valid authorization by reason of factual findings 3 and 14 - 16.

7(a). There are sufficient grounds to discipline Pars, and Akmal, as a pharmacist and as pharmacist-in-charge and owner of Pars, based on the Third Cause for Discipline in the Accusation against Pars and Akmal, and the Sixth Cause for Discipline in the First Amended Accusation against Akmal, for unprofessional conduct pursuant to section 4301, subdivisions (g) and (o), in conjunction with section 4081, subdivisions (a) and (b), and California Code of Regulations, title 16 (CCR), section 1718, for substantial discrepancies between the

dispensed/billed prescriptions for dangerous drugs and purchased/acquired dangerous drugs during the audit period, by reason of factual findings 3, 14, and 18.

8. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, in the total sum of \$17,206.60, which is equivalent to a sixty percent reduction in both the cost of investigation and enforcement, by reason of legal conclusions 1-7, and factual finding 20.

9(a). All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Board's Disciplinary Guidelines (CCR, tit. 16, § 1760) and criteria for rehabilitation (CCR, tit. 16, § 1769), by reason of factual findings 1-7, 19, and 21.

9(b). Actual revocation of Akmal's license is not necessary for the protection of the public. Nevertheless, given Akmal's admitted instances of dispensing maintenance medication without the prior approval of the prescribing doctors, without sufficient understanding of the scope of his discretion, and his significant failure to maintain accurate and complete records of acquisition and disposition at Pars, a period of probation and monitoring by the Board is warranted.

ORDER

License number RPH 60763, issued to respondent Arash Akmal, and Permit Number 50931, issued to respondent Pars Pharmacy, dba Pars, Arash Akmal, owner, (collectively, respondents) are revoked; however, the revocations are immediately stayed and respondents are placed on probation for five years upon the following terms and conditions:

A. Pharmacist License RPH 60763 issued to respondent Arash Akmal shall be subject to the following terms during the stayed revocation:

1. Obey All Laws. Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to

the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board. Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board. Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff. Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of respondent's probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education. Respondent shall provide evidence of efforts to maintain skill and knowledge as pharmacist as directed by the Board or its designee.

6. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5230 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause respondent's direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5230, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number

5230 in advance of respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5230 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant. During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall be jointly and severally liable with Permit No. 50931 pay to the Board its costs of investigation and prosecution in the amount of \$17,206.60. Respondent shall make said payments in accordance with any installment payment plan worked out with the Board.

There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

9. Probation Monitoring Costs. Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License. Respondent shall, at all times while on probation, maintain an active, current license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension. Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for the Board-determined minimum number of hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation. If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation. Upon written notice by the Board or its designee indicating successful completion of probation, respondent's license will be fully restored.

16. Ethics Course. Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

17. No New Ownership. Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective date of this decision. Violation of this restriction shall be considered a violation of probation.

18. Consultant for Owner or Pharmacist-In-Charge. During the period of probation, respondent shall not supervise any intern pharmacist or serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-charge. However, if during the period of probation respondent serves as a pharmacist-in-charge, respondent shall retain an independent consultant at his or her own expense who shall be responsible for reviewing pharmacy operations on a quarterly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of which he or she is not the sole owner. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

B. Pharmacy Permit Number 50931, issued to respondent Pars Pharmacy, and Arash Akmal as owner, shall be subject to the following terms during the stayed revocation:

1. Obey All Laws. Respondents shall obey all state and federal laws and regulations. Respondents shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; and
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or permit which is

related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board. Respondents shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondents shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board. Upon receipt of reasonable prior notice, respondents shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff. Respondents shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondents' compliance with the terms and conditions of probation. Failure to cooperate shall be considered a violation of probation.

5. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent owner shall be jointly and severally liable with RPH Akmal pay to the board its costs of investigation and prosecution in the amount of \$17206.60. Respondent owner and the probation monitor may agree on a payment plan. Once a payment plan has been agreed upon, there shall be no deviation from this plan absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent owner shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution.

6. Notice to Employees. Respondent owner shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent owner shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent owner shall submit written notification to the board, within fifteen (15) days of the

effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation. "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

7. Prohibition against serving as a manager, administrator, owner, member, officer director, associate or partner of a licensee for three years. Respondents shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee for three years.

This provision shall not prohibit respondents from serving as a manager, administrator, owner, member, officer, director, associate or partner at Pars Pharmacy Inc. dba Pars Pharmacy, Akmal, 100 percent owner.

8. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondents shall pay to the board its costs of investigation and prosecution in the amount of \$17,206.60. Respondents shall make installment payments on a monthly or quarterly schedule approved by the Board. There shall be no deviation from the approved schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondents shall not relieve respondents of their responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs. Respondents shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License and Permit. Respondents shall, at all times while on probation, maintain an active, current license and permit with the Board, including periods of suspension or tolling, except if Akmal's license is suspended or tolled, Pars' permit must be surrendered. Failure to maintain an active, current license or permit shall be considered a violation of probation.

If respondents' license or permit expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof, due to tolling or otherwise, upon renewal or reapplication respondents' license or permit shall be subject to all terms and conditions of this probation not previously satisfied.

11. License or Permit Surrender While on Probation. Following the effective date of this decision, should respondents cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondents may tender the pharmacy license or permit to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it

deems appropriate and reasonable. Upon formal acceptance of the surrender of the license or permit, respondents shall no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondents' license and/or permit history with the Board.

Upon acceptance of the surrender, respondent Akmal shall relinquish his pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondents may not reapply for any license or permit from the board for three (3) years from the effective date of the surrender. Respondents shall meet all requirements applicable to the license and/or permit sought as of the date the application for that license and/or permit is submitted to the board, including any outstanding costs.

No later than thirty days prior to surrender of the permit, Pars and Akmal shall notify the Board of their intention to surrender the permit, and take all steps required by the Board to ensure the patients are serviced, including, but not exclusive to, notifying the prescribing doctors, filling or transferring prescriptions.

Upon surrender of the permit, Pars shall cease operation.

12. Notice to Employees. Respondent owner shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent owner shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions of probation by posting a notice, circulating a notice, or both. Additionally, respondent owner shall submit written notification to the board, within fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to submit such notification to the board shall be considered a violation of probation. "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and relief employees and independent contractors employed or hired at any time during probation.

13. Owners and Officers: Knowledge of the Law. Respondent Cal-Mex shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of ten percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating under penalty of perjury that said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy. The failure to timely provide said statements under penalty of perjury shall be considered a violation of probation.

14. Posted Notice of Probation. Respondent owner shall prominently post a probation notice provided by the board in a place conspicuous and readable to the public. The probation notice shall remain posted during the entire period of probation. Respondent owner shall not, directly or indirectly, engage in any conduct or make any statement which is intended to mislead or is likely to have the effect of misleading any patient,

customer, member of the public, or other person(s) as to the nature of and reason for the probation of the licensed entity.

Failure to post such notice shall be considered a violation of probation.

15. Violation of Probation. If respondents have not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondents, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondents violate probation in any respect, the Board, after giving respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondents during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation. Upon written notice by the board or its designee indicating successful completion of probation, respondents' license and permit will be fully restored.

This Decision shall become effective January 29, 2018.

IT IS SO ORDERED this 29th day of December 2017.



By

Amarylis "Amy" Gutierrez, Pharm.D.
Board President
California State Board of Pharmacy

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

In the Matter of the First Amended Accusation
Against:

ARASH AKMAL,
Pharmacist License No. RPH 60763

Respondent.

Case No. 5230

OAH No. 2016010849

In the Matter of the Accusation Against:

PARS PHARMACY, INC. dba
PARS PHARMACY, ARASH AKMAL,
OWNER
Pharmacy License No. PHY 50931

Respondent.

Case No. 5230

OAH No. 2017020374

**ORDER EXTENDING TIME FOR
ISSUANCE OF A DECISION AFTER NON-ADOPTION**

TO ALL PARTIES:

On July 31, 2017, the California State Board of Pharmacy (Board) declined to adopt the Proposed Decision rendered May 1, 2017, and issued an Order Rejecting Proposed Decision.

Pursuant to Government Code § 11517(c)(2)(E)(iv), the time for issuance of a Decision must be extended for 30 days to give the Board an adequate opportunity to meet, consider and prepare its decision in this matter.

IT IS SO ORDERED on this 30th day of November 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended
Accusation Against:

ARASH AKMAL,
Pharmacist License No. RPH 60763

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OWNER
Pharmacy License No. PHY 50931

Respondent.

Case No. 5230

OAH No. 2017020374

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated July 31, 2017. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issues: Whether the legal conclusions are accurate; and, if cause for discipline exists, what penalty, if any, should be applied in this case.

Written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd., Suite N-219, Sacramento, California, on or before October 12, 2017. **No new evidence may be submitted.**

IT IS SO ORDERED this 12th day of September 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in cursive script, appearing to read "Amy Gutierrez", written in black ink.

By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended
Accusation Against:

ARASH AKMAL,
Pharmacist License No. RPH 60763

Respondent.

Case No. 5230

OAH No. 2016010849

In the Matter of the Accusation Against:

PARS PHARMACY, INC. dba
PARS PHARMACY, ARASH AKMAL,
OWNER
Pharmacy License No. PHY 50931

Respondent.

Case No. 5230

OAH No. 2017020374

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

The parties will be notified of the date for submission of such argument when the transcript of the hearing becomes available.

It is so ORDERED on July 31, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the First Amended
Accusation Against:

ARASH AKMAL,

Respondent.

Case No. 5230

OAH No. 2016010849

In the Matter of the Accusation Against:

PARS PHARMACY, INC. dba
PARS PHARMACY, ARASH AKMAL,
OWNER

Respondent.

Case No. 5230

OAH No. 2017020374

PROPOSED DECISION

This consolidated hearing was heard by Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 28, 29 and 30, 2017.

Susan Melton Wilson, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board).

Arash Akmal (Akmal) and Pars Pharmacy, Inc. (Pars), (collectively, respondents) were represented by Rob D. Cucher, Attorney at Law. Akmal was present throughout the hearing.

Oral and documentary evidence was received at the hearing¹. The matter was submitted for decision on March 30, 2017.

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¹ The parties agreed to a protective order for exhibits which contained extensive references to patient information and attempted to redact all patient information from the exhibits. The ALJ found additional exhibits with patient information and added them to the protective order.

SUMMARY

Complainant seeks to discipline respondents' licenses on the basis of allegations that Akmal committed fraud and unprofessional conduct in his handling of prescriptions when he worked as a pharmacist in the employ of Walgreens, and as the owner and pharmacist-in-charge of Pars, and mismanagement of records at Pars. Complainant requests, among other things, that as a consequence of any discipline imposed on Akmal that he be prohibited from serving as a manager, administrator, owner, member, officer, director, or partner of any licensee.

Complainant did not meet her burden of proof on the majority of allegations and causes for discipline related to Akmal's conduct at Walgreens, with the exception that in a few unspecified instances he was negligent in handling long-term prescriptions for his family. Complainant failed to meet her burden of proof that Akmal committed fraud or was negligent in handling prescriptions at Pars, but met her burden of proof that respondent mismanaged the protocols for monitoring the quantities of medications at Pars.

Akmal never admitted to fraud at Walgreens, and the evidence against him remained unsubstantiated by the prescribing physicians. Complainant relied on hearsay contained in Walgreens' investigation, including its interview with Akmal, to show Akmal had a uniform and widespread practice of fraudulently prescribing medications for his family and family friend, which was not sufficiently supported by the evidence. Akmal admitted to filling prescriptions for maintenance medication prior to obtaining the approvals from the prescribing doctors, but denied he did anything wrong. As to the specific prescriptions alleged, his statements to the police were either not confirmed by the prescribing doctors, and in certain cases were contradicted by the evidence.

As a result of the audit of Pars, complainant met her burden of proof regarding Pars' and Akmal's record-keeping of the discrepancies between prescriptions and inventory, but the errors were quickly remediated.

Akmal provided evidence in mitigation and rehabilitation which established support of continued licensure for himself and Pars, with a period of probation.

FACTUAL FINDINGS

Jurisdiction and Scope of Consolidated Matters

1(a). Complainant filed the First Amended Accusation in OAH Case No. 2016010849 against Akmal and the Accusation in OAH Case No. 2017020374 in her official capacity.

1(b). All jurisdictional requirements have been satisfied. The parties requested that the matters be consolidated for hearing, and by order dated February 28, 2017, OAH granted the parties request.

1(c). The Causes against Pars and Akmal in the Accusation, OAH Case No. 201702037, are also contained the First Amended Accusation, OAH Case No. 2016010849, against Akmal. The First Cause for Discipline in the Accusation (Pars Pharmacy-Furnished Dangerous Drugs without a Valid Prescription), is the same as the Fourth Cause for Discipline in the First Amended Accusation. The Second Cause for Discipline in the Accusation (Pars Pharmacy-Forged Prescriptions) is the same as the Fifth Cause for Discipline in the First Amended Accusation. The Third Cause for Discipline in the Accusation (Pars Pharmacy-Failure to Maintain Records of Acquisition and Discipline) is the same as the Sixth Cause for Discipline in the First Amended Accusation.

1(d). At the hearing, complainant withdrew the allegations against Akmal in the First Amended Complaint for fraud regarding 24 prescriptions Dr. Soni authorized for patients for purchase at the Walgreens Drug Store. Consistent with the complainant's withdrawal of these allegations against Akmal, the following language of the First Amended Accusation was stricken and/or amended:

page 9, paragraph 16h(2), line 18, "at least 26 prescriptions" was stricken and amended to "at least two prescriptions" and line 19, "Dr. V. Soni (24 prescriptions)" was stricken";

page 9, paragraph 16h(2), beginning with line 23 (Dr. Soni), page 10, and page 11 through line 24;

page 14, paragraph 18, line 11, " at least twenty-six (26) instances" was stricken and amended to "at least two instances";

page 14, paragraph 19b, line 26, "Dr. V. Soni (24 prescriptions) and" was stricken; and

page 15, paragraph 20c, line 22, "Dr. V. Soni (24 prescriptions) and" was stricken.

1(e). Complainant's motion to amend references to the Business and Professions Code as to Pars in the Fifth Cause of Action of the First Amended Accusation against Akmal, and the Second Cause of Action in the Accusation against Pars and Akmal, was granted and amended as follows.

Respondent is subject to disciplinary action under section 4301, Subdivision (f) and (g) for violating section 4324, subdivision (a), [] while he was working as pharmacist-in-charge of Pars Pharmacy", was amended to "under section 4301, subdivision (f) or (g)"....

1(f). Consistent with complainant's withdrawal of Dr. Soni's prescriptions, prescription number 236922 is also withdrawn from the First Amended Accusation, as to Walgreens in the list under paragraph 16 (c)(1) (Exhibit 4, p.AGO-37.)

Licenses, Akmal's Background and Cooperation with the Board

2(a). On February 22, 2008, the Board issued Pharmacist License number RPH 60763 to Akmal. The license expires on May 31, 2017, unless renewed.

2(b). No prior disciplinary action has been taken against Akmal's license.

3(a). On October 15, 2012, the Board issued Original Permit Number PHY 50931 (Permit) to Pars Pharmacy Inc., to do business as Pars Pharmacy. The Permit expires on October 1, 2017, unless renewed.

3(b) Akmal is and has been the President, 100 percent shareholder since October 15, 2012.

3(c). Akmal has been the Pharmacist-in-Charge since October 15, 2012.

3(d). No disciplinary action has been taken against the Permit.

4(a). This matter focuses on prescriptions filled by Akmal for his close family and close family friend as a pharmacist at Walgreens, and as the pharmacist-in-charge and owner of Pars. Iran S., the elderly mother of Akmal's close friend, and Akmal's elderly parents and in-laws, Mahin A., Houshang A. and Hassein R (the Akmal family or Akmal's family).

4(b). All the prescriptions were for medications that had been historically provided to Akmal's family and family friend for chronic conditions.

4(c). The prescriptions at issue were for the pharmaceuticals considered dangerous drugs under the pharmacy law.

4(d). ~~There was no evidence of theft or misappropriations of funds or diversion of prescription medication for a nonmedical purpose, or prescribing or disbursing pharmaceuticals which were not previously prescribed to Iran S., or any family members, which were no longer required for maintenance of chronic conditions.~~

5. Akmal obtained his bachelor of arts degree from the University of California, Irvine, and his pharmacy degree from the University of Southern California. He is married and has a two year-old daughter.

6. After graduating from pharmacy school, marrying and having difficulty finding positions in Los Angeles, he moved to the Palm Springs area, and on January 2012 secured a

position as a "floater" with Walgreens, working at temporary assignments in a variety of locations around Southern California. Akmal is very close to his family and at hearing, expressed with candor and familial compassion, that, as a pharmacist, his family entrusted him with their prescriptions and he would not expect them to rely upon anyone else but him.

7. Akmal fully cooperated with the Board's investigation.

Walgreens

8(a). The Board became involved as a result of a complaint made by Walgreens involving Akmal's sale of dangerous prescription drugs to the Akmal family and family friend during his short tenure as a floater. Walgreens terminated Akmal's appointment on or about June 30, 2012.

8(b). Walgreens reported Akmal to the Board on July 12, 2012. The Board relied upon the investigation of Sarah Bailey, a qualified pharmacist, who attempted to be meticulous in her follow-up to the Walgreens investigation, by analyzing its data and contacting the doctors attached to the disputed prescriptions.

8(c). Nevertheless, Ms. Bailey's investigation as to Walgreens was deficient, due to Ms. Bailey's overreliance on, and acceptance of, Walgreens claim that Akmal committed broad-scale fraud, and her inability to confirm the bulk of Walgreens claims directly with the prescribing doctors. Ms. Bailey repeatedly referred to Akmal's conduct at Walgreens as fraud in her communications, including in her communications with the Medi-Cal investigator. Her acceptance of Walgreens characterization of his conduct undermined the credibility of her investigation.

8(d). At hearing, almost five years after Walgreens reported Akmal to the Board, twenty-four alleged instances of prescription fraud with regard to Dr. Soni were withdrawn. In addition, Walgreen's claims that Akmal filled multiple prescriptions from Dr. Gharib for his family and Iran S. were denied by Dr. Gharib on November 16, 2013 (exhibit 14, p. AGO-143), and never substantiated, but remained in the First Amended Accusation.

~~8(e). The Board relied upon Ms. Bailey's investigation. Ms. Bailey was the only person who testified on the Board's behalf. The complainant did not provide any direct testimony from Walgreens, the prescribing doctors, or the purported video Walgreens' relied upon to reach its conclusion that Akmal was operating a stealth operation to defraud the pharmacy. Despite Ms. Bayley's diligence in reconciling Walgreens data regarding the prescriptions, she conceded that the Walgreens records were difficult to reconstruct and somewhat confusing.~~

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8(f). Medi-Cal, a California program, declined to investigate Walgreens charges because the prescriptions filled by Akmal were charged to Medicare providers, which are part of a federal program. Walgreens reversed the charges to Medicare providers, but nevertheless, there is no evidence that Medicare conducted an investigation about the prescriptions.

8(g). No criminal charges were filed against Akmal as a result of his arrest.

9(a). Walgreens fired Akmal based upon its investigation of multiple prescriptions to his family, and for disbursing prescriptions it considered fraudulent because Walgreens could not obtain verifications from the prescribing doctors.

9(b). Walgreens also has a policy, which Akmal was not aware of, which barred its pharmacists from transacting business with their families. This Walgreens policy is not part of the pharmacy law. Akmal found out about the policy during his interview with Walgreens before they fired him.

9(c). Walgreens reversed \$21,900.00 to Medicare prescription drug providers on multiple prescriptions prepared by Akmal, pressured Akmal to execute a settlement agreement requiring him to reimburse the company for the reimbursed charges, and after he refused, reported him to the Indio Police Department, who placed him under arrest. Walgreens also reported Akmal to the Board.

9(d). Walgreens relied upon video surveillance in reaching its conclusion respondent committed fraud. Walgreen concluded from the surveillance that Akmal acted secretly, with the intent of concealing his behaviors, and in concert with a group of co-conspirators who picked up prescriptions at various Walgreens' locations. The surveillance video was not introduced in this matter as evidence, and there was no foundation for Walgreens' conclusion from reviewing the video that Akmal committed fraud by falsifying and secretly dispensing multiple prescriptions he wrote on Walgreens' prescription pads. Walgreens insisted the video showed Akmal using several registers, packing, setting aside, and concealing prescriptions for pickup by an unknown driver at the pickup window. Walgreens reported perception of what the video revealed was credibly contradicted by Akmal's candor about his lack of knowledge about Walgreens policy barring sales to family, his unapologetic sense of duty for his elder family members and family friend, Iran S., his need to use various cash registers when he could not sign in or issue change, and the general practice of various family members picking up prescriptions for others. Walgreens' conclusion respondent concealed the prescriptions to support its fraud claim was not supported by the evidence.

9(e). Akmal's interrogation by the Indio Police Department on June 28, 2012, was inconclusive for fraud for the disputed prescriptions on June 7, 2012. In his interview with the Indio Police Department², Akmal never admitted to committing fraud and there is insufficient

² The circumstance of the interrogation was troublesome because of the manner in which the police investigator persuaded Akmal not to delay the interview to secure an attorney,

evidence that he wrote or disbursed prescriptions with the intent to defraud. Akmal insisted he refilled prescriptions for his family, but could not always get hold of the doctor, but refilled them anyway if they were important maintenance medication. Akmal believed it was consistent with pharmacy law to refill the medications required for maintenance so as not to disrupt the patient's medication regiment. Complainant's attempt to use Akmal's interrogation to undermine his credibility was not successful. Akmal admitted to the accuracy of his statements, but denied that he ever admitted to fraud.

9(f). Akmal's hearing statement that he did not intend to commit fraud is consistent with his representations to Ms. Bayley on November 8, 2013, and confirmed by complainant in its First Amended Accusation (Exhibit 4, p. AGO-42). Akmal was consistently candid with Walgreens, the Indio Police Department and Ms. Bayley. He plainly did not think he was doing anything wrong. He was filling prescriptions for maintenance medications by history prescribed without interruption, and he refilled these prescriptions. Akmal admitted to the Indio Police Department he wrote prescriptions based upon previous prescriptions his family and family friend had legitimately obtained; where a prescription was located at another pharmacy, in two circumstances, he may have written it as a new prescription instead of following the practice of formally transferring the prescriptions from another pharmacy by contacting the pharmacist-in-charge.

9(g). The Board attempted to use Akmal's interview with the Indio Police Department regarding a name, A. Sudarsin, found in Walgreens' records along with Akmal's prescriptions, to impeach his credibility. Akmal could not identify the individual to the police and at hearing, speculated about who the person could be. Nevertheless, there was no competent evidence that Akmal used a fictitious name for any prescription in issue, and complainant's attempt to undermine Akmal's credibility by his alleged use of the name of this unknown individual was without support. Akmal may have been inconsistent with his recollection as to whether he or other people filled the prescriptions for his family, but there is no competent evidence that Akmal attempted to hide the prescriptions he prepared and disbursed to the Akmal family or Iran S. Walgreens found Akmal's pharmacy license number was associated with each prescription in issue. The records were maintained by Walgreens and there was no competent evidence that respondent could or did input a false name, and did so for the purpose of committing fraud.

9(h). At hearing, Akmal did not disagree with his statements to the police investigator regarding the prescriptions to his family, but the interpretation given to his statements. Akmal's interrogation confirmed that when he was confident of the validity of long-standing prescriptions, and the need to refill them for maintenance, he did so, even if he could not always secure the doctor's authorization. As to the transfer process from one pharmacy to another, he conceded in one or two circumstances he did write new prescriptions, instead of securing the transfer. Ms. Bayley credibly testified, based upon her experience as a pharmacist, that there were two ways to properly obtain authorization for prescription refills, including

long-standing, and legitimate, prescriptions: call the doctor, who can be hard to reach; or call the previous pharmacy and secure a transfer, which is easier to do. Pharmacies have centralized data for prescriptions, so it is easier to call the pharmacy and secure the transfer, Akmal's statements are probative of his lack of rigor as to refill protocols during his tenure at Walgreens as to Iran S., who, based upon his conduct at Walgreens, he treated as if she was a member of his family.³

9(i). The Board's reliance on Walgreens' investigation to support its claims against Akmal was further undermined by Walgreen's acrimonious relationship with Akmal. There was strong evidence that Walgreens report to the Board was also influenced by its failure to secure an agreement with Akmal for reimbursement to Medicare for the \$21,900.00 for prescriptions he filled for the Akmal family and Iran S., and the resulting acrimony between Walgreens and Akmal. The rationale and necessity for Walgreens reversal of charges is unknown and irrelevant to the Board's investigation of Akmal. In addition to Walgreens reporting Akmal to the Indio Police Department, which resulted in his arrest, Akmal filed a civil suit against Walgreens for, among other things, false imprisonment, which was dismissed.

10(a). The complainant's Walgreen-related charges against Akmal were deficient, with regard to the allegations that he furnished dangerous drugs without a valid prescription and falsified prescription records under Business and Professions Code section 4301, subdivision (j) and (o) for violating section 4059, subdivision (a), with regard to the two 90-pill prescriptions for Lovaza 1 mg. capsules for Iran S. in the name of her physician, Dr. Shakibai. Lovaza is the brand name for Omega-3-acid ethyl esters, fish oil, and is used to control high triglycerides. By history Iran S. had been prescribed this medication for years prior to Akmal's tenure at Walgreens, continued with this medication after he was fired from Walgreens, and continues to be prescribed this medication which Akmal fills as the pharmacist-in-charge and sole owner of Pars.

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³ At hearing, respondent objected to the admission of the Indio Police Department investigation as irrelevant since the investigation was prompted by allegations based upon the Walgreens' investigation that have since been withdrawn or not proven. Complainant stated Akmal's statement to the police was for the purpose of impeachment. The ALJ sustained the objection in part on the grounds of relevancy, but allowed the report and related testimony admitted for impeachment purposes. Other than Akmal's interview, the police records were considered as hearsay, under the authority of *Lake v. Reed* (1997) 16 Cal.4th 448. The ALJ found Akmal's admissions to the police investigator materially consistent with his statements to Ms. Bayley and his testimony at hearing, and probative of his understanding that he could depart from the rigors of obtaining physician authorization for refilling maintenance medication.

10(b). Walgreens' records state the prescription was written on January 31, 2012 and it was filled twice, on April 4, 2012, and October 16, 2012. The first prescription was filled in Cathedral City and the second, in Palm Desert, consistent with Akmal's floater status at various Walgreen's. According to Ms. Bayley, Walgreens could not provide scanned images for the April 2012 prescription refill.

10(c). The alleged two prescriptions were actually one prescription with different numbers given to refills disbursed at two separate different locations.

10(d). According to Ms. Bayley's investigation, she communicated directly to Dr. Shakibai on December 12, 2013, who denied writing or approving a prescription for any patient he did not see within six months prior to the prescription. His records stated he had not seen Iran S. since November 30, 2010. Dr. Shakibai confirmed his representation to Ms. Bayley in writing. (Exhibit 14, pp. AGO-160-166.)

10(e). Dr. Shakibai's statement to Ms. Bayley that he did not authorize the prescriptions of Lovaza was contradicted by other admissible evidence. Walgreens maintained the prescription of Iran S.'s Lovaza (90 pills per refill) from Dr. Shakibai, at the time Akmal was terminated. When Walgreens transferred its prescription to Pars on January 24, 2013, it confirmed the original prescription date of January 31, 2012, the date Dr. Shakibai allegedly denied authorizing Lovaza, with a first and last refill date of October 16, 2012, a date after Akmal was terminated from Walgreens. The prescription provided for one remaining refill on or before January 31, 2013. Walgreens' records were transmitted to Pars on January 24, 2013, as the transferring pharmacy. The prescription number differed, but the evidence was persuasive that the prescription was the same, despite the omission of the April 2012 refill. (Exhibit G.)

11. The complainant charges Akmal with writing and dispensing unauthorized prescriptions (with 3 refills each) for Iran S. on January 31, 2012, for other dangerous drugs Dr. Shakibai prescribed by history. (First Amended Accusation, paragraph 16(h), pp AGO-39.) Dr. Shakibai confirmed in writing he did not prescribe the other dangerous drugs: Lexapro 20mg, (escitalopram), for depression and anxiety; Tricor 145 mg, (fenofibrate), for high cholesterol and triglycerides; Celebrex 200 mg, (celecoxib), for arthritic pain; and Niaspan (niacin), for high cholesterol. (Exhibit 14, pp. AGO-166-168.) These prescriptions were written by Akmal on a Walgreens' prescription pad, but not filled. As such, there is no support for complainant's charge with regard to these medications.

12. Based upon his own admission to filling prescriptions without prior authorization, complainant met her burden of proof that, in certain instances, more than the two identified as Dr. Shakibai's, Akmal filled prescriptions based upon history, or made new prescriptions instead of securing the transfer of prescriptions, for maintenance. Akmal may have been justified in providing a small amount of maintenance medication, pending doctor approval, but he did not satisfactorily explain whether he went beyond his discretion by filling the prescription prior to written approval.

13(a). Complainant failed to meet her burden of proof that Akmal forged prescriptions, committed fraud, or was involved in acts involving dishonesty, fraud or deceit with the intent of substantially benefitting himself or injuring another, with respect to Iran S. and family members Mahin A., Hossein S., and Houshang A. based upon Walgreens records for the disbursement of dangerous drugs on June 7, 2012, from several Walgreens locations. Walgreens contention that Akmal used 20 locations to perpetrate a fraud was unsupported; nine prescriptions disbursed to his family on June 7, 2012 were from one location.

13(b). Walgreens never contacted the prescribing doctors directly; they only spoke to Dr. Gharib's staff, who Dr. Gharib later contradicted.

13(c). Ms. Bayley, who attempted to fulfill her due diligence by repeatedly contacting the prescribing doctors, only spoke directly to Dr. Gharib, who confirmed he authorized the prescriptions, and Dr. Soni, who would not write a written statement that Ms. Bayley requested. All of Dr. Soni's prescriptions were stricken from the First Amended Complaint. As such, Iran S.'s subscription 236922 was not material to the charges relating to June 7, 2012.

13(d). Ms. Bayley never received a response directly from Dr. Hedvat (Hossein), Dr. Rezapour (Mahin, Houshang), or Dr. Torabzadeh (Iran S.) (Exhibit 14.) Ms. Bayley relied upon her conversations with risk management from the University of California, Irvine, but never had direct communications with or obtained any direct confirmation from Dr. Torabzadeh regarding the disputed prescriptions.

13(e). Given the initial overreach of the Walgreens' investigation, and Dr. Gharib's later disclosures, the accuracy of Walgreens conclusion that none of these other prescriptions were valid, was not clearly and convincingly established. At hearing, Akmal recalled writing prescription refills for Iran S. based upon previous prescriptions, specifically calling Dr. Gharib, to confirm the prescriptions and getting a verbal authorization to prescribe. Akmal's testimony is consistent with Dr. Gharib's confirmation he authorized the prescriptions for Lovazo, and Akmal's statement to the police that he attempted to call all doctors, and refilled maintenance prescriptions when he could not.

13(f). Notwithstanding Akmal's admissions that he refilled maintenance prescription medication when he could not obtain the authorization of the doctors, complainant failed to meet her burden of proof that any of the June 7, 2012 prescriptions were fraudulent, or constituted acts of dishonesty, fraud or deceit. These were not new or novel medications for these patients and by history these medications were part of their prescription profile. There was sufficient evidence that in certain circumstances the prescribing doctors did authorize the prescriptions, to place in doubt the conclusions reached about the other doctors' authorizations, who did not directly respond to Ms. Bayley. Given the nature and history of the prescriptions and the incidents of mistakes about the doctors' authorizations, and complainant's over-reliance on hearsay statements, complainant failed to meet her burden of proof that Akmal committed fraud or otherwise violated the pharmacy law during his tenure at Walgreens with regard to the disbursement of the disputed medications for the Akmal family and Iran S.

Pars Pharmacy

14. After he was terminated from Walgreens in June 2012, Akmal started his own pharmacy, Pars, and from October 15, 2012, through the present, he has been 100 percent owner and designated pharmacist-in-charge. Pars is a small retail pharmacy located in Orange County, California.

15(a). Ms. Bayley conducted an audit of Pars for the period of October 15, 2012 to November 8, 2013.

15(b). Ms. Bayley's audit was part of her investigation of Akmal's conduct filling and prescribing medication for his family and family friend at Walgreens. Ms. Bayley targeted 11 medications frequently dispensed the Akmal family and Iran S.

15(c). Based upon Ms. Bayley's investigation, no irregularities were found with prescriptions written and/or disbursed to the Akmal family.

15(d). Ms. Bayley identified 11 prescriptions, prescription numbers 10035 through 10046, for Iran S., which she determined were filled by Akmal as pharmacist-in-charge of Pars without proper authorization from Dr. Soni, because Pars failed to provide her with original prescriptions (exhibit 17, p. AGO-236.) Ms. Bayley had determined that 49 other prescriptions from Dr. Soni, she originally considered fraudulent, were not, after Pars produced the original prescriptions.

15(e). Ms. Bayley identified two prescriptions without proper verification from Dr. Torabzedah for Iran S., for Lovazo, prescription number 10594, dispensed July 10, 2013, and prescription number 10594, dispensed, September 19, 2013.

15(f). Of the 11 medications identified by Ms. Bayley, she identified six during the audit at PARS for irregularities between the orders and the disbursements:

1. Advair Diskuss, 250/50mcg (fluticasone/salmeterol), prescribed for asthma;
2. Crestor, 10 mg, 90 tablets (rosuvastatin), prescribed for hyperlipidemia (high cholesterol);
3. Cymbalta, 60mg, 30 capsules (duloxetine), prescribed for depression;
4. Lidoderm, 5% patch, 30 patches (
5. Lotemax, 0.5, Ophthalmic gel, 5 ml
6. Spiriva, 18mcg handinhaler, 30 doses

16(a). Complainant failed to meet her burden of proof that Pars and Akmal, furnished dangerous drugs without a valid prescription, or forged 11 prescriptions for Iran S.

16(b). Akmal provided sufficient documentation for his prescriptions. Akmal was required to secure the doctors' authorization before filling and disbursing written prescriptions. Ms. Bayley insisted respondent was required to use a special handwritten pad for oral prescriptions in keeping with long-standing custom and practice, but there is no specific requirement for keeping oral prescriptions in the pharmacist's handwriting, or recording them or keyboarding the information directly on a computerized form, which Akmal did, to satisfy the requirement of a writing. Akmal was incorrect in his initial assertion at hearing that the software he used was specifically authorized by the Board, but he provided credible testimony that the software used was specialized pharmacy software certified for use as such by a private organization.

16(c). Ms. Bayley also supported her conclusion that the 11 prescriptions from Dr. Soni were improperly documented and dispensed, because Akmal never disclosed to her during her audit that the prescriptions were oral. His failure to disclose to her whether the prescriptions were oral, even if true, is insufficient to support complainant's burden of proof, because Akmal did provide her with his records, either during or after the audit. Ms. Bailey had confirmed Dr. Soni's authorization for 49 other prescriptions. As such, it was clear there was an ongoing relationship between Pars, Akmal and Dr. Soni's office.

16(d). Akmal's documentation was consistent with the requirements for oral and written prescriptions provided by Ms. Bailey; oral prescriptions require documentation that the doctor authorized the prescription before the prescription was filled. Ms. Bayley agreed the fill date and the disbursement date can be different, and the insurance billing could occur the day the order is filled, as long as the doctor wrote the order or called it in that day. Akmal's documentation for the eleven prescriptions contained the necessary patient information, drug information (name, dosage, quantity) and refill information.

16(e). Akmal's documentation supported his testimony that he received oral authorization for the disputed 11 prescriptions (Exhibit 27). S. Hargrove from Dr. Soni's office faxed and signed her authorization on January 29, 2013, apologizing for her delay: "Dear Arash, you caught me at a bad time." (*Ibid.*)

16(f). Akmal also supported the validity of his documentation methods with credible and compelling testimony of his reasons for using a computerized system for oral prescriptions and confirming his prescriptions with the doctor's office. Akmal testified that his experience at Walgreens compelled him to set up a system where each prescription was recorded in his computer at the time it was ordered; and after he recorded the information he obtained further confirmation directly from the doctor's office. His prescriptions are written as "hard copy." Ms. Bayley's insistence that oral orders should be catalogued in a handwritten notepad was persuasively rebutted by Akmal's understanding and use of current computerized methods for pharmaceutical record-keeping.

16(g). Complainant contends Akmal's 11 computerized prescriptions for Iran S. are deficient as oral prescriptions because the authorizing individual's name was omitted from the

face of the computerized prescription, and the authorizations from Dr. Soni's office were sent in writing the next day. As part of his due diligence, Akmal required Dr. Soni's office to check either "yes or no" under the prescription, to further confirm the prescription, the number of refills, along with a signature of the individual authorizing the prescription.

16(h). Complainant claims Akmal's testimony is not credible and little weight should be given to his attempt to convert written prescriptions to oral prescriptions, particularly since he never told Ms. Bayley at his audit the prescriptions were oral, his hardcopy omitted the name of the authorizing individual from the physician's office, and Akmal had difficulty recalling the name of S. Hargrove at hearing. Nevertheless, given Akmal's history of filling prescriptions with Dr. Soni, Akmal's relationship with his office as evidenced by S. Hardgrove's apology, and his understandable interest in thorough record-keeping as a result of his experience at Walgreens, complainant has not met her burden that Akmal violated the pharmacy law by not obtaining authorization the day the prescriptions were filled.

17(a). Complainant failed to meet her burden of proof that Pars and Akmal furnished dangerous drugs without a valid prescription or committed fraud in the disbursement of two prescriptions from Dr. Torabzedah for Iran S., for Lovazo, prescription number 10594 from Dr. Torabzadeh, dispensed July 10, 2013, and prescription number 10594, dispensed, September 19, 2013.

17(b). Akmal produced documentation regarding to the Board in April 2015 supporting Dr. Torabzedah's electronic prescription for Lovazo, which appears to track the history of prescription number 10594. Prescription number 10023, was issued for Iran S. with one refill, with a request date of April 21, 2013. Complainant finds the documentation questionable because the two exhibits differ slightly in form. It is unknown why two electronic refills were sent the same day, but there is no material difference between the documents: both provide the written date of the prescription as April 21, 2013, both confirm one refill and an electronic authorization. One prescription provides the days (90) and quantity of the prescription (360), with a specific request date of April 21, 2013, 7:09:52 p.m. confirmed by fax with the notation, electronic refill response approved with changes (exhibit E). The other prescription provides just the days, and no fax confirmation and time, but contains a handwritten notation (most likely for the pharmacy) that it includes one new and one refill prescription (exhibit H). Each copy provides instruction to take one capsule by mouth, four times daily.

17(c). All the prescriptions for Iran S. for Lovazo during the audit period were also confirmed on an RX history report. The September 19, 2013, prescription confirmed an original and three refills, and was authorized by Mary from Dr. Torabazadeh's office (exhibit F). Ms. Bayley incorrectly identified zero refills as no prescription could be filled, which was capably rebutted by Akmal and supported by the records.

18(a). Complainant met her burden of proof that Pars failed to adequately maintain records of acquisition and disbursement during the audit period which covered the period October 15, 2012 through November 8, 2013.

18(b). During the audit period which ended November 8, 2013, complainant found a discrepancy between total purchases and dispensing, meaning the prescriptions were filled but not disbursed. Ms. Bayley discovered errors in her calculations which she corrected prior to hearing, which appreciably reduced the discrepancies; however, more calculation errors were discovered at hearing. Nevertheless, even after her errors were corrected, and calculations were adjusted for purchases not paid by insurance, discrepancies remained during the audit period.

18(c). The following discrepancies, as amended and corrected at hearing, were found between the purchasing and disbursement records for the following dangerous prescription drugs:

Advair Discus, 250/50mcg (60 doses) in amount of 18 boxes, prescribed for asthma ;

Crestor, 20 mg (90 tablets), in the amount of three bottles. Prescribed for high cholesterol;

Cymbalta 60 mg, (30 capsules), adjusted at hearing from a discrepancy of 35.9 bottles to a discrepancy of no more than eight bottles;

Liboderm (lidocaine/pain) 5 percent patch (30 patches), corrected at hearing from 21 boxes to 13 boxes;

Lotemax ophthalmic gel (loteprednol/eye inflammation), .05ml, three boxes; and

Spiriva (tiotropium) 18mcg handinhaler (emphyesema), 30 doses, four boxes

18(d). As of November 8, 2013, the last day of the audit period, there was a total of four bottles on hand of Cymbalta, but no stock on hand for any of the other pharmaceuticals. Ms. Bayley did not count prescriptions which were not processed, including any phone orders that were placed aside.

18(e). On November 9, 2013, the day after the audit period through November 15, 2013, Akmar reconciled the discrepancies above by ordering sufficient supplies from his wholesalers. Ms. Bayley contends this does not cure the deficiencies discovered in the audit, because it is the audit period that is relevant.

18(f). Akmal's confirmed at hearing that he prioritized his disbursement of prescriptions based upon the necessity and his line of credit with his wholesalers. He maintained that he placed orders with his wholesalers within a reasonable time after he filled the

prescription, and there is insufficient evidence to the contrary. All the orders were reconciled no later than November 15, 2013.

18(g). Akmal denied knowing the results of Ms. Bayley's audit when he reconciled his discrepancies. Ms. Bayley came to Pars for a total of 2.5 hours on November 8, 2013, and had no recollection of contacting Akmal afterward to discuss the results of her audit. Ms. Bayley did not have the records of purchase from the wholesaler on the inspection date. Notwithstanding his insistence he was not purposefully manipulating his records, it was clearly established that he did not have sufficient stock on hand to fill the orders.

Aggravation/Mitigation/Rehabilitation

19(a). Akmal made mistakes at Walgreens and Pars, but in order to ensure the public is adequately protected, his mistakes do not require the highest level of discipline because his conduct was not fraudulent, but at most careless, and easily remediated.

19(b). Akmal was not charged or convicted of any crime, or Medicare fraud. There is no evidence he diverted drugs for his own profit, or prescribed or distributed drugs which were not already part of the medication regimen of the Akmal family or Iran S., and otherwise authorized by their doctors.

19(c). The investigation against Akmal was extensive and far reaching, and while it appeared on its face to expose extreme misconduct, when fully analyzed, it did not. During his short tenure at Walgreens, Akmal violated its policy against filling prescriptions for family members, a policy that is not relevant to the pharmacy law. Walgreens' investigation was distorted by the dramatic and unsubstantiated conclusions it reached from its video, which was not part of the evidence in this matter, its own records, which were somewhat confusing, and its freedom from the bounds of evidentiary standards applicable to disciplinary proceedings.

19(d). The passage of time is an important factor in mitigation. Akmal's tenure at Walgreens concluded in 2012, the audit for Pars was conducted in 2013, and Akmal has been operating a pharmacy without any known complaints from pharmacists or patients for over four-and-a-half years. Akmal has been under a cloud of suspicion since the consolidated matter was filed and publicized. Nevertheless, and he has been making every effort to move his pharmacy practice forward, and satisfy the concerns of insurance companies and doctors who question him about the complainant's actions.

19(e). Akmal's is a committed and compassionate family man, with a young family to support. As the pharmacist-in-charge and owner of a small independent pharmacy, Akmal provides an important public service. His business is growing; he is just reaching the point where he can hire staff to assist him.

19(f). This is not a situation where the pharmacist was filling prescriptions that were not required or appropriate. Akmal was accused of conduct related to prescriptions for the

Akmal family, which unbeknown to him, violated a Walgreens policy, and his elder family friend. However, there is no question that the medications prescribed were long-standing prescriptions for chronic conditions, and the doctors prescribing them, or their successors, never discontinued the medications, and continued to prescribe them. At Pars, Akmal failed to maintain a complete accounting for the prescriptions for dangerous drugs he filled. However, Ms. Bayley made mistakes as well, and as such, certain discrepancies initially reported were much smaller, and were quickly resolved when Akmal ordered sufficient supplies.

19(g). Akmal has made every effort to learn from his experience at Walgreens and has remediated his practices in recording prescriptions and ensuring the appropriate authorization is secured. Akmal has demonstrated he is capable of operating a small pharmacy, as owner and pharmacist-in-charge. He uses a computerized program for prescriptions, and confirms oral prescriptions in writing with the pharmacy. He is working closely with the prescribing doctors and is servicing his clients and their medical providers and insurers, including Medicare providers, without complaint. As a small, independent pharmacy, Pars provides a service to the community.

19(h). In aggravation, the complainant may have failed to prove Akmal committed fraud on June 7, 2012, with any specifically-identified prescriptions to family members, or fraud or unprofessional conduct in Iran S.'s prescriptions, but Akmal admitted to taking shortcuts in prescribing maintenance medication. Based on his conduct at Walgreens, it is unclear whether Akmal fully appreciates the limits of his discretion to prescribe maintenance medication pending receipt of a doctor's authorization. Akmal also was lax in his attention to the specific policies of Walgreens against prescribing to family members, which, without more, did not violate the pharmacy law, but demonstrated a lack of attention to protocols. Although, certain discrepancies at Pars were large, as a whole, the discrepancy between prescription orders and supplies-on-hand was not, and was quickly remediated, he needs to be more rigorous in his management of prescriptions.

Costs of Investigation and Prosecution

20(a). The Board has incurred \$14,700.00 in the form of Attorney General charges, (exhibit 26), and \$28,316.50 in investigation charges, (exhibit 25), though March 24, 2017, or a total of \$43,016.50, in connection with its investigation and enforcement of this matter. When the scope of the investigation is considered, the costs are reasonable.

20(b). Akmal has been the pharmacist-in-charge and sole owner of Pars since October, 2016. He supports his family with his business earnings, has worked hard to develop his business, and has just started to reach the point in his business where he can hire other people to assist him. His business development has been impacted by the complainant's charges against him, which are public record.

20(c). In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business

and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

20(d). In this case, the costs of investigation are reasonable given the scope of the investigation conducted, but nevertheless remain disproportionately large to prove Akmal and Pars engaged in misconduct regarding his admission of instances of refilling prescription medication for the Akmal family before receiving authorization from the prescribing physician, and his record-keeping of supplies of prescription medication at Pars.

20(e). Akmal and Pars asserted their jointly-held right to a fair hearing, and provided a vigorous and colorable defense to the complainant's multiple causes for discipline against them. Understandably, the complainant had a good faith reason to believe misconduct occurred based upon Walgreens' claims and Akmal's failure to abide by Walgreens' protocols. However, complainant could not sustain her burden of proof on the vast majority of the allegations, notably, the more serious allegations of fraud, and negligence as to specific prescriptions.

20(f). Charging Akmal and Pars with the full cost of the investigation would be punitive. Akmal is self-employed as a pharmacist and is supporting a young family. His business has been slow to grow due in part to the publicity related to this consolidated matter. Further, Pars, and Akmal, individually, and as pharmacist-in-charge, will be responsible for paying any costs incurred to comply with probation, and to charge them the full costs of investigation and enforcement would be burdensome and punitive.

20(g). Accordingly, the costs of investigation and enforcement will be reduced by sixty percent to \$17, 206.6, which are the reasonable costs in this matter. Respondent will be permitted to make installment payments during the term of his probation.

Discipline and Departure from Disciplinary Guidelines

21(a). Akmal's conduct was not fraudulent, deceitful, dishonest, or self-serving. Complainant failed to prove he committed the most serious acts alleged regarding specific patients. At most, during his short tenure at Walgreens, based upon Akmal's admissions, complainant met her burden of proof that he was involved in more than two instances of filling prescriptions for long-standing maintenance medications for the Akmal family, without

obtaining prior approval from the prescribing doctors. At Pars, Akmal failed to maintain a complete accounting for the prescriptions for dangerous drugs he filled. However, Ms. Bayley made mistakes as well, and as such, the discrepancies initially reported were much smaller, and were quickly resolved.

21(b). Based on the evidence the full scope of the complainant's request for discipline is not required to protect the public. Akmal demonstrated that he learned from his errors in judgment during his tenure at Walgreens with regard to disbursing prescriptions for the Akmal family and Iran S. as the pharmacist-in-charge and owner of Pars. Akmal's record-keeping errors were easily remediated, and were not the result of fraud.

21(c). Based upon the evidentiary record, and after consideration of the factors in mitigation and aggravation, the public will be adequately protected with an order revoking respondents' license and permit, with a three-year period of probation, which is consistent with the disciplinary guidelines.

21(d). A three-year period of probation is sufficient to protect the public. Complainant failed to meet her burden of proof regarding fraud or negligence for the specific prescriptions alleged in either accusation. The discipline is limited to the First Cause in the First Amended Accusation which refers to "instances." The scope of discipline is supported by Akmal's admission that he filled prescriptions for maintenance medication when he could not reach the doctors, and the concern Akmal may not sufficiently rigorous in applying of his discretion in this regard. Akmal has demonstration rehabilitation by his practices at Akmal. Under the standard probationary terms, the Board will have discretion to order respondents to participate in relevant educational programs which are appropriate to the circumstances.

21 (e). In addition, the following departures from the disciplinary guidelines for violations of specific code sections incorporated in the Order.

(e)(1). License or permit suspension is not required to protect the public: Akmal has been under investigation since 2012, has not been charged with any crimes, and given his conduct and the passage of time, a period of license suspension, will not further the goals of public protection, and will not be required. As to Pars, the issues are limited to record-keeping, ~~wholesale suspension of the permit is not supported by the record.~~

(e)(2). The restriction against respondents owning or managing a pharmacy, and supervising pharmacists shall not apply to Pars, and Akmal and/or Pars should not be restricted from hiring additional pharmacists to assist Akmal at Pars: There were errors in record-keeping which were quickly corrected. Respondents have developed relationships with the prescribing doctors, and there is no evidence that Akmal cannot operate a pharmacy responsibly. Pars has been operating for close to five years, without complaints from doctors or patients, and continued operation of a small pharmacy provides a service to the public. As Pars grows, it should not be restricted from hiring additional pharmacists.

(e)(3). The provision for license or permit surrender was amended to also provide for reasonable notification to the Board in the event the permit is surrendered and for proper notification and service to the prescribing doctors and patients. Pars shall stop operating the date of surrender.

LEGAL CONCLUSIONS

Burden of Proof

1. Complainant has the burden to prove by clear and convincing evidence the Causes against respondents. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856)

Causes related to Akmal's conduct at Walgreens

2. There are sufficient grounds to discipline Akmal's license based on the First Cause for Discipline in the First Amended Accusation unprofessional conduct, pursuant to Business and Professions Code⁴ section 4301, subdivision (j), (violation of any statutes regulating dangerous drugs), subdivision (l) (violating or attempting to violate state statutes or regulations governing pharmacy) for his violation of section 4059, subdivision (a) (furnishing a dangerous drug without a prescription), by reason of factual findings 1-4, and 8-11. Complainant failed to meet her burden of proof as to the remaining two prescriptions for Iran S. Nevertheless, based upon Akmal's admission of his practice of filling maintenance medication for his family members, complainant did meet her burden of proof that, in at least two instances, Akmal, furnished a dangerous drug without a prescription.

3. There are insufficient grounds to discipline Akmal's license based on the Second Cause for Discipline in the First Amended Accusation for unprofessional conduct pursuant to section 4301, subdivision (f) (the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption), and (g) (knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts), based upon his dispensing new prescriptions in the names of the Akmal family, and ~~two prescriptions for Irene S. using the name of Dr. Shakabai, by reason of factual findings 1-4, and 8-12.~~ Complainant did not meet her burden of proof that Akmal's conduct in filling prescriptions for the Akmal family, and for Iran S. involved moral turpitude, dishonesty, fraud, deceit or corruption, or he knowingly made a false representation.

4. There are insufficient grounds to discipline Akmal's license based on the Third Cause for Discipline in the First Amended Accusation for acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another pursuant to

⁴ Unless otherwise stated, all further statutory references are to the Business and Professions Code.

section 4301, subdivision (f), by reason of factual findings 1-4, and 8-13, based upon: (a) Akmal's admission he admitted fraud on June 7, 2012; (b) a pattern and practice of falsifying prescriptions for family members, and which were a violation of Walgreens' policy and (c) two fraudulent prescriptions for Iran S.

Causes related to Akmal's conduct at Pars

5. There are insufficient grounds to discipline Akmal individually or as pharmacist-in-charge and owner of Pars and Pars, based on the First Cause for Discipline in the Accusation against Pars and Akmal, and the Fourth Cause for Discipline in the First Amended Accusation against Akmal, pursuant to section 4301, subdivisions (j) and (o) for unprofessional conduct for violating the law regulating controlled substances, or attempting to violate the law, or conspiring to violate the law, by furnishing dangerous drugs without a valid prescription at Pars, by reason of factual findings 14-17.

6. There are insufficient grounds to discipline Pars and Akmal, individually, or as pharmacist-in-charge and owner of Pars, based on the Second Cause for Discipline in the Accusation against Pars and Akmal, and the Fifth Cause for Discipline in the First Amended Accusation against Akmal, pursuant to section 4301, subdivisions (f) or (g), for falsifying prescriptions for Iran S. on behalf of Dr. Soni and Dr. Torbzadeh, by reason of factual findings 14-17.

7(a). There are sufficient grounds to discipline Pars, and Akmal, individually, and as pharmacist-in-charge and owner of Pars, based on the Third Cause for Discipline in the Accusation against Pars and Akmal, and the Sixth Cause for Discipline in the First Amended Accusation against Akmal, for unprofessional conduct pursuant to section 4301, subdivisions (j) and (o), in conjunction with California Code of Regulations, title 16 (Regulations), section 4081, subdivision (a) and (b) of for substantial discrepancies between the dispensed/billed prescriptions for dangerous drugs and purchased/acquired dangerous drugs during the audit period, by reason of factual findings 18.

7(b). Pars' and Akmal's argument that Akmal responsibly reconciled the discrepancies within a week of the audit and Akmal's purchases were consistent with his acquisition and disposition responsibilities was not persuasive. According to the plain meaning of the Regulations, "current inventory" as used in Sections 4081 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. Even assuming Akmal was not required to order the prescription drugs the day it was billed, and he acted responsibly by ordering the dangerous drugs within a reasonable time, and fully resolved the discrepancies, he was required at all times to account for the discrepancies, and the evidence is persuasive that Pars and Akmal did not at the time of the audit. Ms. Bayley was not provided with any documentation of pending orders, transmittals, or any notation which acknowledged the discrepancies and provided, as required, a "complete accountability for all dangerous drugs handled by every licensee."

8. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, in the total sum of \$17,206.60, which is equivalent to a sixty percent reduction in both the cost of investigation and enforcement, by reason of legal conclusions 1-7, and factual finding 20.

9(a). All evidence submitted in mitigation and rehabilitation, as well as that submitted in aggravation, has been considered in light of the Board's Disciplinary Guidelines (CCR, tit. 16, § 1760) and criteria for rehabilitation (CCR, tit. 16, § 1769), by reason of factual findings 1-7, and 19. Actual revocation of Akmal's license is not necessary for the protection of the public. Nevertheless, given Akmal's admitted instances of dispensing maintenance medication without the prior approval of the prescribing doctors, without sufficient understanding of the scope of his discretion, and his failure to maintain complete records of acquisition and disposition at Pars, a period of probation and monitoring by the Board is warranted.

9(b). Departure from the Disciplinary Guidelines is warranted, by reason of factual finding 21, and is considered in the Order below.

ORDER

License number RPH 60763 issued to respondent Arash Akmal, and Permit Number 50931, issued to respondent Pars Pharmacy, dba Pars, Arash Akmal, owner, (collectively, respondents) are revoked; however, the revocation is stayed and respondents are placed on probation for three years upon the following terms and conditions:

1. Obey All Laws. Respondents shall obey all state and federal laws and regulations. Respondents shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; and (4) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or permit which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board. Respondents shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondents shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed,

probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board. Upon receipt of reasonable prior notice, respondents shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff. Respondents shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondents' compliance with the terms and conditions of probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education. Respondents shall provide evidence of Akmal's efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee.

6. Notice to Employers. During the period of probation, respondents shall notify Akmal's present and prospective employers of this decision and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent Akmal undertaking any new employment, respondents shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in this case and terms and conditions imposed thereby. It shall be respondent Akmal's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Akmal works for or is employed by or through a pharmacy employment service, respondents must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in this case in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Akmal's undertaking any new employment by or through a pharmacy employment service, respondents shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in this consolidated case, and the terms and conditions imposed thereby. It shall be respondents' responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether Respondent is an employee, independent contractor or volunteer.

7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant with the exception of Pars. During the period of probation, respondents shall not supervise any intern pharmacist, be the PIC or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

This provision shall not apply to respondents’ supervision of interns, serving as pharmacist-in-charge, designated representative-in-charge, or serving as a consultant to Pars Pharmacy Inc. dba Pars Pharmacy, Akmal, 100 percent owner.

8. Prohibition against serving as a manager, administrator, owner, member, officer director, associate or partner of a licensee for three years. Respondents shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee for three years.

This provision shall not prohibit respondents from serving as a manager, administrator, owner, member, officer, director, associate or partner at Pars Pharmacy Inc. dba Pars Pharmacy, Akmal, 100 percent owner.

9. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondents shall pay to the board its costs of investigation and prosecution in the amount of \$17, 206.60. Respondents shall make installment payments on a monthly or quarterly schedule approved by the Board. There shall be no deviation from the approved schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondents shall not relieve respondents of their responsibility to reimburse the board its costs of investigation and prosecution.

10. Probation Monitoring Costs. Respondents shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

11. Status of License and Permit. Respondents shall, at all times while on probation, maintain an active, current license and permit with the Board, including periods of suspension or tolling, except if Akmal's license is suspended or tolled, Pars' permit must be surrendered. Failure to maintain an active, current license or permit shall be considered a violation of probation.

If respondents' license or permit expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof, due to tolling or otherwise, upon renewal or reapplication respondents' license or permit shall be subject to all terms and conditions of this probation not previously satisfied.

12. License or Permit Surrender While on Probation. Following the effective date of this decision, should respondents cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondents may tender Akmal's pharmacy license and Pars's permit to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license or permit, respondents shall no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondents' license and/or permit history with the Board.

Upon acceptance of the surrender, respondent Akmal shall relinquish his pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondents may not reapply for any license or permit from the board for three (3) years from the effective date of the surrender. Respondents shall meet all requirements applicable to the license and/or permit sought as of the date the application for that license and/or permit is submitted to the board, including any outstanding costs.

No later than thirty days prior to surrender of the permit, Pars and Akmal shall notify the Board of their intention to surrender the permit, and take all steps required by the Board to ensure the patients are serviced, including, but not exclusive to, notifying the prescribing doctors, filling or transferring prescriptions.

Upon surrender of the permit, Pars shall cease operation.

13. Notification of a Change in Name, Residence Address, Mailing Address, Place of Business or Employment. Respondents shall notify the Board in writing within ten (10) days of any change of employment or the change of location of Pars. Said notification shall include the reasons for leaving employment or changing the location of Pars, the address of the new employer or Pars, the name of the supervisor and owner, and the work schedule if known. Respondents shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) or relocation of Pars shall be considered a violation of probation.

14. Tolling of Probation. Except during periods of suspension, respondent Akmal shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month, or for another minimum period designated by the Board. Any month during which this minimum is not met shall toll the period of probation for respondents, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met for respondents. During any such period of tolling of probation, respondents must nonetheless comply with all terms and conditions of probation.

Should respondent Akmal, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 80 hours per calendar month, or another period designated by the Board, in California, respondents must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent Akmal's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which Akmal is not practicing as a pharmacist, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist, as defined by section 4000 *et seq.*, for at least 80 hours per calendar month, or another period designated by the Board.

15. Violation of Probation. If respondents have not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondents, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondents violate probation in any respect, the Board, after giving respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondents during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

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16. Completion of Probation. Upon written notice by the board or its designee indicating successful completion of probation, respondents' license and permit will be fully restored.

DATED: May 1, 2017

DocuSigned by:

Eileen Cohn

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EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings

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7

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

10 In the Matter of the Accusation Against:

Case No. 5230

11 **PARS PHARMACY, INC. dba**
12 **PARS PHARMACY,**
13 **ARASH AKMAL, Owner**
4050 Barranca Parkway, Suite 150
14 Irvine, CA 92604

ACCUSATION

15 Permit No. PHY 50931

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 15, 2012, the Board of Pharmacy issued Original Pharmacy
23 Permit Number PHY 50931 to Pars Pharmacy Inc., to do business as Pars Pharmacy (Respondent
24 Pharmacy), with Arash Akmal as 100% shareholder (Respondent Pharmacy Owner). Arash Akmal
25 has also been Pharmacist-in-Charge of Pars Pharmacy since October 15, 2012 and at all times
26 relevant herein. The Pharmacy Permit was in full force and effect at all times relevant to the
27 charges brought herein and will expire on October 1, 2016, unless renewed.
28

1 3. On or about February 22, 2008, the Board of Pharmacy issued Pharmacist License
2 Number RPH 60763 to Arash Akmal. The Pharmacist License was in full force and effect at all
3 times relevant to the charges brought herein and will expire on May 31, 2017.

4 **JURISDICTION**

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

8 5. Section **4059** of the Code states, in pertinent part, that a person may not furnish any
9 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
11 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13 6. Section **4081** of the Code provides in pertinent part:

14 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
15 or dangerous devices shall be at all times during business hours open to inspection by authorized
16 officers of the law, and shall be preserved for at least three years from the date of making. A
17 current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment
18 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption
19 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
20 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who
21 maintains a stock of dangerous drugs or dangerous devices.

22 (b) The owner, officer, and partner of a pharmacy ... shall be jointly responsible, with the
23 pharmacist-in-charge or designated representative-in-charge, for maintaining the records and
24 inventory described in this section.”

25 7. Section **4300** of the Code states:

26 “(a) Every license issued may be suspended or revoked.
27
28

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

4 "(1) Suspending judgment.

5 "(2) Placing him or her upon probation.

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

7 "(4) Revoking his or her license.

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

10 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
11 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
12 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
13 may issue the license subject to any terms or conditions not contrary to public policy...

14 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
15 certificate of licensure for any violation of the terms and conditions of probation. Upon
16 satisfactory completion of probation, the board shall convert the probationary certificate to a
17 regular certificate, free of conditions.

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

23 8. Section 4301 of the Code states:

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

27 "(a) Gross immorality.

28

...

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

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

6 ...
7

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

9 ...
10

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

14 9. Section 4307 of the Code states at sub-division (a) that :

15 Any person who has been denied a license or whose license has been revoked or is under
16 suspension, or who has failed to renew his or her license while it was under suspension, or who has
17 been a manager, administrator, owner member, officer, director, associate, or partner of any
18 partnership, corporation, firm, or association whose application for a license has been denied or
19 revoked, is under suspension or has been placed on probation, and while acting as the manager,
20 administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly
21 participated in any conduct for which the license was denied, revoked, suspended, or placed on

22 probation, shall be prohibited from serving as a manager, administrator, owner, member, officer,
23 director, associate, or partner of a licensee as follows:

24 (1) Where a probationary license is issued or where an existing license is placed on
25 probation, this prohibition shall remain in effect for a period not to exceed five years.

26 (2) Where the license is denied or revoked, the prohibition shall continue until the license
27 is issued or reinstated.

28 10. Section 4113 of the Code provides at sub-division (c):

1 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with the state
2 and federal laws and regulations pertaining to the practice of pharmacy.

3 11. Section 4324 states:

4 "(a) Every person who signs the name of another, or of a fictitious person, or falsely
5 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for
6 any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
7 state prison, or by imprisonment in the county jail for not more than one year.

8 "(b) Every person who has in his or her possession any drugs secured by a forged
9 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the
10 county jail for not more than one year."

11 12. California Code of Regulations, title 16, section 1718 states:

12 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions
13 Code shall be considered to include complete accountability for all dangerous drugs handled by
14 every licensee enumerated in Sections 4081 and 4332.

15 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
16 available for inspection upon request for at least 3 years after the date of the inventory."

17 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 14. Drug Classifications

24

Brand Name	Generic Name	Dangerous Drug Per B & PC 4022	Controlled Substance per B & PC 4022	Indications for use
Lovaza 1gm	Omega-3-acid ethyl esters	Yes	No	High Triglycerides
Lexapro 20mg	escitalopram	Yes	No	Depression and

25
26
27
28

				Anxiety	
1	Tricor 145mg	fenofibrate	Yes	No	High Cholesterol and Triglycerides
2	Celebrex 200mg	celecoxib	Yes	No	Arthritic Pain
3	Niaspan	Niacin	Yes	No	High Cholesterol
4	Boniva	Ibandronate	Yes	No	Bone Loss
5	Glucophage 500 mg	Metformin	Yes	No	Hyperglycemia
6	Remeron 15 mg	mirtazapine	Yes	No	Depression
7	Neurotin 300 mg	gabapentin	Yes	No	Epilepsy
8	Levoxyl 0.025mg	levothyroxine	Yes	No	Hypothyroidism
9	Singulair 10mg	mentolukast	Yes	No	Asthma
	Theo-24 200 mg	theophylline	Yes	No	Asthma
10	Tradjenta 5MG	linagliptin	Yes	No	Hyperglycemia
11	Restasis -0.05% Ophthalmic emulsion	cyclosporin	Yes	No	Chronic Dry Eye
12	Lipitor 40 mg	atorvastatin	Yes	No	Hyperlipidemia
13	Vesicare 5mg	solifenacin	Yes	No	Overactive Bladder
14	Freestyle Lancets	Freestyle Lancets	No	No	Make Punctures to monitor Glucose Level
15	One Touch Ultra Smart Kit	One Touch Ultra Smart Kit	No	No	Blood Glucose Monitoring System
16	Advair Diskus 250/50mcg	Fluticasone/salmeterol	Yes	No	Asthma
17	Aricept 5mg	donepezil	Yes	No	Alzheimer's Disease
18	Crestor 10mg	rosuvastatin	Yes	No	Hyperlipidemia
19	Crestor 5mg	rosuvastatin	Yes	No	Hyperlipidemia
20	Cymbalta 60mg	duloxetine	Yes	No	Depression
	Diovan 160mg	valsartan	Yes	No	Hypertension
21	Diovan 80mg	valsartan	Yes	No	Hypertension
22	Lidoderm 5% patch	lidocaine	Yes	No	Pain
23	Lotemax 0.5 ophthalmic gel	loteprednol	Yes	No	Inflammation of eye
24	Spiriva 18mcg handihaler	tiotropium	Yes	No	Emphysema

FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

15. The following factual allegations are common to all causes for discipline in this case:

1 a. Respondent Par Pharmacy Inc. dba Pars Pharmacy, is a retail pharmacy located (prior
2 to October 15, 2013) in the city of Lake Forest, CA.

3 b. Since October 15, 2012 and at all times relevant herein, Arash Akmal (Respondent
4 Pharmacy Owner) has been 100% owner and designated pharmacist-in-charge of Par Pharmacy.

5 **WALGREENS DRUG STORE**

6 c. In 2012 Respondent Pharmacy Owner Arash Akmal was employed as a "floater"
7 pharmacist for Walgreens Drug Stores Pharmacy – a position which called for him to work
8 temporary assignments in approximately 20 Walgreens Drug Store Pharmacy (Walgreens)
9 locations in southern California.

10 d. Approximately between January 1 and June 30, 2012, Respondent Pharmacy
11 Owner was involved in a fraudulent prescription writing scheme by which he wrote falsified
12 prescriptions on Walgreens telephone prescription pads in order to furnish controlled substances
13 and/or dangerous drugs to five individuals: his mother and father, his mother and father -in-law,
14 and a "friend's mother."

15 e. A review of electronic records and surveillance videos from Walgreens Pharmacy No.
16 10703 the evening of June 7, 2012 showed that Respondent Pharmacy Owner used three
17 different cash registers in the pharmacy to "ring up" the falsified prescriptions with \$0.00 co-
18 payments, and billed all of the prescriptions to Medicare. After completing these payment
19 transactions, Respondent Pharmacy Owner placed the prescription containers in bags, which he
20 then concealed. At approximately 20:45 hours (8:45 pm), a vehicle pulled up to the drive through
21 window. Respondent Pharmacy Owner then retrieved the concealed bags, passed them to the
22 driver, then "rang up" 2 additional prescription orders – which he also handed to the driver.

23 f. Subsequent investigation of prescription records for the individuals Respondent
24 Pharmacy Owner dispensed to on June 7, 2012, disclosed that he had created and dispensed
25 falsified prescriptions for these same individuals at twenty (20) different Walgreens pharmacies
26 where he had been assigned, and that the total amount charged to 4 different insurers for these
27 prescriptions was approximately \$21,900.

28

1 g. In an interview with a Walgreens investigator on June 28, 2012, regarding his
2 conduct on June 7 described above, Respondent Pharmacy Owner admitted that he falsified new
3 prescription orders for medications for his parents and his in-laws, to dispense medications that
4 had been *previously* prescribed to them - by making reference to prescriptions filled elsewhere;
5 **admitted** that no doctor's office had called in any of the June 7 prescription orders, and further
6 stated "he did not think he was doing anything wrong."

7 h. At all times relevant herein, Walgreens Drug Store Pharmacy had an internal policy
8 prohibiting employees from filling prescriptions for their own family members.

9 i. Respondent Pharmacy Owner was terminated from his position at Walgreens on or
10 about June 29, 2012 due to referenced events.

11 j. On or about November 8, 2013, during an interview with a Board Inspector,
12 Respondent Pharmacy Owner denied that he had committed any fraudulent activities while
13 working at Walgreens Drug Store Pharmacy(s).

14 **PARS PHARMACY**

15 k. Due to the outcome of the investigation of the conduct of Respondent Pharmacy
16 Owner resulting in his termination from Walgreen's, as described above, the Board initiated an
17 inspection of Pars Pharmacy, and a targeted audit of 11 medications frequently dispensed to the
18 five individuals identified in the Walgreen's investigation - all members or friends of Respondent
19 Pharmacy Owner's family.

20 **Unauthorized Prescriptions—Dr. V. Soni**

21 ~~l. Board inspectors verified that at least 11 prescriptions dispensed from Respondent~~
22 Pharmacy by Respondent Pharmacy Owner on or about September 19, 2013 were falsified. Per
23 statements of Dr. V. Soni on or about December 13, 2013, he did not authorize the following
24 prescriptions dispensed to and billed to Medi-Cal for patient Iran S:

25 m. Unauthorized Prescriptions (Iran S.)

26

	Rx No.	Fill Date	
27	1.	10046	09/19/13

28

2.	10047	09/19/13
3.	10045	09/19/13
4.	10044	09/19/13
5.	10043	09/19/13
6.	10042	09/19/13
7.	10040	09/19/13
8.	10039	09/19/13
9.	10038	09/19/13
10.	10037	09/19/13
11.	10035	09/19/13

Unauthorized Prescriptions-Dr. Torazadeh

n. On or about December 11, 2013, L.S., reported that 2 prescriptions for patient Iran S., filled by Respondent Pharmacy, could not be identified as originating from or authorized by Dr. Torazadeh, the purported prescriber based on her review of patient history reports and prescription records for the patient:

- (1) Lovaza Rx No. 10594 dispensed 7/10/13
- (2) Lovaza Rx No. 10594 refill/dispensed 9/19/13

o. On or about April 20, 2015, Board inspectors requested Respondent Pharmacy produce original prescription documents for the prescriptions referenced above, which Respondent was unable to do.

Targeted Audit of Medications

p. The Board's inspector obtained acquisition and inventory records for Par's Pharmacy for 11 drugs identified as frequently prescribed for relatives of Respondent Pharmacy Owner identified in the "Walgreen's" investigation. The audit identified significant discrepancies between medications dispensed or billed for—and what was purchased by the pharmacy during the audit period (10-15-12 to 11-08-13) as follows:

- q. Audit Period: 10/15/12 to 11/08/13

	Drug Name	Total Purchasing (a)	Total Dispensing (b)	Stock on Hand on 11/08/13 (c)	Discrepancy* (d)=(a)-(b+c)	Discrepancy (number of Manufacturer's container)
1.	Advair Diskus 250/50mcg, 60 doses	3840	5400	0	-1560	26 boxes
2.	Crestor 10mg, 90 tablets	1710	2070	0	-360	4 bottles
3.	Cymbalta 60mg, 30 capsules	2110	2790	4	-684	22.8 bottles
4.	Lidoderm 5% patch, 30 patches	1920	2430	0	-510	17 boxes
5.	Lotemax 0.5 Ophthalmic gel, 5ml	85	130	0	-45	9 boxes
6.	Spiriva 18mcg handihaler, 30 doses	770	990	0	-220	7.3 boxes

FIRST CAUSE FOR DISCIPLINE

(Pars Pharmacy - Furnished Dangerous Drugs without a Valid Prescription)

16. Respondent Pharmacy is subject to disciplinary action under section 4301, subdivision (j) and (o), for violating section 4059, subdivision (a), in that, on at least thirteen (13) instances on dates approximately between July 10, 2013 and September 19, 2013, Respondent furnished dangerous drugs without valid prescriptions by use of falsified prescriptions that the dispensing pharmacist knew had not been authorized by a physician, as described more fully at paragraph 15 above.

SECOND CAUSE FOR DISCIPLINE

(Pars Pharmacy - Forged Prescriptions)

17. Respondent Pharmacy is subject to disciplinary action under section 4301, subdivision (f) and (g), for violating section 4324, subdivision (a), in while on dates approximately between January 31, 2012 and June 19, 2012, Respondent Pharmacy dispensed at least 13 falsified

1 prescriptions for Iran S, using the names of Dr. V. Soni (11 prescriptions) and Dr. Torbzadeh (2
2 prescriptions), which the dispensing pharmacist knew had been falsified, as described more fully at
3 paragraph 15 above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Pars Pharmacy - Failure to Maintain Records of Acquisition and Disposition)**

6 18. Respondent Pharmacy is subject to disciplinary action under section 4300 for
7 unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with
8 section 4081, subdivision (a) and (b) and California Code of Regulations, title 16, section 1718, in
9 that, per Board audit for dates between October 15, 2012 and November 8, 2013, the pharmacy
10 had a substantial discrepancies between what was dispensed/billed for, and what was
11 purchased/acquired by the pharmacy, with no records to account for or reasonably explain the
12 discrepancies, as described more fully at paragraph 15 above.

13 **OTHER MATTERS**

14 19. An Accusation is currently pending against the individual pharmacist license of
15 Respondent Pharmacy Owner (Pharmacist License Number RPH 60763), Board of Pharmacy case
16 no. 5230, *In the Matter of Accusation Against Arash Akmal*, originally filed on March 27, 2015.

17 20. Pursuant to Business and Professions Code section 4307, if discipline is imposed on
18 Original Pharmacy Permit Number PHY 50931 to Pars Pharmacy Inc., to do business as Pars
19 Pharmacy, with Arash Akmal as 100% shareholder (owner), Pars Pharmacy Inc. shall be
20 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
21 or partner of a licensee for five years if Pharmacy Permit Number PHY 50931 is placed on
22 probation or until Pharmacy Permit Number PHY 50931 is reinstated if it is revoked.

23 21. Pursuant to Business and Professions Code section 4307, if discipline is imposed on
24 Original Pharmacy Permit Number PHY 50931 to Pars Pharmacy Inc., while Arash Akmal has
25 been an officer and/or owner and had knowledge of or knowingly participated in any conduct for
26 which the licensee was disciplined, he shall be prohibited from serving as a manager, administrator,
27 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
28

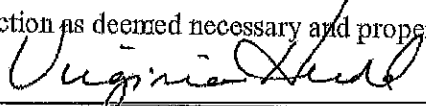
1 Permit Number PHY 50931 is placed on probation or until Pharmacy Permit Number PHY 50931
2 is reinstated if it is revoked.

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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 Permit Number PHY 50931, issued to Pars Pharmacy, Inc., dba Pars. Pharmacy, Arash Akmal, Owner;
- 2. Prohibiting Pars Pharmacy Inc., from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50931 is placed on probation or until Pharmacy Permit Number PHY 50931 is reinstated if Pharmacy Permit Number 50931 is revoked;
- 3. Prohibiting Arash Akmal from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50931 is placed on probation or until Pharmacy Permit Number PHY 50931 is reinstated if Pharmacy Permit Number 50931 is revoked;
- 4. Ordering Pars Pharmacy Inc., dba Pars Pharmacy, and Arash Akmal as 100% shareholder (owner), 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; and,
- 5. Taking such other and further action as deemed necessary and proper.

DATED: 9/16/16 

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

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

10 In the Matter of the Accusation Against:

Case No. 5230

11 **ARASH AKMAL**
12 3452 Country Club Drive
13 Glendale, CA 91208

14 Pharmacist License No. RPH 60763

15 Respondent.

FIRST AMENDED
ACCUSATION

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 22, 2008, the Board of Pharmacy issued Pharmacist License
21 Number RPH 60763 to Arash Akmal (Respondent). The Pharmacist License was in full force
22 and effect at all times relevant to the charges brought herein and will expire on May 31, 2017,
23 unless renewed.

24 3. On or about October 15, 2012, the Board of Pharmacy issued Original Pharmacy
25 Permit Number PHY 50931 to Pars Pharmacy Inc., to do business as Pars Pharmacy, with Arash
26 Akmal as 100% shareholder (owner). Arash Akmal has also been Pharmacist-in-Charge of Pars
27 Pharmacy since October 15, 2012 and at all times relevant herein. The Pharmacy Permit was in
28 full force and effect at all times relevant to the charges brought herein and will expire on October

1 1, 2016, unless renewed.

2 **JURISDICTION**

3 4. The original Accusation in this matter was filed on March 27, 2015, and duly served
4 to Respondent, who filed his timely Notice of Defense. This First Amended Accusation is
5 brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the
6 authority of the following laws. All section references are to the Business and Professions Code
7 unless otherwise indicated.

8 5. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
9 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
11 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

13 6. Section 4081 of the Code provides in pertinent part:

14 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
15 or dangerous devices shall be at all times during business hours open to inspection by authorized
16 officers of the law, and shall be preserved for at least three years from the date of making. A
17 current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment
18 holding a currently valid and unrevoked certificate, license, permit, registration, or exemption
19 under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4
20 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who
21 ~~maintains a stock of dangerous drugs or dangerous devices.~~

22 (b) The owner, officer, and partner of a pharmacy ... shall be jointly responsible, with the
23 pharmacist-in-charge or designated representative-in-charge, for maintaining the records and
24 inventory described in this section."

25 7. Section 4300 of the Code states:

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

27
28

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

4 (1) Suspending judgment.

5 (2) Placing him or her upon probation.

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

7 (4) Revoking his or her license.

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

10 (c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
11 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
12 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
13 may issue the license subject to any terms or conditions not contrary to public policy...

14 (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
15 certificate of licensure for any violation of the terms and conditions of probation. Upon
16 satisfactory completion of probation, the board shall convert the probationary certificate to a
17 regular certificate, free of conditions.

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

23 8. Section 4301 of the Code states:

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

27 (a) Gross immorality.

28

...

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

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

6 ...

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

9 ...

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

14 9. Section 4307 of the Code states at sub-division (a) that :

15 Any person who has been denied a license or whose license has been revoked or is under
16 suspension, or who has failed to renew his or her license while it was under suspension, or who
17 has been a manager, administrator, owner member, officer, director, associate, or partner of any
18 partnership, corporation, firm, or association whose application for a license has been denied or
19 revoked, is under suspension or has been placed on probation, and while acting as the manager,
20 administrator, owner, member, officer, director, associate, or partner had knowledge or
21 ~~knowingly participated in any conduct for which the license was denied, revoked, suspended, or~~
22 placed on probation, shall be prohibited from serving as a manager, administrator, owner,
23 member, officer, director, associate, or partner of a licensee as follows:

24 (1) Where a probationary license is issued or where an existing license is placed on
25 probation, this prohibition shall remain in effect for a period not to exceed five years.

26 (2) Where the license is denied or revoked, the prohibition shall continue until the license
27 is issued or reinstated.

28 10. Section 4113 of the Code provides at sub-division (c):

1 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with the state
2 and federal laws and regulations pertaining to the practice of pharmacy.

3 11. Section 4324 states:

4 "(a) Every person who signs the name of another, or of a fictitious person, or falsely
5 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription
6 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
7 in the state prison, or by imprisonment in the county jail for not more than one year.

8 "(b) Every person who has in his or her possession any drugs secured by a forged
9 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the
10 county jail for not more than one year."

11 12. California Code of Regulations, title 16, section 1718 states:

12 "Current Inventory" as used in Sections 4081 and 4332 of the Business and Professions
13 Code shall be considered to include complete accountability for all dangerous drugs handled by
14 every licensee enumerated in Sections 4081 and 4332.

15 The controlled substances inventories required by Title 21, CFR, Section 1304 shall be
16 available for inspection upon request for at least 3 years after the date of the inventory."

17 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be

22 included in a stipulated settlement.

23 14. Drug Classifications

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25 Brand Name	Generic Name	Dangerous Drug Per B&PC 7023	Controlled Substance per B&PC 7027	Indications for Use
26 Lovaza 1gm	Omega-3-acid ethyl 27 esters	Yes	No	High Triglycerides
28 Lexapro 20mg	escitalopram	Yes	No	Depression and Anxiety

1	Tricor 145mg	fenofibrate	Yes	No	High Cholesterol and Triglycerides
2	Celebrex 200mg	celecoxib	Yes	No	Arthritic Pain
3	Niaspan	Niacin	Yes	No	High Cholesterol
4	Boniva	Ibandronate	Yes	No	Bone Loss
5	Glucophage 500 mg	Metformin	Yes	No	Hyperglycemia
6	Remeron 15 mg	mirtazapine	Yes	No	Depression
7	Neurotin 300 mg	gabapentin	Yes	No	Epilepsy
8	Levoxy 0.025mg	levothyroxine	Yes	No	Hypothyroidism
9	Singulair 10mg	mentolukast	Yes	No	Asthma
10	Theo-24 200 mg	theophylline	Yes	No	Asthma
11	Tradjenta 5MG	linagliptin	Yes	No	Hyperglycemia
12	Restasis -0.05% Ophthalmic emulsion	cyclosporin	Yes	No	Chronic Dry Eye
13	Lipitor 40 mg	atorvastatin	Yes	No	Hyperlipidemia
14	Vesicare 5mg	solifenacin	Yes	No	Overactive Bladder
15	Freestyle Lancets	Freestyle Lancets	No	No	Make Punctures to monitor Glucose Level
16	One Touch Ultra Smart Kit	One Touch Ultra Smart Kit	No	No	Blood Glucose Monitoring System
17	Advair Diskus 250/50mcg	Fluticasone/salmeterol	Yes	No	Asthma
18	Aricept 5mg	donepezil	Yes	No	Alzheimer's Disease
19	Crestor 10mg	rosuvastatin	Yes	No	Hyperlipidemia
20	Crestor 5mg	rosuvastatin	Yes	No	Hyperlipidemia
21	Cymbalta 60mg	duloxetine	Yes	No	Depression
22	Diovan 160mg	valsartan	Yes	No	Hypertension
23	Diovan 80mg	valsartan	Yes	No	Hypertension
24	Lidoderm 5% patch	lidocaine	Yes	No	Pain
25	Lotemax 0.5 ophthalmic gel	loteprednol	Yes	No	Inflammation of eye
26	Spiriva 18mcg handihaler	tiotropium	Yes	No	Emphysema

FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

15. The following factual allegations are common to all causes for discipline in this case:

16. **WALGREENS DRUG STORE**

1 a. In 2012 Respondent was employed as a "floater" pharmacist for Walgreens Drug
 2 Stores Pharmacy – a position which called for him to work temporary assignments in
 3 approximately 20 Walgreens Drug Store Pharmacy (Walgreens) locations in southern California.

4 b. Approximately between January 1 and June 30, 2012, Respondent was involved
 5 in a fraudulent prescription writing scheme by which he wrote falsified prescriptions on
 6 Walgreens telephone prescription pads in order to furnish controlled substances and/or dangerous
 7 drugs to five individuals: his mother and father, his mother and father -in-law, and a "friend's
 8 mother."

9 c. **June 7, 2012** - A Walgreens investigator reviewing electronic records and
 10 surveillance videos from Walgreens Drug Store Pharmacy No. 10703, located in the city of
 11 Indio, from the evening of June 7, 2012, determined that on that date, Respondent falsified, then
 12 dispensed multiple prescription orders as follows:

13 (1) On or about June 7, 2012, Respondent entered and verified multiple telephonic
 14 prescription orders for his parents and his in-laws onto Walgreens No 10703 prescription pads,
 15 including the following:

17 Prescription Number	Written Date	Sold Date	Drug Name	Quantity Dispensed	Prescriber Last Name	Patient Name	Verified Member Name
18 236761	09/23/2011	06/07/2012	Dexinat 60mg Cap (formerly Kapidex)	90	Gharib	Mahin A	"SU"
19 236925	06/07/2012	06/07/2012	Singular 10MG tablets	90	Gharib	Mahin A.	"SU"
20 236911	02/09/2012	06/07/2012	Lidoderm 5% Patch	30	Torabzadeh	Iran S.	"SU"
21 236922	06/07/2012	06/07/2012	Lipitor 40 mg tablets	90	Soni	Iran S.	"SU"
22 236955	06/07/2012	06/07/2012	Restasis 0.05% OPHTH Emulsion 30's	90	Rezapour	Houshang A.	"SU"
23 236951	06/07/2012	06/07/2012	Trilipix 135mg Capsuls	90	Gharib	Houshang A.	"SU"
24 231224	11/25/2011	06/07/2012	Srriiva Caps 30's	90	Hedvat	Flossein R.	"SU"

			& Handihailer				
1	236954	11/25/2011	06/07/2012	Lidoderm 5% Patch 30's	60	Hedvat	Hossein R. "SU"
2	236952	11/10/2011	06/07/2012	Clopidogrel 75mg Tablets	90	Hedvat	Hossein R. "SU"
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5 (2) On or about June 12, 2014, a Walgreens investigator contacted Dr. Gharib's
6 office to inquire whether telephone prescriptions had been called in on June 7. At that time, Dr.
7 Gharib's receptionist (Shala) stated: (a) she reviewed charts of the patients referenced by the
8 investigator – and found no prescriptions had been 'called in' on June 7, and (b) Dr. Gharib did
9 not typically order prescriptions by telephone, and preferred to use an on-line service (E-Rx).

10 (3) A review of electronic records and surveillance videos from Walgreens
11 Pharmacy No. 10703 the evening of June 7, 2012 shows that Respondent used three different cash
12 registers in the pharmacy to "ring up" the falsified prescriptions with \$0.00 co-payments, and
13 billed all of the prescriptions to Medicare.

14 (4) After completing these payment transactions, Respondent placed the
15 prescription containers in bags, which he then concealed.

16 (5) At approximately 20:45 hours (8:45 pm), a vehicle pulled up to the drive
17 through window. Respondent retrieved the concealed bags, then passed them to the driver.
18 Respondent then "rang up" 2 additional prescription orders – which he also handed to the driver.

19 d. Subsequent investigation of prescription records for the individuals Respondent had
20 dispensed to on June 7, 2012, disclosed that Respondent had created and dispensed falsified
21 prescriptions for these same individuals at twenty (20) different Walgreens pharmacies where he
22 had been assigned, and that the total amount charged to 4 different insurers for these prescriptions
23 was approximately \$21,900.

24 e. **Admissions of Respondent.** In an interview with a Walgreens investigator on
25 June 28, 2012, regarding his conduct on June 7 described above, Respondent admitted that he
26 falsified new prescription orders for medications for his parents and his in-laws, to dispense
27 medications that had been *previously* prescribed to them - by making reference to prescriptions
28 filled elsewhere. Respondent **admitted** that no doctor's office had called in **any** of the

1 prescription orders he purportedly filled June 7. Respondent further stated "he did not think he
2 was doing anything wrong."

3 f. At all times relevant herein, Walgreens Drug Store Pharmacy had an internal policy
4 prohibiting employees from filling prescriptions for their own family members.

5 g. Respondent was terminated from his position at Walgreens on or about June 29, 2012
6 due to these events.

7 **Walgreens - Board Investigation**

8 h. A subsequent Pharmacy Board investigation of Respondent's misconduct and review
9 of related Walgreens prescription records by Board inspectors disclosed the following:

10 (1) **Cathedral City** – On January 31, 2012, while working as a relief pharmacist
11 at Walgreens 5301 located in Cathedral City, California, Respondent forged at least five (5)
12 prescriptions (Lexapro 20 mg, Lovaza 1gm, Tricor 145 mg, Celebrex 200 mg, Niaspan 500
13 mg, with "3 refills" each) – purportedly orally transmitted prescriptions via telephone
14 from Dr. F. Shakibai for patient Iran S. The prescriptions are hand-written and show
15 Respondent's initials "AAA."

16 (2) **Fraud in Multiple Locations** – Board Inspectors have verified that on dates
17 approximately between January 31, 2012 and June 19, 2012, Respondent was found to
18 have forged and dispensed least 26 fraudulent prescriptions for Iran S. using the names of
19 Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2 prescriptions) as shown in the table
20 below while working as a relief pharmacist at multiple Walgreen pharmacy locations:

21

	Walgreens Location Number	Prescription Number ¹	Written Date	Filled Date	Drug Name	Walgreen's location
	DR. SONI					
25	1 6975	795923	04/22/2012	04/22/2012	Ibandronate Sodium 150mg tablets	PHY46091 (Walgreen's Laguna Niguel)

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27 ¹ * Prescriptions numbers with an asterisk were forged telephonic orders personally
28 written or filled by Respondent

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2	6975	796965	05/02/2012	05/02/2012	Methformin ER 500 MG** 24 HR tabs	PHY46091 (Walgreen's Laguna Niguel)
3	6975	798140	05/14/2012	05/14/2012	Ibandronate Sodium 150 mg tablets	PHY46091 (Walgreen's Laguna Niguel)
4	6975	798117	05/14/2012	05/14/2012	Mirtazapine 15mgTablets	PHY46091 (Walgreen's Laguna Niguel)
5	6975	798116	05/14/2012	05/14/2012	Gabapentin 300 mg capsules	PHY46091 (Walgreen's Laguna Niguel)
6	6975	7981745	05/14/2012	05/14/2012	Freestyle Lite Blood Glucose System	PHY46091 (Walgreen's Laguna Niguel)
7	6975	798148	05/14/2012	05/14/2012	Levothyroxine 0.025mg (25mcg) Tab	PHY46091 (Walgreen's Laguna Niguel)
8	6975	798138	05/14/2012	05/14/2012	Diovan 80 mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
9	6975	798142	05/14/2012	05/14/2012	Cymbalta 60mg Capsules (new)	PHY46091 (Walgreen's Laguna Niguel)
10	6975	798141	05/14/2012	05/14/2012	Singulair 10mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
11	6975	798125	04/20/2012	05/15/2012	Theo-24 200 mg ER Capsules	PHY46091 (Walgreen's Laguna Niguel)
12	6975	798120	05/14/2012	05/15/2012	Tradjenta 5mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
13	6975	798117	05/14/2012	06/11/2012	Mirtazapine 15 mg Tablets	PHY46091 (Walgreen's Laguna Niguel)

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14	6975	798116	05/14/2012	06/11/2012	Gabapentin 300 mg capsules	PHY46091 (Walgreen's Laguna Niguel)
15	6975	798125	04/20/2012	06/12/2012	Theo-24 200 mg ER Capsules	PHY46091 (Walgreen's Laguna Niguel)
16	6975	796965	05/02/2012	06/13/2012	Metformin ER 500 mg** 24 hr tabs	PHY46091 (Walgreen's Laguna Niguel)
17	6975	801608	06/14/2012	06/18/2012	Diovan 80 mg tablets	PHY46091 (Walgreen's Laguna Niguel)
18	9080	268418*	06/10/2012	06/10/2012	Cymbalta 30 mg Capsules	PHY48893 (Walgreen's, Indio)
19	9781	165950*	05/25/2012	05/25/2012	Restasis 0.05% OPTH Emulsion 30's	PHY48893 (Walgreen's, Indio)
20	10703	236922*	06/07/2012	06/07/2012	Lipitor 40 mg tablets	PHY48893 (Walgreen's, Indio)
21	10703	236997	06/08/2012	06/08/2012	Vesicare 5mg tablets	PHY48893 (Walgreen's, Indio)
22	10703	237718*	06/19/2012	06/19/2012	Fenofibrate 160 mg tablets	PHY48893 (Walgreen's, Indio)
23	11786	199076	04/20/2012	06/04/2012	Freestyle Lancets 100's	PHY48893 (Walgreen's, Irvine)
24	11786	199074*	06/04/2012	06/04/2012	One Touch Ultra Smart Kit	PHY49096 (Walgreen's, Irvine)
25	5301	1278381	01/31/2012	02/01/2012	Lovaza 1mg capsules	PHY44489 (Walgreen's,

						Cathedral City)
26	4756	1268746	01/31/2012	04/04/2012	Lovaza 1mg capsules	PHY449592. (Walgreen's Palm Desert)

i. On or about November 8, 2013, during an interview with a Board Inspector, Respondent denied that he had committed any fraudulent activities while working at Walgreens Drug Store Pharmacy(s).

17. PARS PHARMACY

a. Since October 15, 2012 and at all times relevant herein, Respondent Akmal has been 100% owner and designated pharmacist-in-charge of par pharmacy, a retail pharmacy located (prior to October 15, 2013) in the city of Lake Forest, CA.

b. Due to the outcome of the investigation of Respondent's conduct at Walgreen's—described above, the Board initiated an inspection of Pars Pharmacy, and a targeted audit of 11 medications frequently dispensed to members or friends of Respondent's family.

Unauthorized Prescriptions—Dr. V. Soni

c. Board inspectors verified that at least 11 prescriptions dispensed by Respondent, while working as Pharmacist-in-charge of Pars Pharmacy on or about September 19, 2013 were falsified. Per statements of Dr. V. Soni on or about December 13, 2013, he did not authorize the following prescriptions dispensed to and billed to Medi-Cal for patient Iran S., by Respondent:

d. Unauthorized Prescriptions (Iran S.)

	Rx No.	Fill Date
1.	10046	09/19/13
2.	10047	09/19/13
3.	10045	09/19/13
4.	10044	09/19/13
5.	10043	09/19/13
6.	10042	09/19/13

7.	10040	09/19/13
8.	10039	09/19/13
9.	10038	09/19/13
10.	10037	09/19/13
11.	10035	09/19/13

Unauthorized Prescriptions-Dr. Torazadeh

e. On or about December 11, 2013, L.S., reported that 2 prescriptions for patient Iran S., could not be identified as originating from or authorized by Dr. Torazadeh, the purported prescriber based on her review of patient history reports and prescription records for the patient:

- (1) Lovaza Rx No. 10594 dispensed 7/10/13
- (2) Lovaza Rx No. 10594 refill/dispensed 9/19/13

f. On or about April 20, 2015, Board inspectors requested Respondent produce original prescription documents for the prescriptions referenced above. Respondent was unable to produce original documents as requested.

Targeted Audit of Medications

g. The Board's inspector obtained acquisition and inventory records for Pars Pharmacy for 11 drugs identified as frequently prescribed for relatives of Respondent identified in the "Walgreen's" investigation. The audit identified significant discrepancies between medications dispensed or billed for—and what was purchased by the pharmacy during the audit period (10-15-12 to 11-08-13) as follows:

h. Audit Period: 10/15/12 to 11/08/13

	Drug Name	Total Purchasing (a)	Total Dispensing (b)	Stock on Hand on 11/08/13 (c)	Discrepancy* (d)=(a)-(b+c)	Discrepancy (number of Manufacturer's container)
1.	Advair Diskus 250/50mcg, 60 doses	3840	5400	0	-1560	26 boxes
2.	Crestor 10mg, 90 tablets	1710	2070	0	-360	4 bottles
3.	Cymbalta	2110	2790	4	-684	22.8 bottles

	60mg, 30 capsules					
4.	Lidoderm 5% patch, 30 patches	1920	2430	0	-510	17 boxes
5.	Lotemax 0.5 Ophthalmic gel, 5ml	85	130	0	-45	9 boxes
6.	Spiriva 18mcg handihaler, 30 doses	770	990	0	-220	7.3 boxes

FIRST CAUSE FOR DISCIPLINE

(Walgreen's) Furnished Dangerous Drugs without a Valid Prescription

18. Respondent is subject to disciplinary action under section 4301, subdivision (j) and (o), for violating section 4059, subdivision (a), in that on at least **twenty- six (26)** instances on dates approximately between January 31, 2012 and June 19, 2012, Respondent furnished dangerous drugs without valid prescriptions by use of falsified prescriptions that he knew had not been authorized by a physician, as described more fully at paragraph 16 above.

SECOND CAUSE FOR DISCIPLINE

(Walgreen's) Forged Prescriptions

19. Respondent is subject to disciplinary action under section 4301, subdivision (f) and (g), for violating section 4324, subdivision (a), in that on dates between January 31, 2012 and June 19, 2012, Respondent created false prescriptions for patients as follows:

a. **Admitted Fraud (June 7, 2012)** – On or about June 7, 2012, by his own admission, Respondent falsified new prescription orders in the names of his parents and in laws. Respondent falsely represented that these new orders had been made to Walgreens by someone other than himself.

b. **Fraudulent Prescriptions for Iran S.** - On dates approximately between January 31, 2012 and June 19, 2012, Respondent was found to have forged and dispensed least 26 fraudulent prescriptions for **Iran S.** using the names of Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2 prescriptions) while working as a relief pharmacist at multiple Walgreen pharmacy locations, as described more fully at paragraph 16 above.

1 THIRD CAUSE FOR DISCIPLINE

2 (Walgreen's) Acts Involving Dishonesty, Fraud, or Deceit

3 20. Respondent is subject to disciplinary action under section 4301, subdivision (f), due
4 to acts on multiple instances on dates as noted below, in that Respondent committed acts
5 involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or
6 substantially injure another, by reason of the following facts:

7 a. **Admitted Fraud (June 7, 2012)** - On or about June 7, 2012, Respondent entered and
8 verified multiple fraudulent telephonic prescription orders for his parents and his in-laws onto
9 Walgreens prescription pads, which were then apparently given to a single individual through the
10 pharmacy's drive-up window, as described more fully in paragraph 10, above. Respondent
11 subsequently admitted that he falsified new prescription orders for his parents and in-laws on
12 that date.

13 b. **Pattern and Practice of Falsifying Prescriptions for Family Members** - A
14 Walgreens investigation of prescription records for "family" members Respondent had dispensed
15 to on June 7, 2012, disclosed that Respondent had created and dispensed falsified prescriptions
16 for these same individuals at twenty (20) different Walgreens pharmacies where he had been
17 assigned. At all times during his employment, Walgreens Drug Store Pharmacy had an internal
18 policy prohibiting employees from filling prescriptions for their own family members, of which
19 Respondent was aware.

20 c. **Fraudulent Prescriptions for Iran S.** - On dates approximately between January 31,
21 2012 and June 19, 2012, Respondent was found to have forged and dispensed least 26 fraudulent
22 prescriptions for Iran S. using the names of Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2
23 prescriptions) while working as a relief pharmacist at multiple Walgreen pharmacy locations, as
24 described more fully at paragraph 16 above.

25 FOURTH CAUSE FOR DISCIPLINE

26 (Pars Pharmacy) - Furnished Dangerous Drugs without a Valid Prescription

27 21. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
28 (o), for violating section 4059, subdivision (a), in that, while he was working as pharmacist-in-

1 charge of Pars Pharmacy, on at least thirteen (13) instances on dates approximately between July
2 10, 2013 and September 19, 2013, Respondent furnished dangerous drugs without valid
3 prescriptions by use of falsified prescriptions that he knew had not been authorized by a
4 physician, as described more fully at paragraph 17, above.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Pars Pharmacy) Forged Prescriptions**

7 22. Respondent is subject to disciplinary action under section 4301, subdivision (f) and
8 (g), for violating section 4324, subdivision (a), in while he was working as pharmacist-in-charge
9 of Pars Pharmacy, on dates approximately between January 31, 2012 and June 19, 2012,
10 Respondent forged and dispensed at least 13 falsified **prescriptions for S**, using the names of
11 Dr. V. Soni (11 prescriptions) and Dr. Torbzadeh (2 prescriptions) while working as pharmacist-
12 in-charge of Pars Pharmacy, as described more fully at paragraph 17 above.

13 **SIXTH CAUSE FOR DISCIPLINE**

14 **(Pars Pharmacy) Failure to Maintain Records of Acquisition and Disposition**

15 23. Respondent is subject to disciplinary action under section 4300 for unprofessional
16 conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4081,
17 subdivision (a) and (b) and California Code of Regulations, title 16, section 1718, in that, per
18 Board audit for dates between October 15, 2012 and November 8, 2013, while Respondent was
19 pharmacist-in-charge of Pars Pharmacy, said pharmacy had a substantial discrepancies between
20 what was dispensed/billed for, and what was purchased/acquired by the pharmacy, with no
21 records to account for or reasonably explain the discrepancies, as described more fully at

22 paragraph 17 above.

23 **PRAYER**

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

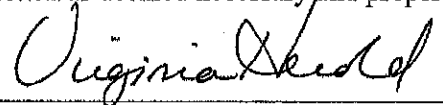
- 26 1. Revoking or suspending Pharmacist License Number RPH 60763, issued to Arash
27 Akmal;
- 28 2. Ordering Arash Akmal to pay the Board of Pharmacy the reasonable costs of the

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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: 9/16/16



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

LA2014512147
52205320.docx;

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7

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

10 In the Matter of the Accusation Against:

Case No. 5230

11 **ARASH AKMAL**
12 3452 Country Club Drive
13 Glendale, CA 91208

ACCUSATION

14 Pharmacist License No. RPH 60763

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 22, 2008, the Board of Pharmacy issued Pharmacist License
21 Number RPH 60763 to Arash Akmal (Respondent). The Pharmacist License was in full force
22 and effect at all times relevant to the charges brought herein and will expire on May 31, 2015,
23 unless renewed.

24 **JURISDICTION**

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

28 *///*

1 4. Section 4300 of the Code states:
2 "(a) Every license issued may be suspended or revoked.
3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:
6 "(1) Suspending judgment.
7 "(2) Placing him or her upon probation.
8 "(3) Suspending his or her right to practice for a period not exceeding one year.
9 "(4) Revoking his or her license.
10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.
12 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
13 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
14 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
15 may issue the license subject to any terms or conditions not contrary to public policy, including,
16 but not limited to, the following:
17 "(1) Medical or psychiatric evaluation.
18 "(2) Continuing medical or psychiatric treatment.
19 "(3) Restriction of type or circumstances of practice.
20 "(4) Continuing participation in a board-approved rehabilitation program.
21 "(5) Abstention from the use of alcohol or drugs.
22 "(6) Random fluid testing for alcohol or drugs.
23 "(7) Compliance with laws and regulations governing the practice of pharmacy.
24 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
25 certificate of licensure for any violation of the terms and conditions of probation. Upon
26 satisfactory completion of probation, the board shall convert the probationary certificate to a
27 regular certificate, free of conditions.
28 /././

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

6 5. Section 4301 of the Code states:

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

10 "(a) Gross immorality.

11 ...

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

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

17 ...

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

20 ...

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

25 6. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
26 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
27 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
28

1 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
 2 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

3 7. Section 4324 states:

4 "(a) Every person who signs the name of another, or of a fictitious person, or falsely
 5 makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription
 6 for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment
 7 in the state prison, or by imprisonment in the county jail for not more than one year.

8 "(b) Every person who has in his or her possession any drugs secured by a forged
 9 prescription shall be punished by imprisonment in the state prison, or by imprisonment in the
 10 county jail for not more than one year."

11 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
 12 administrative law judge to direct a licentiate found to have committed a violation or violations of
 13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
 14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
 15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
 16 included in a stipulated settlement.

17 9. Drug Classifications

Brand Name	Generic Name	Dangerous Drug per B & PC 4022	Controlled Substance per B & PC 1022	Indications for use
Lovaza 1gm	Omega-3-acid ethyl esters	Yes	No	High Triglycerides
Lexapro 20mg	escitalopram	Yes	No	Depression and Anxiety
Tricor 145mg	fenofibrate	Yes	No	High Cholesterol and Triglycerides
Celebrex 200mg	celecoxib	Yes	No	Arthritic Pain
Niaspan	Niacin	Yes	No	High Cholesterol
Boniva	Ibandronate	Yes	No	Bone Loss
Glucophage 500 mg	Metformin	Yes	No	Hyperglycemia
Remeron 15 mg	mirtazapine	Yes	No	Depression
Neurotin 300 mg	gabapentin	Yes	No	Epilepsy
Levoxyl 0.025mg	levothyroxine	Yes	No	Hypothyroidism

1	Diovan 80 mg	valsartan	Yes	No	Hypertension
	Cymbalta 60mg	duloxetine	Yes	No	Depression
2	Singulair 10mg	mentelukast	Yes	No	Asthma
3	Theo-24 200 mg ER	theophylline	Yes	No	Asthma
4	Tradjenta 5MG	linagliptin	Yes	No	Hyperglycemia
5	Restasis -0.05% Ophthalmic emulsion	cyclosporin	Yes	No	Chronic Dry Eye
6	Lipitor 40 mg	atorvastatin	Yes	No	Hyperlipidemia
7	Vesicare 5mg	solifenacin	Yes	No	Overyactive Bladder
8	Freestyle Lancets	Freestyle Lancets	No	No	Make Punctures to monitor Glucose Level
9	One Touch Ultra Smart Kit	One Touch Ultra Smart Kit	No	No	Blood Glucose Monitoring System

10

11

12 **FACTS COMMON TO ALL CAUSES FOR DISCIPLINE**

13 10. The following allegations are common to all causes for discipline in this matter:

14 a. In 2012 Respondent was employed as a "floater" pharmacist for Walgreens Drug
15 Stores Pharmacy – a position which called for him to work temporary assignments in
16 approximately 20 Walgreens Drug Store Pharmacy (Walgreens) locations in southern California.

17 b. Approximately between January 1 and June 30, 2012, Respondent was involved
18 in a fraudulent prescription writing scheme by which he wrote falsified prescriptions on
19 Walgreens telephone prescription pads in order to furnish controlled substances and/or dangerous
20 drugs to five individuals: his mother and father, his mother and father -in-law, and a "friend's
21 mother."

22 c. **June 7, 2012** – A Walgreens investigator reviewing electronic records and
23 surveillance videos from Walgreens Drug Store Pharmacy No. 10703, located in the city of
24 Indio, from the evening of June 7, 2012, determined that on that date, Respondent falsified, then
25 dispensed multiple prescription orders as follows:

26 (1) On or about June 7, 2012, Respondent entered and verified multiple telephonic
27 prescription orders for his parents and his in-laws onto Walgreens No 10703 prescription pads,
28 including the following:

Prescription Number	Written Date	Sold Date	Drug Name	Quantity Dispensed	Prescriber Last Name	Patient Name	Verified User Last Name
236761	09/23/2011	06/07/2012	Dexlmat 60mg Cap (formerly Kapidex)	90	Gharib	Mahin A	"SU"
236925	06/07/2012	06/07/2012	Singular 10MG tablets	90	Gharib	Mahin A.	"SU"
236911	02/09/2012	06/07/2012	Lidoderm 5% Patch	30	Torabzadeh	Iran S.	"SU"
236922	06/07/2012	06/07/2012	Lipitor 40 mg tablets	90	Soni	Iran S.	"SU"
236955	06/07/2012	06/07/2012	Restasis 0.05% OPHTH Emulsion 30's	90	Rezapour	Houshang A.	"SU"
236951	06/07/2012	06/07/2012	Trilipix 135mg Capsuls	90	Gharib	Houshang A.	"SU"
231224	11/25/2011	06/07/2012	Sririva Caps 30's & Handhailer	90	Hedvat	Hossein R.	"SU"
236954	11/25/2011	06/07/2012	Lidoderm 5% Patch 30's	60	Hedvat	Hossein R.	"SU"
236952	11/10/2011	06/07/2012	Clopidogrel 75mg Tablets	90	Hedvat	Hossein R.	"SU"

(2) On or about June 12, 2014, a Walgreens investigator contacted Dr. Gharib's office to inquire whether telephone prescriptions had been called in on June 7. At that time, Dr. Gharib's receptionist (Shala) stated: (a) she reviewed charts of the patients referenced by the investigator – and found no prescriptions had been 'called in' on June 7, and (b) Dr. Gharib did not typically order prescriptions by telephone, and preferred to use an on-line service (E-Rx).

(3) A review of electronic records and surveillance videos from Walgreens Pharmacy No. 10703 the evening of June 7, 2012 shows that Respondent used three different cash registers in the pharmacy to "ring up" the falsified prescriptions with \$0.00 co-payments, and billed all of the prescriptions to Medicare.

(4) After completing these payment transactions, Respondent placed the prescription containers in bags, which he then concealed.

1 (5) At approximately 20:45 hours (8:45 pm), a vehicle pulled up to the drive
2 through window. Respondent retrieved the concealed bags, then passed them to the driver.
3 Respondent then "rang up" 2 additional prescription orders – which he also handed to the driver.

4 d. Subsequent investigation of prescription records for the individuals Respondent had
5 dispensed to on June 7, 2012, disclosed that Respondent had created and dispensed falsified
6 prescriptions for these same individuals at twenty (20) different Walgreens pharmacies where he
7 had been assigned, and that the total amount charged to 4 different insurers for these prescriptions
8 was approximately \$21,900.

9 e. **Admissions of Respondent.** In an interview with a Walgreens investigator on
10 June 28, 2012, regarding his conduct on June 7 described above, Respondent admitted that he
11 falsified new prescription orders for medications for his parents and his in-laws, to dispense
12 medications that had been *previously* prescribed to them - by making reference to prescriptions
13 filed elsewhere. Respondent **admitted** that no doctor's office had called in **any** of the
14 prescription orders he purportedly filled June 7. Respondent further stated "he did not think he
15 was doing anything wrong."

16 f. At all times relevant herein, Walgreens Drug Store Pharmacy had an internal policy
17 prohibiting employees from filling prescriptions for their own family members.

18 g. Respondent was terminated from his position at Walgreens on or about June 29, 2012
19 due to these events.

20 **Board Investigation**

21 h. A subsequent Pharmacy Board investigation of Respondent's misconduct and review
22 of related Walgreens prescription records by Board inspectors disclosed the following:

23 (1) **Cathedral City** – On January 31, 2012, while working as a relief pharmacist
24 at Walgreens 5301 located in Cathedral City, California, Respondent forged at least five (5)
25 prescriptions (Lexapro 20 mg, Lovaza 1gm, Tricor 145 mg, Celebrex 200 mg, Niaspan 500
26 mg, with "3 refills" each) – purportedly orally transmitted prescriptions via telephone
27 from Dr. F. Shakibai for patient Iran S. The prescriptions are hand-written and show
28 Respondent's initials "AAA."

(2) **Fraud in Multiple Locations** – Board Inspectors have verified that on dates approximately between January 31, 2012 and June 19, 2012, Respondent was found to have forged and dispensed least 26 fraudulent prescriptions for **Iran S.** using the names of Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2 prescriptions) as shown in the table below while working as a relief pharmacist at multiple Walgreen pharmacy locations:

	Walgreens Location Number	Prescription Number ¹	Written Date	Filled Date	Drug Name	Walgreen's location
	DR. SONI					
1	6975	795923	04/22/2012	04/22/2012	Ibandronate Sodium 150mg tablets	PHY46091 (Walgreen's Laguna Niguel)
2	6975	796965	05/02/2012	05/02/2012	Methformin ER 500 MG** 24 HR tabs	PHY46091 (Walgreen's Laguna Niguel)
3	6975	798140	05/14/2012	05/14/2012	Ibandronate Sodium 150 mg tablets	PHY46091 (Walgreen's Laguna Niguel)
4	6975	798117	05/14/2012	05/14/2012	Mirtazapine 15mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
5	6975	798116	05/14/2012	05/14/2012	Gabapentin 300 mg capsules	PHY46091 (Walgreen's Laguna Niguel)
6	6975	7981745	05/14/2012	05/14/2012	Freestyle Lite Blood Glucose System	PHY46091 (Walgreen's Laguna Niguel)
7	6975	798148	05/14/2012	05/14/2012	Levothyroxine 0.025mg (25mcg) Tab	PHY46091 (Walgreen's Laguna Niguel)
8	6975	798138	05/14/2012	05/14/2012	Diovan 80 mg Tablets	PHY46091 (Walgreen's Laguna Niguel)

¹ * Prescriptions numbers with an asterisk were forged telephonic orders personally written or filled by Respondent

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						Laguna Niguel)
9	6975	798142	05/14/2012	05/14/2012	Cymbalta 60mg Capsules (new)	PHY46091 (Walgreen's Laguna Niguel)
10	6975	798141	05/14/2012	05/14/2012	Singulair 10mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
11	6975	798125	04/20/2012	05/15/2012	Theo-24 200 mg ER Capsules	PHY46091 (Walgreen's Laguna Niguel)
12	6975	798120	05/14/2012	05/15/2012	Tradjenta 5mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
13	6975	798117	05/14/2012	06/11/2012	Mirtazapine 15 mg Tablets	PHY46091 (Walgreen's Laguna Niguel)
14	6975	798116	05/14/2012	06/11/2012	Gabapentin 300 mg capsules	PHY46091 (Walgreen's Laguna Niguel)
15	6975	798125	04/20/2012	06/12/2012	Theo-24 200 mg ER Capsules	PHY46091 (Walgreen's Laguna Niguel)
16	6975	796965	05/02/2012	06/13/2012	Metformin ER 500 mg** 24 hr tabs	PHY46091 (Walgreen's Laguna Niguel)
17	6975	801608	06/14/2012	06/18/2012	Diovan 80 mg tablets	PHY46091 (Walgreen's Laguna Niguel)
18	9080	268418*	06/10/2012	06/10/2012	Cymbalta 30 mg Capsules	PHY48893 (Walgreen's, Indio)
19	9781	165950*	05/25/2012	05/25/2012	Restasis 0.05% OPTH Emulsion 30's	PHY48893 (Walgreen's, Indio)
20	10703	236922*	06/07/2012	06/07/2012	Lipitor 40 mg tablets	PHY48893 (Walgreen's,

						Indio)
21	10703	236997	06/08/2012	06/08/2012	Vesicare 5mg tablets	PHY48893 (Walgreen's, Indio)
22	10703	237718*	06/19/2012	06/19/2012	Fenofibrate 160 mg tablets	PHY48893 (Walgreen's, Indio)
23	11786	199076	04/20/2012	06/04/2012	Freestyle Lancets 100's	PHY48893 (Walgreen's, Irvine)
24	11786	199074*	06/04/2012	06/04/2012	One Touch Ultra Smart Kit	PHY49096 (Walgreen's, Irvine)
DR. SHAKIBAI						
25	5301	1278381	01/31/2012	02/01/2012	Lovaza 1mg capsules	PHY44489 (Walgreen's, Cathedral City)
26	4756	1268746	01/31/2012	04/04/2012	Lovaza 1mg capsules	PHY449592. (Walgreen's Palm Desert)

j. On or about November 8, 2013, during an interview with a Board Inspector, Respondent denied that he had committed any fraudulent activities while working at Walgreens Drug Store Pharmacy(s).

FIRST CAUSE FOR DISCIPLINE

(Furnished Dangerous Drugs without a Valid Prescription)

11. Respondent is subject to disciplinary action under section 4301, subdivision (j) and (o), for violating section 4059, subdivision (a), in that on at least **twenty-six (26) instances** on dates approximately between January 31, 2012 and June 19, 2012, Respondent furnished dangerous drugs without valid prescriptions by use of falsified prescriptions that he knew had not been authorized by a physician. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 9 and 10 as though set forth fully.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Forged Prescriptions)**

3 12. Respondent is subject to disciplinary action under section 4301, subdivision (f) and
4 (g), for violating section 4324, subdivision (a), in that on dates between January 31, 2012 and
5 June 19, 2012, Respondent created false prescriptions for patients as follows:

6 a. **Admitted Fraud (June 7, 2012)** – On or about June 7, 2012, by his own admission,
7 Respondent falsified new prescription orders in the names of his parents and in laws. Respondent
8 falsely represented that these new orders had been made to Walgreens by someone other than
9 himself.

10 b. **Fraudulent Prescriptions for Iran S.** - On dates approximately between January 31,
11 2012 and June 19, 2012, Respondent was found to have forged and dispensed least 26 fraudulent
12 prescriptions for Iran S. using the names of Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2
13 prescriptions) while working as a relief pharmacist at multiple Walgreen pharmacy locations, as
14 described more fully at paragraph 10, sub-section "h" above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Acts Involving Dishonesty, Fraud, or Deceit)**

17 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), due
18 to acts on multiple instances on dates as noted below, in that Respondent committed acts
19 involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or
20 substantially injure another, by reason of the following facts:

21 a. **Admitted Fraud (June 7, 2012)** - On or about June 7, 2012, Respondent entered and
22 verified multiple fraudulent telephonic prescription orders for his parents and his in-laws onto
23 Walgreens prescription pads, which were then apparently given to a single individual through the
24 pharmacy's drive-up window, as described more fully in paragraph 10, above. Respondent
25 subsequently admitted that he falsified new prescription orders for his parents and in-laws on
26 that date.

27 b. **Pattern and Practice of Falsifying Prescriptions for Family Members** - A
28 Walgreens investigation of prescription records for "family" members Respondent had dispensed

1 to on June 7, 2012, disclosed that Respondent had created and dispensed falsified prescriptions
2 for these same individuals at twenty (20) different Walgreens pharmacies where he had been
3 assigned. At all times during his employment, Walgreens Drug Store Pharmacy had an internal
4 policy prohibiting employees from filling prescriptions for their own family members, of which
5 Respondent was aware.

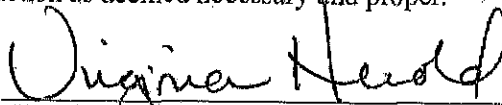
6 c. **Fraudulent Prescriptions for Iran S.** - On dates approximately between January 31,
7 2012 and June 19, 2012, Respondent was found to have forged and dispensed least 26 fraudulent
8 prescriptions for **Iran S.** using the names of Dr. V. Soni (24 prescriptions) and Dr. F. Shakibai (2
9 prescriptions) while working as a relief pharmacist at multiple Walgreen pharmacy locations, as
10 described more fully at paragraph 10, sub-section "h" above.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacist License Number RPH 60763, issued to Arash
15 Akmal;
- 16 2. Ordering Arash Akmal to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: 3/27/15



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

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