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

In the Matter of the Second Amended Accusation Against: **IV SOLUTIONS INC.** **Alireza Varastehpour-President** **3384 Motor Avenue** **Los Angeles, CA 90034** **Original Pharmacy Permit No. PHY 45885** **And** **RENEE SADOW** **24 Union Jack St., #3** **Marina del Rey, CA 90292-8600** **Pharmacist License No. RPH 27398** Respondents.	Case No. 3606 OAH No. L-2010080069 **SECOND AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about May 9, 2002, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 45885 to IV Solutions Inc. with Alireza Varastehpour aka Alex Vara as President (Respondent IV Solutions). The Original Pharmacy Permit was in full force and effect at all

times relevant to the charges brought herein and will expire on May 1, 2010, unless renewed. Board records show that Jeannie Kim was the Pharmacist-in-Charge (PIC) from November 25, 2008 to February 16, 2009 and Renee Sadow has been the PIC from February 16, 2009 to the present.

3. On or about April 25, 1971, the Board of Pharmacy issued Original Pharmacist License Number RPH 27398 to Renee Sadow (Respondent PIC Sadow). The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

JURISDICTION

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

5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 of the Code states:

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

. . . .

"(c) Gross negligence.

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

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

. . . .

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

. . . .

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

"(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

7. Section 4051 of the Code states:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

"(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section 4052, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

"(1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.

"(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

"(3) Access to the information described in paragraph (2) is secure from unauthorized access and use."

8. Section 4078 (a)(1) of the code provides that "no person shall place a false or misleading label or description". Subsection (a) (2) further provides that "no prescriber shall direct that prescription be labeled with any information that is false or misleading".

9. Section 4076 (a) (6) provides, in pertinent part, that a pharmacist about dispense a prescription except container that meets the requirement of state and federal law and is **correctly** labeled with the name and address of the pharmacy.

10. Section 4081 of the code states:

"(a) All records of manufacture and sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours (section by authorized officers of the law, it shall be preserved for at least three years from the date of making. A current inventory shall be kept by every wholesaler [and] pharmacy holding a currently valid and unrevoked certificate, license, [or] permit....."

"(b) The owner, officer, and partner of any pharmacy or wholesaler...shall be jointly responsible with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory."

11. Section 4113 (b) of the Code provides that the pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

12. Section 4125 (a) provides that "[e]very pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel".

13. Section 4305 of the Code states:

"(a) Any person, who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

"(b) Any person who has obtained a license to conduct a pharmacy, who willfully fails to notify the board of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

"(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of

termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action."

14. Section 4306.5 (a) provides that unprofessional conduct for a pharmacist includes acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

15. Section 4322 of the Code states that:

"Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment."

16. Title 16, California Code of Regulations (hereinafter "CCR") section 1709.1, provides in part, that a pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

17. CCR section 1711(d) provides that each pharmacy shall use the findings of its quality assurance program to develop pharmacy systems and workflow processes designed to prevent medication errors. An investigation of each medication error shall commence as soon as is reasonably possible, but no later than 2 business days from the date the medication error is discovered. All medication errors discovered shall be subject to a quality assurance review.

18. CCR section 1716 provides that pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

19. CCR Section 1751.6, subsection (a) states that consultation shall be available to the patient and/or primary caregiver concerning proper use of sterile injectable products and related supplies furnished by the pharmacy.

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20. CCR Section 1793.1 states that "[o]nly a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist, may:

(a) Receive a new prescription order orally from a prescriber or other person authorized by law.

(b) Consult with a patient or his or her agent regarding a prescription, either prior to or after dispensing, or regarding any medical information contained in a patient medication record system or patient chart.

(c) Identify, evaluate and interpret a prescription.

(d) Interpret the clinical data in a patient medication record system or patient chart.

(e) Consult with any prescriber, nurse or other health care professional or authorized agent thereof.

(f) Supervise the packaging of drugs and check the packaging procedure and product upon completion.

(g) Perform all functions which require professional judgment."

21. Section 4307(a) of the Code provides that any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

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

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DRUG DEVICE CLASSIFICATION(S)

23. "Lovenox" is a prescription anticoagulant that prevents the formation of blood clots and is a dangerous drug per Business and Professions Code Section 4022.

24. The "Curlin 4000 CMS Pump" is an ambulatory infusion pump and a dangerous device which can only be obtained by prescription from a licensed practitioner.

FIRST CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

25. Respondents IV Solutions, PIC Sadow, and Respondent Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivision (f), which prohibits the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not. The circumstances are as follows:

Patient JM

26. From about November 6, 2009 to September 1, 2010, Respondent IV Solutions furnished several prescription dispensings and sent excessively high bills to JM's insurance plan provider in the amount of $2,031.446.10 in drug treatments while Respondent IV Solutions only incurred an acquisition cost of approximately $34,187.87.

Respondent IV Solutions claimed that its charges in the total amount of $2,031,446.10 are "usual and customary", however, JM's wife researched price comparisons of the average wholesale price of an in-network pharmacy and retail cash price (Walgreens) and Respondent IV Solutions price of the same medications charged to JM which revealed that Respondent's charges were grossly excessive as follows:

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Drug: Pegasys 180mcg/0.5ml syringe; one kit=4 doses (syringes)	
Average wholesale price (AWP)	$2764.76 per kit
In-network pharmacy's cash price (Walgreens)	$2764.76 per kit
IVS charged price	$117,824.00 per kit

Drug: ribavirin 200mg; one bottle=84 capsules	
Average wholesale price (AWP)	$525.00 per bottle
In-network pharmacy's cash price (Walgreens)	$607.99 per bottle
IVS charged price	$12,780.00 per bottle

Drug: Procrit 40,000 units/ml; one vial	
Average wholesale price (AWP)	$777.60 per vial
In-network pharmacy's cash price (Walgreens)	$812.00 per vial
IVS charged price	$34,425.00 per vial

Drug: Neupogen 300mcg/ml; one vial	
Average wholesale price (AWP)	$327.99 per vial
In-network pharmacy's cash price (Walgreens)	$355.00 per vial
IVS charged price	$13,143.00 per vial

The prescriptions were transmitted by the physician to Respondent IV Solutions, which was an out-of-network pharmacy. Neither the physician nor Respondent IV Solutions ever revealed to JM or his wife that the pharmacy was out of network. Moreover, Respondent IV Solutions failed to provide JM with billing for over a year. The bills were only sent to the insurance company.

The total amount paid by insurance (paid directly to the patient) is $899,577.76. In addition to leaving a remaining balance to the patient in the amount of $1,131.868.34, the overcharging of the drugs affects JM's lifetime coverage cap. JM and his wife retained an attorney who demanded documentation from Respondent IV Solutions. Respondent IV Solutions, through its attorney, produced a forged copy of an agreement and consent form that was purportedly signed by JM. JM and his wife denies ever signing this document.

Patient RM

27. From about April 22, 2011 to May 28, 2011, Respondent IV Solutions furnished several dispensings of Cubicin and billed RM's insurance plan in the amount of $12,755 for each day's drug treatment while Respondent only incurred an acquisition cost of approximately $177.27 for each day. Other pharmacy services such as home health care and nursing care were

billed to insurance in amounts totaling over $59,000. Patient RM was referred to Respondent IV Solutions by the health care provider. Neither the health care provider nor Respondent IV Solutions informed Patient RM that it was an out of network provider. Patient RM's insurance paid out a total of $514,769.43 to Respondent for drugs. Respondent incurred a total cost of $7,309.04 for the drugs.

SECOND CAUSE FOR DISCIPLINE

(Obtaining a Dangerous Device from an Unlicensed Wholesaler)

28. Respondents IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code section 4169(a)(1) which states that a person or entity may not purchase, trade, sell, or transfer dangerous drugs and devices at wholesale with a person or entity that is not licensed with the Board as a wholesaler or pharmacy. Respondents violated section 4169(a)(l) in that from about January 1, 2009 to about January 1, 2012, Respondent IV Solutions obtained Curling 4000 CMS pumps from an unlicensed wholesaler located in Cincinnati, Ohio.

THIRD CAUSE FOR DISCIPLINE

(Performing the Duties of a Pharmacist without a License)

29. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1793.1 subsection (b) which states that only a pharmacist may consult with a patient or his agent regarding a prescription and subsection (e) which states that only a pharmacist may consult with any prescriber, nurse or other health care professional or authorized agent. The circumstances are that from about April 17, 2010 to April 19, 2010, as President of Respondent IV Solutions Inc located at 3384 Motor Avenue in Los Angeles, Respondent Vara, a non-pharmacist, performed the duties of a registered pharmacist without being licensed, by having calls delivered to him and/or responding to calls delivered to the pharmacy for the following reasons:

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a. 4/17/10 at 9:17 am-from Becky (reason-need the RPH) delivered to Alex;
b. 4/17/10 at 9:55 am-from L. Buted for pt. E. E. (reason-need the RPH) delivered to Alex;
c. 4/17/10 at 11:17 am-from L. Kerr for pt. T. (reason-need the RPH) delivered to Alex;
d. 4/17/10 at 11:32 am-from Kevin Gilbreth for pt. D. Kordyak (reason-nursing) delivered to Alex;
e. 4/17/10 at 12:49 am from C. Serna at Genus Home Care for pt. D. Kordyak (reason-office) delivered to Alex;
f. 4/17/10 at 2:39 pm from Donna Gilbreth for pt. D. Kordyak (reason-need the RPH) delivered to OC Pharmacist; message- family member called stating pump is programmed incorrectly;
g. 4/17/10 at 3:25 pm from Donna Gilbreth for D. Kordyak (reason-delivery issue) message-returning call from Alex;
h. 4/17/10 at 3:36 pm from Kevin Gilbreth for D. Kordyak (reason-need the RPH) delivered to OC Pharmacist; message "If there is something wrong with the pump can I get one that works/its Sat and I need this done before Sunday";
i. 4/17/10 at 5:20 pm from Rachel @ Genus Home Care for D. Kordyak (reason-need the RPH) delivered to Alex;
j. 4/17/10 at 7:16 pm from Connie Li (reason-need the RPH) delivered to Alex;
k. 4/18/10 at 3:15 pm from Cheryl @Tri City Hospital for pt. J.R. (reason-need the RPH) delivered to Alex;
l. 4/19/10 at 7:55 pm from Dr. Solsky (reason- need the RPH) delivered to OC Pharmacist; message-***Requesting to speak to Alex***.

FOURTH CAUSE FOR DISCIPLINE

(Performing the Duties of a Pharmacist without a License)

30. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (f), (j), (o), and (p) in conjunction with California Code of Regulations 1793.1 subsection (g) which states that only a pharmacist may perform all functions which require professional judgment. The circumstances are as follows:

On April 17, 2010, Respondent Vara responded to calls from caregivers D. Gilbreth and K. Gilbreth that were delivered to the pharmacy for the following reason: Need the Pharmacist. Respondent Vara represented himself to be a pharmacist. The caregivers informed Respondent Vara that the Curlin IV pump #115698 rented from their pharmacy malfunctioned and that the settings did not match the order/label which resulted in D. Kordyak receiving 13.5gm of Zosyn IV continuously instead of 3.375gm every six (6) hours intermittently. Respondent Vara performed the duties of a pharmacist without being licensed when he determined that the Curlin IV pump #115698 was functioning properly and refused to replace the pump as requested by the patient's caregivers. Moreover, when D. Gilbreth requested to speak to a pharmacist,

Respondent stated "you can speak to me". Despite her repeated requests, no pharmacist from Respondent IV Solutions ever returned D. Gilbreth's call nor did a pharmacist ever contact any of the caregivers, patient, prescriber, nurse, or other health care professional regarding the aforementioned IV pump issue.

FIFTH CAUSE FOR DISCIPLINE

(False Representation of Licensure)

31. Respondent Vara is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301, subdivisions (f), (j), (o), and (p) and Code Section 4322 for falsely representing himself as a pharmacist. Specifically, on April 17, 2010, Respondent Vara represented himself as a pharmacist to Genus Home Care and J. Haywood, Administrator for Genus Home Care.

SIXTH CAUSE FOR DISCIPLINE

(False and Misleading Label on Prescription)

32. Respondents IV Solutions, and PIC Sadow is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (f), (j), (o), and (p) in conjunction with Business and Professions Code Section 4078(a)(1) which states that no person shall place a false or misleading label on a prescription. Moreover, Respondent violated Code Section 4076(a)(6) which states, in pertinent part, that a pharmacist shall not dispense a prescription except in a container that is **correctly** labeled with the name and address of the pharmacy. Specifically, on April 2, 2010 and April 7, 2010, Respondent PIC Sadow used prescription labels on RX 1813 and RX1837 that falsely represented the name of the pharmacy as "IV Solutions Clinical Pharmacy" an unknown, unlicensed pharmacy instead of "IV Solutions Inc" which is identified on their pharmacy's license PHY 45885.

SEVENTH CAUSE FOR DISCIPLINE

(Records of Dangerous Drugs and Devices Kept Open for Inspection)

33. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code Section 4081(a) and (b) by failing to make all

records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices available for inspection by the Board as requested.

Specifically, on April 2, 2010, Respondent IV Solutions, generated a Delivery Ticket to D. Kordyak and sent wound care supplies including 3x1000ml Sodium Chloride Irrig.; 72 ABD Pads 7.5x8inches; 10 adhesive remover; 1 admission packet; 200 Alcohol Prep Pads; 15 Alcohol Swabtx3; 50 Gauze soft sponge 2x2 6Ply; 100 Gauze sponge 4x4 8Ply; 12 Gauze Fluff Roll 4.5in.x 4.1Yd; 100 Gloves powder free latex (medium); 10 Povie Swabstix 3s; 10 Syringe with Catheter Tip; and 3 Tape Paper 2" that were not ordered by the prescriber.

Respondents failed to provide the list of dangerous drugs, supplies, including wound care supplies, and prescription records, billing records, or protocol for the supplies and/or dangerous drugs sent to D. Kordyak as requested by the Board on August 11, 2010 and September 16, 2010.

EIGHTH CAUSE FOR DISCIPLINE

(Medication Error)

34. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1716 as follows:

On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment as required. On April 17, 2010, D. Kordyak's family discovered that the total 24 hour dose of 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every six (6) hours.

NINTH CAUSE FOR DISCIPLINE

(Quality Assurance Review Not Initiated)

35. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code section 4125(a) which requires a pharmacy to establish a Quality Assurance Program to review medication errors and California Code of

Regulation, title 16, section 1711(d) which requires all medication errors discovered are subject to a quality assurance review with an investigation to commence within two (2) business days from the date of discovery. The circumstances are as follows:

On April 17, 2010, Respondent PIC Sadow failed to conduct a quality assurance review within two days after discovering that the Curlin pump #115698 continuously infused the total 24 hours dose of 13.5gm of IV Zosyn into D. Kordyak instead of intermittently as prescribed.

TENTH CAUSE FOR DISCIPLINE

(Subvert or Attempt to Subvert an Investigation)

36. Respondent IV Solutions, Vara, and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Business and Professions Code section 4301(q) for engaging in conduct that subverted or attempted to subvert an investigation of the Board. Specifically, Respondents failed to provide the list of dangerous drugs, supplies, including wound care supplies, and prescription records, billing records, or protocol for the supplies and/or dangerous drugs sent to D. Kordyak as requested by the Board on August 11, 2010 and September 16, 2010.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Misuse of Education)

37. Respondent PIC Sadow is subject to disciplinary action for unprofessional conduct within the meaning of Business and Professions Code Section 4306.5(a) for her inappropriate exercise of her education, training or experience as a pharmacist. On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment as required. On April 17, 2010, D. Kordyak's family discovered that the total 24 hour dose of 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every six (6) hours.

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TWELFTH CAUSE FOR DISCIPLINE

(Failure to have Consultation Available)

38. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1751.6 subsection (a) which states that consultation shall be available to the patient and/or primary caregiver concerning proper use of sterile injectable products and related supplies furnished by the pharmacy. The circumstances are as follows:

On October 8, 2010, Respondent IV Solutions dispensed and delivered a curlin infusion pump along with sterile injectable products and relatel supplies to C.R., who had been discharged from the hospital the previous day after her foot surgery. When the pharmacy delivered the pump, no consultation was provided to C.R. or any caregiver for C.R. The employee who delivered the pump left a receipt for the delivered items.

On or about October 9, 2010, a home health care nurse visited C.R., to administer intravenous morphine via the Curlin infusion pump. The nurse was unfamiliar with the Curlin pump and called all of the phone numbers known to her for IV Solutions, but was unable to reach anyone because the phone calls would not roll over to the on-call service. The Director of the home health care service and C.R. also tried to call as well without success. Consequently, the nurse and C.R. decided to forego the morphine and C.R. had to rely upon less effective medication to address her pain.

During the Board investigation, Respondent Vara admitted that Respondent IV Solutions does not provide in-service consultations to home health care agency nurses who experience trouble using the pump for their patients as he considers it to be a nursing issue.

THIRTEENTH CAUSE FOR DISCIPLINE

Making Up False Document)

Respondent is further subject to disciplinary action for unprofessional conduct under Code Section 4301 subdivision (f) and (g) for creating a false document. Complainant realleges paragraph 38 as though fully set forth herein. On Monday, October 11, 2010, C.R. felt that she

no longer needed the above-rerenewal unused morphine and contacted the pharmacy to request a refund. She was told that someone would get back to her, however, she received no response. The unused pump, supplies and morphine were picked up by the pharmacy on October 12, 2010 and Respondent IV Solutions left a receipt. The receipt reflects that three (3) bags of morphine were charged to C.R. for a total of $210.00, when in fact, she only received one bag of morphine as indicated on her initial delivery ticket.

FOURTEENTH CAUSE FOR DISCIPLINE

(Making of False Documents)

39. Respondent IV Solutions and Vara are subject to disciplinary action under Code Section 4301 subdivision (f) and (g) in that Respondent IV Solutions, through its owner, Respondent Vara, falsely represented an unlicensed facility, Stat Clinic Pharmacy, as a pharmacy and provided pharmacy services to approximately 25 patients, which included creating and receiving pharmacy-related documentation with patients and/or their physicians such as contracts and agreements, medical forms, confidential medical records, and prescriptions.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violation of State Law Governing Pharmacy/Receiving and Holding Misbranded Dangerous Drugs)

40. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Health and Safety Code Section 111440 for importing 215 vials of Lovenox which are dangerous drugs, from Canada that were both misbranded and restricted to sales in Canada.

SIXTEENTH CAUSE FOR DISCIPLINE

(Noncompliant Ordering and Delivery to an Unlicensed Facility)

41. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Code Section 4059.5(a) for ordering and delivering Lovenox, a dangerous drug, to an unlicensed premise.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Noncompliant Security)

42. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 Subdivisions (j) and (o) for violation of Regulation 1714(d) and (e) in that its owner Respondent Vara was in possession of the pharmacy key on February 29, 2008 and April 7, 2008, and opened the pharmacy without a pharmacist present.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Pharmacy Operating without a Pharmacist Present)

43. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) and 4081 for violations of Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that owner Respondent Vara opened the pharmacy for business on February 29, 2008 without a pharmacist present. On April 17, 2008, Respondent Vara opened the pharmacy for business without a pharmacist present and a pharmacy technician was allowed to mix an IV Solution at the pharmacy while no pharmacist was present.

NINETEENTH CAUSE FOR DISCIPLINE

(Noncompliant Pharmacist Identification)

44. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) for violation of Regulation 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the pharmacy did not have a system to identify which pharmacist was responsible for the filling of a prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that the pharmacy still had not implemented a system after having been ordered to do so.

TWENTIETH CAUSE FOR DISCIPLINE

(Non-Pharmacist Filling Prescriptions)

45. Respondent IV Solutions and Vara are subject to disciplinary action under Code Section 4051 subdivision (a) in that during a Board investigation, the pharmacy was found to

have non-pharmacists filling multiple prescriptions for controlled substances and dangerous drugs from March 1, 2008 to March 20, 2008.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Noncompliant Refilling of Controlled Substance)

46. Respondent IV Solutions and Vara subject to disciplinary action under Code Section 4301 Subdivisions (j) and (o) in conjunction with Health and Safety Code Section 11200(c) for refilling a Schedule II controlled substance on March 14, 2008.

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 Original Pharmacy Permit Number PHY 45885 issued to IV Solutions, Inc.

2. Revoking or suspending Pharmacist License No. RPH 27398 issued to Renee Sadow.

3. Ordering Respondent IV Solutions, Inc. and PIC Sadow 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;

4. Preventing Respondents IV Solutions, Inc., PIC Sadow, and Vara from serving as managers, administrators, owners, members, officers, directors, associates, or partners of a licensee.

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

DATED: 1/17/13

Virginia Herold

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

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

In the Matter of the Accusation Against: **IV SOLUTIONS INC.** **Alireza Varastehpour-President** **3384 Motor Avenue** **Los Angeles, CA 90034** **Original Pharmacy Permit No. PHY 45885** **And** **RENEE SADOW** **24 Union Jack St., #3** **Marina del Rey, CA 90292-8600** **Pharmacist License No. RPH 27398** Respondents.	Case No. 3606 OAH No. L-2010080069 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about May 9, 2002, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 45885 to IV Solutions Inc. with Alireza Varastehpour aka Alex Vara as President (Respondent IV Solutions). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2010, unless renewed.

Board records show that Jeannie Kim was the Pharmacist-in-Charge (PIC) from November 25, 2008 to February 16, 2009 and Renee Sadow has been the PIC from February 16, 2009 to the present.

3. On or about April 25, 1971, the Board of Pharmacy issued Original Pharmacist License Number RPH 27398 to Renee Sadow (Respondent PIC Sadow). The license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

JURISDICTION

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

5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4301 of the Code states:

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

. . . .

"(c) Gross negligence.

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

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

. . . .

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

. . . .

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

"(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

7. Section 4051 of the Code states:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

"(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section 4052, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

"(1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.

"(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

"(3) Access to the information described in paragraph (2) is secure from unauthorized access and use."

8. Section 4078 (a)(1) of the code provides that "no person shall place a false or misleading label or description". Subsection (a) (2) further provides that "no prescriber shall direct that prescription be labeled with any information that is false or misleading".

9. Section 4076 (a) (6) provides, in pertinent part, that a pharmacist about dispense a prescription except container that meets the requirement of state and federal law and is **correctly** labeled with the name and address of the pharmacy.

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10. Section 4081 of the code states:

"(a) All records of manufacture and sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours (section by authorized officers of the law, it shall be preserved for at least three years from the date of making. A current inventory shall be kept by every wholesaler [and] pharmacy holding a currently valid and unrevoked certificate, license, [or] permit....."

"(b) The owner, officer, and partner of any pharmacy or wholesaler...shall be jointly responsible with the pharmacist-in-charge or representative-in-charge, for maintaining the records and inventory."

11. Section 4113 (b) of the Code provides that the pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

12. Section 4125 (a) provides that "[e]very pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or in part, to the pharmacy or its personnel".

13. Section 4305 of the Code states:

"(a) Any person, who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

"(b) Any person who has obtained a license to conduct a pharmacy, who willfully fails to notify the board of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

"(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of

termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action."

14. Section 4306.5 (a) provides that unprofessional conduct for a pharmacist includes acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

15. Section 4322 of the Code states that:

"Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars ($5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment."

16. Title 16, California Code of Regulations (hereinafter "CCR") section 1709.1, provides in part, that a pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

17. CCR section 1711(d) provides that each pharmacy shall use the findings of its quality assurance program to develop pharmacy systems and workflow processes designed to prevent medication errors. An investigation of each medication error shall commence as soon as is reasonably possible, but no later than 2 business days from the date the medication error is discovered. All medication errors discovered shall be subject to a quality assurance review.

18. CCR section 1716 provides that pharmacists shall not deviate from the requirements of a prescription except upon the prior consent of the prescriber or to select the drug product in accordance with Section 4073 of the Business and Professions Code.

19. CCR Section 1793.1 states that "[o]nly a pharmacist, or an intern pharmacist acting under the supervision of a pharmacist, may:

(a) Receive a new prescription order orally from a prescriber or other person authorized by law.

(b) Consult with a patient or his or her agent regarding a prescription, either prior to or after dispensing, or regarding any medical information contained in a patient medication record system or patient chart.

(c) Identify, evaluate and interpret a prescription.

(d) Interpret the clinical data in a patient medication record system or patient chart.

(e) Consult with any prescriber, nurse or other health care professional or authorized agent thereof.

(f) Supervise the packaging of drugs and check the packaging procedure and product upon completion.

(g) Perform all functions which require professional judgment."

20. Section 4307(a) of the Code provides that any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

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

DRUG CLASSIFICATION(S)

22. "Lovenox" is a prescription anticoagulant that prevents the formation of blood clots and is a dangerous drug per Business and Professions Code Section 4022.

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FIRST CAUSE FOR DISCIPLINE

(Performing the Duties of a Pharmacist without a license)

23. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1793.1 subsection (b) which states that only a pharmacist may consult with a patient or his agent regarding a prescription and subsection (e) which states that only a pharmacist may consult with any prescriber, nurse or other health care professional or authorized agent. The circumstances are that from about April 17, 2010 to April 19, 2010, as President of Respondent IV Solutions Inc located at 3384 Motor Avenue in Los Angeles, Respondent Vara, a non-pharmacist, performed the duties of a registered pharmacist without being licensed, by having calls delivered to him and/or responding to calls delivered to the pharmacy for the following reasons:

a. 4/17/10 at 9:17 am-from Becky (reason-need the RPH) delivered to Alex;
b. 4/17/10 at 9:55 am-from L. Buted for pt. E. E. (reason-need the RPH) delivered to Alex;
c. 4/17/10 at 11:17 am-from L. Kerr for pt. T. (reason-need the RPH) delivered to Alex;
d. 4/17/10 at 11:32 am-from Kevin Gilbreth for pt. D. Kordyak (reason-nursing) delivered to Alex;
e. 4/17/10 at 12:49 am from C. Serna at Genus Home Care for pt. D. Kordyak (reason-office) delivered to Alex;
f. 4/17/10 at 2:39 pm from Donna Gilbreth for pt. D. Kordyak (reason-need the RPH) delivered to OC Pharmacist; message- family member called stating pump is programmed incorrectly;
g. 4/17/10 at 3:25 pm from Donna Gilbreth for D. Kordyak (reason-delivery issue) message-returning call from Alex;
h. 4/17/10 at 3:36 pm from Kevin Gilbreth for D. Kordyak (reason-need the RPH) delivered to OC Pharmacist; message "If there is something wrong with the pump can I get one that works/its Sat and I need this done before Sunday";
i. 4/17/10 at 5:20 pm from Rachel @ Genus Home Care for D. Kordyak (reason-need the RPH) delivered to Alex;
j. 4/17/10 at 7:16 pm from Connie Li (reason-need the RPH) delivered to Alex;
k. 4/18/10 at 3:15 pm from Cheryl @Tri City Hospital for pt. J.R. (reason-need the RPH) delivered to Alex;
l. 4/19/10 at 7:55 pm from Dr. Solsky (reason- need the RPH) delivered to OC Pharmacist; message-***Requesting to speak to Alex***.

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SECOND CAUSE FOR DISCIPLINE

(Performing the Duties of a Pharmacist without a License)

24. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1793.1 subsection (g) which states that only a pharmacist may perform all functions which require professional judgment. The circumstances are as follows:

On April 17, 2010, Respondent Vara responded to calls from caregivers D. Gilbreth and K. Gilbreth that were delivered to the pharmacy for the following reason: Need the Pharmacist. RespondentVara represented himself to be a pharmacist. The caregivers informed Respondent Vara that the Curlin IV pump #115698 rented from their pharmacy malfunctioned and that the settings did not match the order/label which resulted in D. Kordyak receiving 13.5gm of Zosyn IV continuously instead of 3.375gm every six (6) hours intermittently. Respondent Vara performed the duties of a pharmacist without being licensed when he determined that the Curlin IV pump #115698 was functioning properly and refused to replace the pump as requested by the patient's caregivers. Moreover, when D. Gilbreth requested to speak to a pharmacist, Respondent stated "you can speak to me". Despite her repeated requests, no pharmacist from Respondent IV Solutions ever returned D. Gilbreth's call nor did a pharmacist ever contact any of the caregivers, patient, prescriber, nurse, or other health care professional regarding the aforementioned IV pump issue.

THIRD CAUSE FOR DISCIPLINE

(False Representation of Licensure)

25. Respondent Vara is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301, subdivisions (j), (o), and (p) and Code Section 4322 for falsely representing himself as a pharmacist. Specifically, on April 17, 2010, Respondent Vara represented himself as a pharmacist to Genus Home Care and J. Haywood, Administrator for Genus Home Care.

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FOURTH CAUSE FOR DISCIPLINE

(False and Misleading Label on Prescription)

26. Respondents IV Solutions, and PIC Sadow is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code Section 4078(a)(1) which states that no person shall place a false or misleading label on a prescription. Moreover, Respondent violated Code Section 4076(a)(6) which states, in pertinent part, that a pharmacist shall not dispense a prescription except in a container that is **correctly** labeled with the name and address of the pharmacy. Specifically, on April 2, 2010 and April 7, 2010, Respondent PIC Sadow used prescription labels on RX 1813 and RX1837 that falsely represented the name of the pharmacy as "IV Solutions Clinical Pharmacy" an unknown, unlicensed pharmacy instead of "IV Solutions Inc" which is identified on their pharmacy's license PHY 45885.

FIFTH CAUSE FOR DISCIPLINE

(Records of Dangerous Drugs and Devices Kept Open for Inspection)

27. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code Section 4081(a) and (b) by failing to make all records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices available for inspection by the Board as requested.

Specifically, on April 2, 2010, Respondent IV Solutions, generated a Delivery Ticket to D. Kordyak and sent wound care supplies including 3x1000ml Sodium Chloride Irrig.; 72 ABD Pads 7.5x8inches; 10 adhesive remover; 1 admission packet; 200 Alcohol Prep Pads; 15 Alcohol Swabtx3; 50 Gauze soft sponge 2x2 6Ply; 100 Gauze sponge 4x4 8Ply; 12 Gauze Fluff Roll 4.5in.x 4.1Yd; 100 Gloves powder free latex (medium); 10 Povie Swabstix 3s; 10 Syringe with Catheter Tip; and 3 Tape Paper 2" that were not ordered by the prescriber.

Respondents failed to provide the list of dangerous drugs, supplies, including wound care supplies, and prescription records, billing records, or protocol for the supplies and/or dangerous drugs sent to D. Kordyak as requested by the Board on August 11, 2010 and September 16, 2010.

SIXTH CAUSE FOR DISCIPLINE

(Medication Error)

28. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with California Code of Regulations 1716 as follows:

On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment as required. On April 17, 2010, D. Kordyak's family discovered that the total 24 hour dose of 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every six (6) hours.

SEVENTH CAUSE FOR DISCIPLINE

(Quality Assurance Review Not Initiated)

29. Respondent IV Solutions and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in conjunction with Business and Professions Code section 4125(a) which requires a pharmacy to establish a Quality Assurance Program to review medication errors and California Code of Regulation, title 16, section 1711(d) which requires all medication errors discovered are subject to a quality assurance review with an investigation to commence within two (2) business days from the date of discovery. The circumstances are as follows:

On April 17, 2010, Respondent PIC Sadow failed to conduct a quality assurance review within two days after discovering that the Curlin pump #115698 continuously infused the total 24 hours dose of 13.5gm of IV Zosyn into D. Kordyak instead of intermittently as prescribed.

EIGHTH CAUSE FOR DISCIPLINE

(Subvert or Attempt to Subvert an Investigation)

30. Respondent IV Solutions, Vara, and PIC Sadow are subject to disciplinary action for unprofessional conduct within the meaning of Business and Professions Code section 4301(q) for engaging in conduct that subverted or attempted to subvert an investigation of the Board.

Specifically, Respondents failed to provide the list of dangerous drugs, supplies, including wound care supplies, and prescription records, billing records, or protocol for the supplies and/or dangerous drugs sent to D. Kordyak as requested by the Board on August 11, 2010 and September 16, 2010.

NINTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Misuse of Education)

31. Respondent PIC Sadow is subject to disciplinary action for unprofessional conduct within the meaning of Business and Professions Code Section 4306.5(a) for her inappropriate exercise of her education, training or experience as a pharmacist. On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment as required. On April 17, 2010, D. Kordyak's family discovered that the total 24 hour dose of 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every six (6) hours.

TENTH CAUSE FOR DISCIPLINE

(Violation of State Law Governing Pharmacy/Receiving and Holding Misbranded Dangerous Drugs)

32. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Health and Safety Code Section 111440 for importing 215 vials of Lovenox which are dangerous drugs, from Canada that were both misbranded and restricted to sales in Canada.

ELEVENTH CAUSE FOR DISCIPLINE

(Noncompliant Ordering and Delivery to an Unlicensed Facility)

33. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Code Section 4059.5(a) for ordering and delivering Lovenox, a dangerous drug, to an unlicensed premise.

TWELTH CAUSE FOR DISCIPLINE

(Noncompliant Security)

34. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 Subdivisions (j) and (o) for violation of Regulation 1714(d) and (e) in that its owner Respondent Vara was in possession of the pharmacy key on February 29, 2008 and April 7, 2008, and opened the pharmacy without a pharmacist present.

THIRTEENTH CAUSE FOR DISCIPLINE

(Pharmacy Operating without a Pharmacist Present)

35. Respondent IV Solutions and Vara are subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) and 4081 for violations of Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that owner Respondent Vara opened the pharmacy for business on February 29, 2008 without a pharmacist present. On April 17, 2008, Respondent Vara opened the pharmacy for business without a pharmacist present and a pharmacy technician was allowed to mix an IV Solution at the pharmacy while no pharmacist was present.

FOURTEENTH CAUSE FOR DISCIPLINE

(Noncompliant Pharmacist Identification)

36. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) for violation of Regulation 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the pharmacy did not have a system to identify which pharmacist was responsible for the filling of a prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that the pharmacy still had not implemented a system after having been ordered to do so.

FIFTHTEENTH CAUSE FOR DISCIPLINE

(Non-Pharmacist Filling Prescriptions)

37. Respondent IV Solutions and Vara are subject to disciplinary action under Code Section 4051 subdivision (a) in that during a Board investigation, the pharmacy was found to

have non-pharmacists filling multiple prescriptions for controlled substances and dangerous drugs from March 1, 2008 to March 20, 2008.

SIXTEENTH CAUSE FOR DISCIPLINE

(Noncompliant Refilling of Controlled Substance)

38. Respondent IV Solutions and Vara subject to disciplinary action under Code Section 4301 Subdivisions (j) and (o) in conjunction with Health and Safety Code Section 11200(c) for refilling a Schedule II controlled substance on March 14, 2008.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Making of False Documents)

39. Respondent IV Solutions and Vara are subject to disciplinary action under Code Section 4301 subdivision (g) in that Respondent IV Solutions, through its owner, Respondent Vara, falsely represented an unlicensed facility, Stat Clinic Pharmacy, as a pharmacy and provided pharmacy services to approximately 25 patients, which included creating and receiving pharmacy-related documentation with patients and/or their physicians such as contracts and agreements, medical forms, confidential medical records, and prescriptions.

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 Original Pharmacy Permit Number PHY 45885 issued to IV Solutions, Inc.

2. Revoking or suspending Pharmacist License No. RPH 27398 issued to Renee Sadow.

3. Ordering Respondent IV Solutions, Inc. and PIC Sadow 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;

4. Preventing Respondents IV Solutions, Inc., PIC Sadow, and Vara from serving as managers, administrators, owners, members, officers, directors, associates, or partners of a licensee.

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

DATED: 7/25/11

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

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

In the Matter of the Accusation Against: **IV SOLUTIONS INC.** **Alireza Varastehpour-President** **3384 Motor Avenue** **Los Angeles, CA 90034** **Original Pharmacy Permit No. PHY 45885** Respondents.	Case No. 3606 OAH No. L-2010080069 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 9, 2002, the Board of Pharmacy issued Original Pharmacy Permit Number PHY 45885 to IV Solutions Inc. with Alireza Varastehpour aja Alex Vara as President (Respondent IV Solutions). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on May 1, 2010, unless renewed. Board records show that Jeannie Kim was the Pharmacist-in-Charge from November 25, 2008 to February 16, 2009.

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JURISDICTION

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

4. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

5. Section 4301 of the Code states:

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

. . . .

"(c) Gross negligence.

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

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

. . . .

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

. . . .

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

"(p) Actions or conduct that would have warranted denial of a license.

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6. Section 4051 of the Code states:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter.

"(b) Notwithstanding any other law, a pharmacist may authorize the initiation of a prescription, pursuant to Section 4052, and otherwise provide clinical advice or information or patient consultation if all of the following conditions are met:

"(1) The clinical advice or information or patient consultation is provided to a health care professional or to a patient.

"(2) The pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation and advice.

"(3) Access to the information described in paragraph (2) is secure from unauthorized access and use."

7. Section 4081 also provides that the owner, officer and partner of any pharmacy or wholesaler shall be jointly responsible with the pharmacist-in-charge or exemptee for maintaining the records and inventory. A current inventory shall be kept by every pharmacy and wholesaler holding a currently valid and un-revoked license.

8. Section 4113 (b) of the Code provides that the pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

9. Section 4324 of the Code states:

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

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

10. Section 4305 of the Code states:

"(a) Any person, who has obtained a license to conduct a pharmacy, shall notify the board within 30 days of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

"(b) Any person who has obtained a license to conduct a pharmacy, who willfully fails to notify the board of the termination of employment of any pharmacist who takes charge of, or acts as manager of the pharmacy, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

"(c) Any pharmacist who takes charge of, or acts as manager of a pharmacy, who terminates his or her employment at the pharmacy, shall notify the board within 30 days of termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action."

11. Title 16, California Code of Regulations (hereinafter "CCR") section 1709.1, provides in part, that a pharmacist-in-charge of a pharmacy shall be employed at that location and shall have responsibility for the daily operation of the pharmacy.

CCR Section 1793.1 provides, in part, that only a registered pharmacist, or an intern pharmacist acting under the supervision of a registered pharmacist, may:

"(a) receive a new prescription order orally from a prescriber or other person authorized by law...

(f) supervise the packaging of drugs and check the packaging procedure and product upon completion;

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(g) be responsible for all activities of pharmacy technician to ensure that all such activities are performed completely, safely and without risk of harm to patients;

(h) perform any other duty which federal or state law or regulation authorizes only a registered pharmacist to perform; and

(i) perform all functions which require professional judgment".

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

13. "Lovenox" is a prescription anticoagulant that prevents the formation of blood clots and is a dangerous drug per Business and Professions Code Section 4022.

FIRST CAUSE FOR DISCIPLINE

(Violation of State Law Governing Pharmacy/Receiving and Holding Misbranded Dangerous Drugs)

14. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Health and Safety Code Section 111440 for importing 215 vials of Lovenox which are dangerous drugs, from Canada that were both misbranded and restricted to sales in Canada.

SECOND CAUSE FOR DISCIPLINE

(Noncompliant Ordering and Delivery to an Unlicensed Facility)

15. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) in conjunction with Code Section 4059.5(a) for ordering and delivering Lovenox, a dangerous drug, to an unlicensed premise.

THIRD CAUSE FOR DISCIPLINE

(Noncompliant Security)

16. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 Subdivisions (j) and (o) for violation of Regulation

1714(d) and (e) in that its owner Alex Vara was in possession of the pharmacy key on February 29, 2008 and April 7, 2008, and opened the pharmacy without a pharmacist present.

FOURTH CAUSE FOR DISCIPLINE

(Pharmacy Operating without a Pharmacist Present)

17. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 Subdivisions (j) and (o) and 4081 for violations of Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that owner Alex Vara opened the pharmacy for business on February 29, 2008 without a pharmacist present. On April 17, 2008, Alex Vara opened the pharmacy for business without a pharmacist present and a pharmacy technician was allowed to mix an IV Solution at the pharmacy while no pharmacist was present.

FIFTH CAUSE FOR DISCIPLINE

(Noncompliant Pharmacist Identification)

18. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct within the meaning of Code Section 4301 Subdivisions (j) and (o) for violation of Regulation 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the pharmacy did not have a system to identify which pharmacist was responsible for the filling of a prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that the pharmacy still had not implemented a system after having been ordered to do so.

SIXTH CAUSE FOR DISCIPLINE

(Non-Pharmacist Filling Prescriptions)

19. Respondent IV Solutions is subject to disciplinary action under Code Section 4051subdisivion (a) in that during a Board investigation, the pharmacy was found to have non-pharmacists filling multiple prescriptions for controlled substances and dangerous drugs from March 1, 2008 to March 20, 2008.

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SEVENTH CAUSE FOR DISCIPLINE

(Noncompliant Refilling of Controlled Substance)

20. Respondent IV Solutions is subject to disciplinary action under Code Section 4301 Subdivisions (j) and (o) in conjunction with Health and Safety Code Section 11200(c) for refilling a Schedule II controlled substance on March 14, 2008.

EIGHTH CAUSE FOR DISCIPLINE

(Making of False Documents)

21. Respondent IV Solutions is subject to disciplinary action under Code Section 4301 subdivison (g) in that Respondent IV Solutions, through its owner, Alex Vara, falsely represented an unlicensed facility, Stat Clinic Pharmacy, as a pharmacy and provided pharmacy services to approximately 25 patients, which included creating and receiving pharmacy-related documentation with patients and/or their physicians such as contracts and agreements, medical forms, confidential medical records, and prescriptions.

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 Original Pharmacy Permit Number PHY 45885, issued to IV Solutions, Inc.

2. Ordering IV Solutions, Inc. to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/25/11

Virginia Herold

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

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