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

In the Matter of the Accusation Against: **MIV CARE, INC. dba RX CARE PHARMACY, MICHAEL VOLDMAN, President** **19000 Hawthorne, Suite #302** **Torrance, CA 90503** **Pharmacy Permit No. 46138,** **and** **4445 W. Broadway, No. 303** **Hawthorne, CA 90250** **PAUL AQUINAS LIM** **1441 S. Huntington Drive, #1880** **South Pasadena, CA 91030** **Pharmacist License No. RPH 40911,** **POLINA NEMINOV** **21757 Planewood Drive** **Woodland Hills, CA 91364** **Pharmacist License No. RPH 50440** **ANNA K. KOO** **19510 Beckworth Avenue** **Torrance, CA 90503** **Pharmacist License No. 42518** Respondents.	Case No. 3254 **NOTICE OF WITHDRAWAL OF ACCUSATION AS TO RESPONDENT POLINA NEMINOV ONLY**

1. On or about November 25, 2009, Complainant Virginia Herold ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3254 against Respondent MIV Care, Inc. dba Rx Care Pharmacy, Michael Voldman (Pharmacy Permit No. 46138), Respondent Paul Aquinas Lim (Pharmacist License No. RPH 40911), Respondent Polina Neminov (Pharmacist License No. RPH 50440) and Respondent Anna K. Koo (Pharmacist License No. 42518).

2. Complainant, exercising her discretionary authority pursuant to Title 16, California Code of Regulations, Section 1703, and acting on information submitted to her, and in the interest of justice, has determined that good cause exists to withdraw Accusation No. 3254 as to Respondent Polina Neminov (Pharmacist License No. RPH 50440) **only**.

3. WHEREFORE, Complainant hereby withdraws and dismisses without prejudice Accusation No. 3254 as to Respondent Polina Neminov (Pharmacist License No. RPH 50440) **only**.

DATED: 12/3/10

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

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In the Matter of the Accusation Against: **MIV CARE, INC. dba RX CARE PHARMACY, MICHAEL VOLDMAN, President** **19000 Hawthorne, Suite #302** **Torrance, CA 90503** **Pharmacy Permit No. 46138,** **and** **4445 W. Broadway, No. 303** **Hawthorne, CA 90250** **PAUL AQUINAS LIM** **1441 S. Huntington Drive, #1880** **South Pasadena, CA 91030** **Pharmacist License No. RPH 40911,** **POLINA NEMINOV** **21757 Planewood Drive** **Woodland Hills, CA 91364** **Pharmacist License No. RPH 50440** **ANNA K. KOO** **19510 Beckworth Avenue** **Torrance, CA 90503** **Pharmacist License No. 42518** Respondents.	Case No. 3254 **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 October 8, 2002, the Board of Pharmacy issued Pharmacy Permit Number 46138 to MIV Care, Inc. dba RX Care Pharmacy (Respondent RX Care) with Michael Voldman as President. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2009, unless renewed. Paul Aquinas Lim, RPH 40911 is and has been the Pharmacist-In-Charge (PIC) since November 14, 2006.

3. On or about June 5, 1987, the Board of Pharmacy issued Pharmacist License Number RPH 40911 to Paul Aquinas Lim (Respondent Lim). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2009, unless renewed.

4. On or about September 3, 1998, the Board of Pharmacy issued Pharmacist License Number RPH 50440 to Polina Neminov (Respondent Neminov). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2010, unless renewed.

5. On or about March 29, 1989, the Board of Pharmacy issued Pharmacist License Number RPH 42518 to Anna K. Koo (Respondent Koo). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

JURISDICTION

6. 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.

7. Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

"(1) Medical or psychiatric evaluation.

. . . .

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

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

8. 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:

. . . .

"(b) Incompetence.

"(c) Gross negligence.

. . . .

"(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.

. . . .

9. California Code of Regulations, title 16, section 1717, states in pertinent part:

. . . .

"(b) In addition to the requirements of Section 4040, Business and Professions Code, the following information shall be maintained for each prescription on file and shall be readily retrievable:

(1) The date dispensed, and the name or initials of the dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be initialed by the supervising pharmacist before they are dispensed.

10. Section 4076 of the Code states:

"(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

. . . .

"(9) The expiration date of the effectiveness of the drug dispensed.

11. Section 125.3 of the Code provides, in pertinent part, that the Board/Registrar/Director 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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12. **DRUG CLASSIFICATIONS**

	BRAND NAME	GENERIC NAME	SCHEDULED DRUG	INDICATIONS FOR USE
1.	Opana	Oxymorphone	Schedule II H&S 11055(b)(1)(o)	CII Severe Pain
2.	Lunesta	Eszophiclone	Schedule IV H&S 11057(d)	Insomnia
3.	Lyrica	Pregabalin	Schedule V H&S 11058(b)	Neuropathic pain
4.	Provigil	Modafinil	Schedule IV H&S 11057(f)(3)	Stimulant
5.	Boniva	Inbandronate	Not scheduled B&P 4022	Postmenopausal Osteoporosis
6.	Octonel 5 mg/30 mg/35 mg/75 mg/ or 150 mg	Risendronate	Not scheduled B&P 4022	Postmenopausal Osteoporosis as daily dosing or 1 month
7.	Veramyst	Fluticasone	Not scheduled B&P 4022	Once daily steroid for seasonal allergies
8.	Effexor	Venlafaxime	Not scheduled B&P 4022	Depression
9.	Ambien	Zolpidem	Schedule IV H&S 11057(d)(32)	Insomnia
10.	Nasonex	Mometasone	Not scheduled B&P 4022	Nasal Steroid Spray-Allergies
11.	Restoril	Terrazepam	Schedule IV H&S 11057(d)(29)	Insomnia
12.	Ativan	Lorazepam	Schedule IV H&S 11057(d)(16)	Anti-Anxiety
13.	Lomotil	Dephenoxylate w/Atropine	Schedule V H&S 11058(c)(4)	Diarrhea

FACTUAL SUMMARY

The Board initiated an investigation based upon a complaint from a former employee alleging that Respondent RX Care is actually owned by its manager Zena Frayman, a non-licensee. She further alleged that Ms. Frayman forged PIC Lim's signature on bubble packs and filled her own new prescriptions. The investigation did not sustain these allegations, but revealed other issues of non-compliance as follows:

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FIRST CAUSE FOR DISCIPLINE

(Violation of Laws Relating to Controlled Substances and Dangerous Drugs)

13. Respondents RX Care and Lim are subject to disciplinary action under section 4301 (j) and (o) in conjunction with Federal Regulation 1305.13 (e) which requires the purchaser of schedule CII controlled substances to record on Copy 3 of the DEA 222 order form the number of containers received and the dates received because on May 29, 2008, Respondents failed to endorse all of the DEA 222 forms Copy 3 with the number of containers received and the dates received.

SECOND CAUSE FOR DISCIPLINE

(Violation of Federal and State Laws)

14. Respondents RX Care and Lim are subject to disciplinary action section 4301 (j) and (o) for multiple violations of Federal and State laws as follows:

a. Health and Safety Code Section 11164(a) requires all written prescriptions for Schedule (hereinafter, "C") II-V controlled substances to be written on California Security Prescription forms pursuant to Health and Safety Code Section 11162.1. On May 29, 2008, Respondent RX Care dispensed CII-CV controlled substances forms that were not written security prescription forms as required for CII drug Opana ER on RX 114658, CIV drug Ambien on RX 114655 and RX 114643, Lunesta on RX 114645 RX 114656, RX 119341, RX 119358, and RX 119364, Provigil on RX 119372, and CV drug Lyrica on RX 114659 and RX 119365.

b. Business and Professions Code Section 4076(a)(9) requires a prescription container to be correctly labeled with the expiration date of the effectiveness of the drug dispensed. On May 29, 2008, a review of completed bubble packed prescriptions showed that PIC Paul Lim allowed the repackaged drugs in bubble packs to be labeled with the manufacturer's expiration date rather than a six-month expiration date. The pharmacy also did not have amber colored bubble packs available for light sensitive drugs.

c. Business and Professions Code Section 4342 authorizes the Board to take action against the sale of dangerous drugs that do not conform to the standard and tests as to quality and strength pursuant to the 25th Edition of the USP, page 10. On May 29, 2008, PIC Paul Lim

allowed the pharmacy to maintain dangerous drugs that were expired or contained in unlabeled containers, improperly labeled containers, and drugs that were returned from Board and Care facilities and other pharmacies.

d. Business and Professions Code Section 4063 provides that no prescription refill for a dangerous drug may be refilled without the prescriber's authorization. On May 29, 2008, Respondent RX Care's refill records revealed that prescriptions RX 111448, RX 112086, RX 116662, RX 110383, and RX 117236 for Boniva 150 mg, a dangerous drug, were refilled by Respondent Lim without any documented authorization from the prescriber either in the computer, on the original prescriptions or any other documents.

e. Health and Safety Code Section 11200(b) requires that no prescription for a Schedule III, IV, or V controlled substance be refilled more than five times and/or refilled in amounts when taken together, exceeds a 120-day supply. Respondent Lim, as PIC, was responsible for allowing the pharmacists to dispense the following controlled substance greater than five times: the 10th refill on RX 109104 for CIV Lorazepam on May 3, 2008; the 6th refill on RX 114082 for CV generic Lomotil on May 3, 2008; the 7th refill on RX 115806 for CIV Temazepam on May 3, 2008; the 10th refill on RX 110315 for CIV Provigil on April 25, 2008; the 6th refill on RX 114078 of CV Lyrica on April 26, 2008; the 7th refill on RX 113021 of CIV Clonazepam on April 26, 26, 2008; and the 7th refill on RX 112063 for CIV Clonazepam on May 6, 2008.

THIRD CAUSE FOR DISCIPLINE

(Violation of Board Rules and Regulations)

15. Respondents RX Care and Lim are subject to disciplinary action under section 4301 (o) as follows:

a. California Code of Regulations 1717(b)(1) requires that each prescription on file be recorded with the date dispensed and the name or initials of the dispensing pharmacist. On May 29, 2008, the prescription refill records revealed that many prescriptions were not initialed by a dispensing pharmacist.

b. California Code of Regulations 1716 prohibits the pharmacist from deviating from the prescription except upon prior consent by the prescriber. Respondent RX Care's pharmacists

deviated from the written couponed prescriptions without consent from prescriber Dr. Raikhel as follows: RX 114637 was written for Effexor XR 37.5mg, but Effexor XR 75mg was dispensed on November 13, 2007; RX 114645 was written for Lunesta 2mg, but Lunesta 3mg was dispensed on November 13, 2007; RX 114652 was written for Effexor XR 37.5mg, but Effexor XR 75mg was dispensed on November 13, 2007; on RX 114653 for Nasonex, the prescriber's directions were "2 puffs daily", but "1 puff 2 times daily" was typed and dispensed on November 13, 2007; RX 119364 was written for Lunesta 2mg, but Lunesta 3mg was dispensed on March 22, 2008; on RX 119370 for Veramyst, the prescriber's directions were "One puff every day", but "2 sprays daily" was typed and dispensed on March 22, 2008; on RX 119372 for Provigil 200mg, the prescriber's directions were "Take 1 tablet twice daily", but "Take 1 tablet by mouth daily" was typed and dispensed on March 22, 2008.

c. California Code of Regulations 1761 requires the pharmacist not to dispense any prescription which contains any significant error, omission, irregularity, uncertainty, or ambiguity. On March 22, 2008, Respondent Lim dispensed on March 22, 2008 RX 119378 for four Actonel 35mg that did not contain written directions for use and as such was erroneous, uncertain, irregular, and ambiguous.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Federal and State Laws)

16. Respondents RX Care, Paul Aquinas Lim, and Polina Neminov are subject to disciplinary action section 4301 (j) and (o) as follows:

a. Health and Safety Code Section 11164(a) requires all written prescriptions for Schedule II-V controlled substances to be written on the California Security Prescription forms pursuant to Health and Safety Code Section 11162.1. Respondent Neminov was identified by Respondent Lim as the pharmacist who dispensed, on November 13, 2007, the following controlled substances prescriptions that were not written on the required security prescription forms: CII drug Opana ER on RX 114658, CIV drug Ambien on RX 114655 and RX 114643, Lunesta on RX 114645 and RX 114656, and CV drug Lyrica on RX 114659.

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FIFTH CAUSE FOR DISCIPLINE

(Violation of Board Rules and Regulations)

17. Respondents RX Care, Paul Aquinas Lim, and Polina Neminov are subject to disciplinary action under section 4301 (o) as follows:

a. California Code of Regulations 1716 requires the pharmacist to not deviate from the prescription except upon prior consent from the prescriber. Respondent Neminov was identified by Respondent Lim as the pharmacist who deviated from the written couponed prescriptions without consent from the prescriber Dr. Raikhel as follows: RX 114637 was written for Effexor XR 37.5mg, but Effexor XR 75mg was dispensed on November 13, 2007; RX 114645 was written for Lunesta 2mg, but Lunesta 3mg was dispensed on November 13, 2007; RX 114652 was written for Effexor XR 37.5mg, but Effexor XR 75mg was dispensed on November 13, 2007; and on RX 114653 for Nasonex, the prescriber's directions were "2 puffs daily", but "1 puff 2 times daily" was typed and dispensed on November 13, 2007.

b. California Code of Regulations 1761 requires the pharmacist not to dispense any prescription which contains any significant error, omission, irregularity, uncertainty, or ambiguity. Respondent Lim identified Respondent Neminov as the dispensing pharmacist who, on November 13, 2007, dispensed RX 114657 for Boniva 150mg which did not contain written directions for use and was post-dated to November 28, 2007, and as such was erroneous, uncertain, irregular, and ambiguous.

SIXTH CAUSE FOR DISCIPLINE

(Violation of Board Rules and Regulations)

18. Respondents RX Care, Paul Aquinas Lim, and Respondent Koo are subject to disciplinary action under section 4301 (o) as follows:

a. Health and Safety Code Section 11164(a) requires all written prescriptions for Schedule II-V controlled substances to be written on the California Security Prescription forms pursuant to Health and Safety Code Section 11162.1. Respondent Koo was identified by Respondent Lim as the pharmacist who dispensed RX119341 which is a prescription for Lunesta, a CIV drug, which was not written on the required security prescription forms.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number 46138, issued to RX Care Pharmacy.

2. Revoking or suspending Pharmacist License Number RPH 40911, issued to Paul Aquinas Lim.

3. Revoking or suspending Pharmacist License Number RPH 50440, issued to Polina Neminov.

4. Revoking or suspending Pharmacist License Number RPH 42518, issued to Anna K. Koo.

5. Ordering RX Care Pharmacy, Paul Aquinas Lim, Polina Neminov, Anna K. Koo 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;

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

DATED: 11/25/09

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

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