

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

In the Matter of the Accusation Against:

**IRVINE MEDICAL PHARMACY, INC.
DBA IRVINE MEDICAL PHARMACY**

Pharmacy Permit No. PHY 42046

and

NASSER FATHI

Pharmacist License No. RPH 48441

Case No. 4969

OAH No. 2014070603

In the Matter of the Statement of Issues Against:

**WEST PACIFIC PHARMACY, INC.,
DBA WEST PACIFIC PHARMACY**

Nasser Fathi, President

Community Pharmacy Permit Application

Case No. 5092

OAH No. 2014070585

DECISION AND ORDER

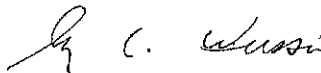
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 28, 2015.

It is so ORDERED on January 21, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER, Board President

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

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13 **DBA IRVINE MEDICAL PHARMACY**

14 Pharmacy Permit No. PHY 42046

15 and

16 **NASSER FATHI**

17 Pharmacist License No. RPH 48441

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19 In the Matter of the Statement of Issues
Against:

20 **WEST PACIFIC PHARMACY, INC.,**
21 **DBA WEST PACIFIC PHARMACY**
Nasser Fathi, President

22 Community Pharmacy Permit Application
23

Case No. 4969

OAH No. 2014070603

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Case No. 5092

OAH No. 2014070585

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

26 **PARTIES**

27 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
28 She brought this action solely in her official capacity and is represented in this matter by Kamala

1 D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy Attorney
2 General.

3 2. Irvine Medical Pharmacy, Inc., dba Irvine Medical Pharmacy (Respondent Irvine
4 Medical Pharmacy Medical Pharmacy), Nasser Fathi (Respondent Fathi), and West Pacific
5 Pharmacy, Inc., dba West Pacific Pharmacy (Respondent West Pacific Pharmacy), collectively
6 Respondents, are represented in these proceedings by attorney Herbert L. Weinberg, whose
7 address is McGuire Woods LLP, 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

8 3. On or about January 20, 1997, the Board of Pharmacy issued Pharmacy Permit No.
9 PHY 42046 to Respondent Irvine Medical Pharmacy with Nasser Fathi as President. The
10 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in
11 Accusation No. 4969 and will expire on January 1, 2015, unless renewed.

12 4. On or about December 6, 1995, the Board of Pharmacy issued Pharmacist License
13 Number RPH 48441 to Respondent Fathi. The Pharmacist License was in full force and effect at
14 all times relevant to the charges brought in Accusation No. 4969 and will expire on October 31,
15 2015, unless renewed.

16 5. On or about July 12, 2013, Respondent West Pacific Pharmacy filed an application
17 dated June 20, 2013, with the Board of Pharmacy to obtain a Community Pharmacy Permit with
18 Nasser Fathi as President and Pharmacist-in-Charge. The Board denied the application on or
19 about October 22, 2013.

20 JURISDICTION

21 6. Accusation No. 4969 was filed before the Board of Pharmacy (Board), Department of
22 Consumer Affairs, and is currently pending against Respondents Irvine Medical Pharmacy and
23 Fathi. The Accusation and all other statutorily required documents were properly served on
24 Respondents Irvine Medical Pharmacy and Fathi on March 14, 2014. Respondents Irvine
25 Medical Pharmacy and Fathi timely filed a Notice of Defense contesting the Accusation. A copy
26 of Accusation No. 4969 is attached as Exhibit A and incorporated by reference.

27 7. Statement of Issues No. 5092 was filed before the Board, and is currently pending
28 against Respondent West Pacific Pharmacy. The Statement of Issues and all other statutorily

1 required documents were properly served on Respondent West Pacific Pharmacy on April 25,
2 2014. A copy of Statement of Issues No. 5092 is attached as Exhibit B and incorporated herein
3 by reference.

4 ADVISEMENT AND WAIVERS

5 8. Respondents have carefully read, fully discussed with counsel, and understand the
6 charges and allegations in Accusation No. 4969 and Statement of Issues No. 5092. Respondents
7 have also carefully read, fully discussed with counsel, and understand the effects of this
8 Stipulated Settlement and Disciplinary Order.

9 9. Respondents are fully aware of their legal rights in this matter, including the right to a
10 hearing on the charges and allegations in the Accusation and Statement of Issues; the right to
11 confront and cross-examine the witnesses against them; the right to present evidence and to
12 testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of
13 witnesses and the production of documents; the right to reconsideration and court review of an
14 adverse decision; and all other rights accorded by the California Administrative Procedure Act
15 and other applicable laws.

16 10. Respondents voluntarily, knowingly, and intelligently waive and give up each and
17 every right set forth above.

18 CULPABILITY

19 11. Respondents Irvine Medical Pharmacy and Fathi understand that the charges and
20 allegations in Accusation No. 4969, if proven at a hearing, constitute cause for imposing
21 discipline upon Pharmacy Permit No. PHY 42046 and Pharmacist License Number RPH 48441.
22 For the purpose of resolving the Accusation without the expense and uncertainty of further
23 proceedings, Respondents Irvine Medical Pharmacy and Fathi agree that, at a hearing,
24 Complainant could establish a factual basis for the charges in the Accusation and that those
25 charges constitute cause for discipline. Respondents Irvine Medical Pharmacy and Fathi hereby
26 gives up the right to contest that cause for discipline exists based on those charges.

27 12. In addition, Respondent West Pacific Pharmacy understands that the charges and
28 allegations in Statement of Issues No. 5092, if proven at a hearing, constitute cause for denying

1 its application for a Community Pharmacy Permit. For the purpose of resolving the Statement of
2 Issues without the expense and uncertainty of further proceedings, Respondent West Pacific
3 Pharmacy agrees that, at a hearing, Complainant could establish a factual basis for the charges in
4 the Statement of Issues, and that Respondent West Pacific Pharmacy hereby gives up its right to
5 contest those charges.

6 13. Respondent Irvine Medical Pharmacy understands that by signing this stipulation, it
7 enables the Board to issue an order accepting the surrender of the Pharmacy Permit No. PHY
8 42046 without further process.

9 14. Respondent Fathi agrees that his Pharmacist License No. RPH 48441 is subject to
10 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
11 Disciplinary Order below. Respondent West Pacific Pharmacy agrees that its Community
12 Pharmacy Permit is subject to denial and agrees to be bound by the Board's probationary terms as
13 set forth in the Disciplinary Order below.

14 CONTINGENCY

15 15. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents
16 understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may
17 communicate directly with the Board regarding this stipulation and surrender, without notice to or
18 participation by Respondents or their counsel. By signing the stipulation, Respondents
19 understand and agree that they may not withdraw their agreement or seek to rescind the
20 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
21 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
22 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
23 the parties, and the Board shall not be disqualified from further action by having considered this
24 matter.

25 16. The parties understand and agree that Portable Document Format (PDF) and facsimile
26 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
27 signatures thereto, shall have the same force and effect as the originals.

1 17. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
2 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
3 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
4 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
5 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
6 writing executed by an authorized representative of each of the parties.

7 18. In consideration of the foregoing admissions and stipulations, the parties agree that
8 the Board may, without further notice or formal proceeding, issue and enter the following Order:

9 **DISCIPLINARY ORDERS**

10 **IT IS HEREBY ORDERED** that Pharmacy Permit No. PHY 42046, issued to Respondent
11 Irvine Medical Pharmacy, Inc., dba Irvine Medical Pharmacy, (Respondent Irvine Medical
12 Pharmacy) is surrendered and accepted by the Board of Pharmacy.

13 1. Respondent Irvine Medical Pharmacy surrenders Pharmacy Permit No. PHY 42046
14 as of the effective date of this Decision. Respondent Irvine Medical Pharmacy shall relinquish
15 the premises wall license and renewal license to the Board within ten (10) days of the effective
16 date of this Decision.

17 2. The surrender of Respondent Irvine Medical Pharmacy's license and the acceptance
18 of the surrendered license by the Board shall constitute the imposition of discipline against
19 Respondent Irvine Medical Pharmacy. This Decision constitutes a record of discipline and shall
20 become a part of Respondent Irvine Medical Pharmacy's license history with the Board.

21 3. Respondent Irvine Medical Pharmacy shall, within ten (10) days of the effective date,
22 arrange for the destruction of, the transfer to, sale of or storage in a facility licensed by the Board
23 of all controlled substances and dangerous drugs and devices, as well as, the records of
24 acquisition and disposition for those dangerous drugs. Respondent Irvine Medical Pharmacy
25 shall further provide written proof of such disposition and submit a completed Discontinuance of
26 Business form according to Board guidelines.

27 4. Respondent Irvine Medical Pharmacy shall also, by the effective date of this
28 Decision, arrange for the continuation of care for existing patients of the pharmacy by, at

1 minimum, providing a written notice to existing patients that specifies the anticipated closing date
2 of the pharmacy and that identifies one or more area pharmacies capable of taking up the patients'
3 care, and by cooperating as may be necessary in the transfer of records or prescriptions for
4 existing patients. Within five days of its notice to the pharmacy's existing patients, Respondent
5 Irvine Medical Pharmacy shall provide a copy of the written notice to the Board. For the purposes
6 of this provision, "ongoing patients" means those patients for whom the pharmacy has on file a
7 prescription with one or more refills outstanding, or for whom the pharmacy has filled a
8 prescription within the preceding sixty (60) days.

9 5. If Respondent Irvine Medical Pharmacy ever applies for an application for a licensed
10 premises or a petition for reinstatement in the State of California, the Board shall treat it as a new
11 application for licensure. Respondent Irvine Medical Pharmacy must comply with all the laws,
12 regulations, and procedures for licensure in effect at the time the application or petition is filed,
13 and all of the charges and allegations contained in Accusation No. 4969 shall be deemed to be
14 true, correct and admitted by Respondent when the Board determines to grant or deny the
15 application or petition.

16 **IT IS FURTHER HEREBY ORDERED** that Pharmacist License No. RPH 48441 issued
17 to Nasser Fathi (Respondent Fathi) is revoked. However, the revocation is stayed and
18 Respondent Fathi is placed on probation for five (5) years on the following terms and conditions.

19 **1. Suspension**

20 As part of probation, Respondent Fathi is suspended from the practice of pharmacy for
21 sixty (60) days beginning the effective date of this decision.

22 During suspension, Respondent Fathi shall not enter any pharmacy area or any portion of
23 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
24 of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and
25 devices or controlled substances are maintained. Respondent Fathi shall not practice pharmacy
26 nor do any act involving drug selection, selection of stock, manufacturing, compounding,
27 dispensing or patient consultation; nor shall Respondent Fathi manage, administer, or be a
28

1 consultant to any licensee of the Board, or have access to or control the ordering, manufacturing
2 or dispensing of dangerous drugs and devices or controlled substances.

3 Respondent Fathi shall not engage in any activity that requires the professional judgment of
4 a pharmacist. Respondent Fathi shall not direct or control any aspect of the practice of pharmacy.
5 Respondent Fathi shall not perform the duties of a pharmacy technician or a designated
6 representative for any entity licensed by the Board.

7 Subject to the above restrictions, Respondent Fathi may continue to own or hold an interest
8 in any licensed premises in which he holds an interest at the time this decision becomes effective
9 unless otherwise specified in this order.

10 Failure to comply with this suspension shall be considered a violation of probation.

11 **2. Obey All Laws**

12 Respondent Fathi shall obey all state and federal laws and regulations.

13 Respondent Fathi shall report any of the following occurrences to the Board, in writing,
14 within seventy-two (72) hours of such occurrence:

- 15 • an arrest or issuance of a criminal complaint for violation of any provision of the
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
17 substances laws
- 18 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
19 criminal complaint, information or indictment
- 20 • a conviction of any crime
- 21 • discipline, citation, or other administrative action filed by any state or federal agency
22 which involves Respondent Fathi's pharmacist license or which is related to the
23 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
24 or charging for any drug, device or controlled substance.

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

26 **3. Report to the Board**

27 Respondent Fathi shall report to the Board quarterly, on a schedule as directed by the Board
28 or its designee. The report shall be made either in person or in writing, as directed. Among other

1 requirements, Respondent Fathi shall state in each report under penalty of perjury whether there
2 has been compliance with all the terms and conditions of probation. Failure to submit timely
3 reports in a form as directed shall be considered a violation of probation. Any period(s) of
4 delinquency in submission of reports as directed may be added to the total period of probation.
5 Moreover, if the final probation report is not made as directed, probation shall be automatically
6 extended until such time as the final report is made and accepted by the Board.

7 **4. Interview with the Board**

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

13 **5. Cooperate with Board Staff**

14 Respondent Fathi shall cooperate with the Board's inspection program and with the Board's
15 monitoring and investigation of Respondent Fathi's compliance with the terms and conditions of
16 his probation. Failure to cooperate shall be considered a violation of probation.

17 **6. Continuing Education**

18 Respondent Fathi shall provide evidence of efforts to maintain skill and knowledge as a
19 pharmacist as directed by the Board or its designee.

20 **7. Notice to Employers**

21 During the period of probation, Respondent Fathi shall notify all present and prospective
22 employers of the decision in case number 4969 and the terms, conditions and restrictions imposed
23 on Respondent Fathi by the decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 Respondent Fathi undertaking any new employment, Respondent Fathi shall cause his direct
26 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during
27 Respondent Fathi's tenure of employment) and owner to report to the Board in writing
28 acknowledging that the listed individual(s) has/have read the decision in case number 4969, and

1 terms and conditions imposed thereby. It shall be Respondent Fathi's responsibility to ensure that
2 his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

3 If Respondent Fathi works for or is employed by or through a pharmacy employment
4 service, Respondent Fathi must notify his direct supervisor, pharmacist-in-charge, and owner at
5 every entity licensed by the Board of the terms and conditions of the decision in case number
6 4969 in advance of the Respondent Fathi commencing work at each licensed entity. A record of
7 this notification must be provided to the Board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of Respondent Fathi undertaking any new employment by or through a pharmacy
10 employment service, Respondent Fathi shall cause his direct supervisor with the pharmacy
11 employment service to report to the Board in writing acknowledging that he has read the decision
12 in case number 4969 and the terms and conditions imposed thereby. It shall be Respondent
13 Fathi's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
14 acknowledgment(s) to the Board.

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

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

22 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
23 **Designated Representative-in-Charge, or Serving as a Consultant**

24 During the period of probation, Respondent Fathi shall not supervise any intern pharmacist,
25 be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
26 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
27 unauthorized supervision responsibilities shall be considered a violation of probation.
28

1 **9. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent Fathi shall pay
3 to the Board its costs of investigation and prosecution in the amount of \$14,918.50. Respondent
4 Fathi and Respondent West Pacific Pharmacy shall be jointly and severally liable for payment of
5 these costs. Payments shall be made as follows: Beginning on the effective date of the decision
6 and due on the first of each month thereafter, Respondents Fathi and West Pacific Pharmacy shall
7 pay \$300.00 per month until the costs are paid in full. There shall be no deviation from this
8 schedule absent prior written approval by the Board or its designee. Failure to pay costs by the
9 deadline(s) as directed shall be considered a violation of probation.

10 The filing of bankruptcy by Respondents Fathi or West Pacific Pharmacy shall not relieve
11 Respondents Fathi and West Pacific Pharmacy of the responsibility to reimburse the Board its
12 costs of investigation and prosecution.

13 **10. Probation Monitoring Costs**

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

18 **11. Status of License**

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

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

26 **12. License Surrender While on Probation/Suspension**

27 Following the effective date of this decision, should Respondent Fathi cease practice due to
28 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,

1 Respondent Fathi may tender his license to the Board for surrender. The Board or its designee
2 shall have the discretion whether to grant the request for surrender or take any other action it
3 deems appropriate and reasonable. Upon formal acceptance of the surrender of the license,
4 Respondent Fathi will no longer be subject to the terms and conditions of probation. This
5 surrender constitutes a record of discipline and shall become a part of the Respondent's license
6 history with the Board.

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

13 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
14 **Employment**

15 Respondent Fathi shall notify the Board in writing within ten (10) days of any change of
16 employment. Said notification shall include the reasons for leaving, the address of the new
17 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
18 Fathi shall further notify the Board in writing within ten (10) days of a change in name, residence
19 address, mailing address, or phone number.

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

22 **14. Tolling of Probation**

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

1 Should Respondent Fathi, regardless of residency, for any reason (including vacation) cease
2 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
3 Respondent Fathi must notify the Board in writing within ten (10) days of the cessation of
4 practice, and must further notify the Board in writing within ten (10) days of the resumption of
5 practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

9 "Cessation of practice" means any calendar month during which Respondent is
10 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
11 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
12 month during which Respondent is practicing as a pharmacist for at least forty (40)
13 hours as a pharmacist as defined by Business and Professions Code section 4000 et
14 seq.

15 **15. Violation of Probation**

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

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

1 In any proceedings conducted pursuant to this probation condition, all allegations and charges in
2 Accusation No. 4969 shall be deemed to be admitted and true.

3 **16. Completion of Probation**

4 Upon written notice by the Board or its designee indicating successful completion of
5 probation, Respondent Fathi's license will be fully restored.

6 **17. Community Services Program**

7 Within sixty (60) days of the effective date of this decision, Respondent Fathi shall submit
8 to the Board or its designee, for prior approval, a community service program in which
9 Respondent Fathi shall provide free or at a reduced cost health-care related services, to a
10 community, charitable facility, or agency for at least ninety-six (96) hours per year for each year
11 of probation. Within thirty (30) days of Board approval thereof, Respondent Fathi shall submit
12 documentation to the Board demonstrating commencement of the community service program. A
13 record of this notification must be provided to the Board upon request. Respondent Fathi shall
14 report on progress with the community service program in the quarterly reports. Failure to timely
15 submit, commence, or comply with the program shall be considered a violation of probation.

16 **18. Remedial Education**

17 Within sixty (60) days of the effective date of this decision, Respondent Fathi shall submit
18 to the Board or its designee, for prior approval, an appropriate program of remedial education
19 related to corresponding responsibility therapeutics of controlled substances, particularly in
20 opioid therapy. The program of remedial education shall consist of at least ten (10) hours, which
21 shall be completed within the first year of probation at Respondent Fathi's own expense. All
22 remedial education shall be in addition to, and shall not be credited toward, continuing education
23 (CE) courses used for license renewal purposes.

24 Failure to timely submit or complete the approved remedial education shall be considered a
25 violation of probation. The period of probation will be automatically extended until such
26 remedial education is successfully completed and written proof, in a form acceptable to the
27 Board, is provided to the Board or its designee.

28 Following the completion of each course, the Board or its designee may require the

1 Respondent Fathi, at his own expense, to take an approved examination to test the Respondent
2 Fathi's knowledge of the course. If the Respondent Fathi does not achieve a passing score on the
3 examination, this failure shall be considered a violation of probation. Any such examination
4 failure shall require Respondent Fathi to take another course approved by the Board in the same
5 subject area.

6 **19. No Ownership of Licensed Premises**

7 With the exception of West Pacific Pharmacy, Inc., dba West Pacific Pharmacy,
8 Respondent Fathi shall not acquire any new ownership, legal or beneficial interest nor serve as a
9 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
10 business, firm, partnership, or corporation licensed by the Board. If Respondent Fathi currently
11 owns or has any legal or beneficial interest in, or serves as a manager, administrator, member,
12 officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation
13 currently or hereinafter licensed by the Board, Respondent Fathi may continue to serve in such
14 capacity or hold that interest, but only to the extent of that position or interest as of the effective
15 date of this decision. Violation of this restriction shall be considered a violation of probation.

16 **20. Separate File of Records**

17 Respondent Fathi shall maintain and make available for inspection a separate file of all
18 records pertaining to the acquisition or disposition of all controlled substances. Failure to
19 maintain such file or make it available for inspection shall be considered a violation of probation.

20 **21. Consultant for Owner or Pharmacist-In-Charge**

21 During the period of probation, Respondent Fathi shall not supervise any intern pharmacist
22 or serve as a consultant to any entity licensed by the Board. Respondent Fathi may be a
23 pharmacist-in-charge at West Pacific Pharmacy, Inc., dba West Pacific Pharmacy. However, if
24 during the period of probation Respondent Fathi serves as a pharmacist-in-charge, Respondent
25 Fathi shall retain an independent consultant at his own expense who shall be responsible for
26 reviewing pharmacy operations on a monthly basis for compliance by Respondent Fathi with state
27 and federal laws and regulations governing the practice of pharmacy and for compliance by
28 Respondent Fathi with the obligations of a pharmacist-in-charge. The consultant shall be a

1 pharmacist licensed by and not on probation with the Board and whose name shall be submitted
2 to the Board or its designee, for prior approval, within thirty (30) days of the effective date of this
3 decision. Respondent Fathi shall not be a pharmacist-in-charge at more than one pharmacy or at
4 any pharmacy of which he is not the sole owner. Failure to timely retain, seek approval of, or
5 ensure timely reporting by the consultant shall be considered a violation of probation.

6 **22. Tolling of Suspension**

7 During the period of suspension, Respondent Fathi shall not leave California for any period
8 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
9 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
10 absence from California during the period of suspension exceeding ten (10) days shall toll the
11 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
12 Respondent Fathi is absent from California. During any such period of tolling of suspension,
13 Respondent Fathi must nonetheless comply with all terms and conditions of probation.

14 Respondent Fathi must notify the Board in writing within ten (10) days of departure, and
15 must further notify the Board in writing within ten (10) days of return. The failure to provide
16 such notification(s) shall constitute a violation of probation. Upon such departure and return,
17 Respondent Fathi shall not resume the practice of pharmacy until notified by the Board that the
18 period of suspension has been satisfactorily completed.

19 **23. Ethics Course**

20 Within sixty (60) calendar days of the effective date of this decision, Respondent Fathi shall
21 enroll in a course in ethics, at Respondent Fathi's expense, approved in advance by the Board or
22 its designee. Failure to initiate the course during the first year of probation, and complete it
23 within the second year of probation, is a violation of probation.

24 Respondent Fathi shall submit a certificate of completion to the Board or its designee
25 within five days after completing the course.

26 **IT IS FURTHER HEREBY ORDERED** that West Pacific Pharmacy, Inc., dba West
27 Pacific Pharmacy with Nasser Fathi as President and Pharmacist in Charge, (Respondent West
28 Pacific Pharmacy) will be issued a community pharmacy permit only upon completion of all

1 licensing requirements. The community pharmacy permit will be immediately revoked, however,
2 the revocation will be stayed and Respondent West Pacific Pharmacy is placed on five (5) years
3 probation on the following terms and conditions.

4 **24. Suspension**

5 The Community Pharmacy Permit issued to West Pacific Pharmacy, Inc., dba West Pacific
6 Pharmacy (Respondent West Pacific Pharmacy) is suspended for a period of thirty (30) days
7 beginning the effective of this decision.

8 Respondent West Pacific Pharmacy shall cease all pharmacy operations during the period
9 of suspension. Failure to comply with this suspension shall be considered a violation of
10 probation.

11 **25. Obey All Laws**

12 Respondent West Pacific Pharmacy shall obey all state and federal laws and regulations.

13 Respondent West Pacific Pharmacy shall report any of the following occurrences to the
14 Board, in writing, within seventy-two (72) hours of such occurrence:

- 15 • an arrest or issuance of a criminal complaint for violation of any provision of the
16 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
17 substances laws
- 18 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
19 criminal complaint, information or indictment
- 20 • a conviction of any crime
- 21 • discipline, citation, or other administrative action filed by any state or federal agency
22 which involves Respondent's Community Pharmacy Permit or which is related to the
23 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
24 billing, or charging for any drug, device or controlled substance.

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

26 **26. Report to the Board**

27 Respondent West Pacific Pharmacy shall report to the Board quarterly, on a schedule as
28 directed by the Board or its designee. The report shall be made either in person or in writing, as

1 directed. Among other requirements, Respondent West Pacific Pharmacy shall state in each
2 report under penalty of perjury whether there has been compliance with all the terms and
3 conditions of probation. Failure to submit timely reports in a form as directed shall be considered
4 a violation of probation. Any period(s) of delinquency in submission of reports as directed may
5 be added to the total period of probation. Moreover, if the final probation report is not made as
6 directed, probation shall be automatically extended until such time as the final report is made and
7 accepted by the Board.

8 **27. Interview with the Board**

9 Upon receipt of reasonable prior notice, Respondent West Pacific Pharmacy shall appear in
10 person for interviews with the Board or its designee, at such intervals and locations as are
11 determined by the Board or its designee. Failure to appear for any scheduled interview without
12 prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews
13 with the Board or its designee during the period of probation, shall be considered a violation of
14 probation.

15 **28. Cooperate with Board Staff**

16 Respondent West Pacific Pharmacy shall cooperate with the Board's inspection program
17 and with the Board's monitoring and investigation of Respondent West Pacific Pharmacy's
18 compliance with the terms and conditions of their probation. Failure to cooperate shall be
19 considered a violation of probation.

20 **29. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, Respondent West Pacific
22 Pharmacy shall pay to the Board its costs of investigation and prosecution as set forth in
23 paragraph nine (9) of this Stipulated Settlement and Disciplinary Order.

24 **30. Probation Monitoring Costs**

25 Respondent West Pacific Pharmacy shall pay any costs associated with probation
26 monitoring as determined by the Board each and every year of probation. Such costs shall be
27 payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such
28 costs by the deadline(s) as directed shall be considered a violation of probation.

1 **31. Status of License**

2 Respondent West Pacific Pharmacy shall, at all times while on probation, maintain current
3 licensure with the Board. If Respondent West Pacific Pharmacy submits an application to the
4 Board, and the application is approved, for a change of location, change of permit or change of
5 ownership, the Board shall retain continuing jurisdiction over the license, and Respondent West
6 Pacific Pharmacy shall remain on probation as determined by the Board. Failure to maintain
7 current licensure shall be considered a violation of probation.

8 If Respondent West Pacific Pharmacy's license expires or is cancelled by operation of law
9 or otherwise at any time during the period of probation, including any extensions thereof or
10 otherwise, upon renewal or reapplication Respondent West Pacific Pharmacy's license shall be
11 subject to all terms and conditions of this probation not previously satisfied.

12 **32. License Surrender While on Probation/Suspension**

13 Following the effective date of this decision, should Respondent West Pacific Pharmacy
14 discontinue business, Respondent West Pacific Pharmacy may tender the premises license to the
15 Board for surrender. The Board or its designee shall have the discretion whether to grant the
16 request for surrender or take any other action it deems appropriate and reasonable. Upon formal
17 acceptance of the surrender of the license, Respondent West Pacific Pharmacy will no longer be
18 subject to the terms and conditions of probation.

19 Upon acceptance of the surrender, Respondent West Pacific Pharmacy shall relinquish the
20 premises wall and renewal license to the Board within ten (10) days of notification by the Board
21 that the surrender is accepted. Respondent West Pacific Pharmacy shall further submit a
22 completed Discontinuance of Business form according to Board guidelines and shall notify the
23 Board of the records inventory transfer.

24 Respondent West Pacific Pharmacy shall also, by the effective date of this decision, arrange
25 for the continuation of care for ongoing patients of the pharmacy by, at minimum, providing a
26 written notice to ongoing patients that specifies the anticipated closing date of the pharmacy and
27 that identifies one or more area pharmacies capable of taking up the patients' care, and by
28 cooperating as may be necessary in the transfer of records or prescriptions for ongoing patients.

1 Within five days of its provision to the pharmacy's ongoing patients, Respondent West Pacific
2 Pharmacy shall provide a copy of the written notice to the Board. For the purposes of this
3 provision, "ongoing patients" means those patients for whom the pharmacy has on file a
4 prescription with one or more refills outstanding, or for whom the pharmacy has filled a
5 prescription within the preceding sixty (60) days.

6 Respondent West Pacific Pharmacy may not apply for any new licensure from the Board
7 for three (3) years from the effective date of the surrender. Respondent West Pacific Pharmacy
8 shall meet all requirements applicable to the license sought as of the date the application for that
9 license is submitted to the Board.

10 Respondent West Pacific Pharmacy further stipulates that it shall reimburse the Board for
11 its costs of investigation and prosecution prior to the acceptance of the surrender.

12 **33. Notice to Employees**

13 Respondent West Pacific Pharmacy shall, upon or before the effective date of this decision,
14 ensure that all employees involved in permit operations are made aware of all the terms and
15 conditions of probation, either by posting a notice of the terms and conditions, circulating such
16 notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent
17 place and shall remain posted throughout the probation period. Respondent West Pacific
18 Pharmacy shall ensure that any employees hired or used after the effective date of this decision
19 are made aware of the terms and conditions of probation by posting a notice, circulating a notice,
20 or both. Additionally, Respondent West Pacific Pharmacy shall submit written notification to the
21 Board, within fifteen (15) days of the effective date of this decision, that this term has been
22 satisfied. Failure to submit such notification to the Board shall be considered a violation of
23 probation.

24 "Employees" as used in this provision includes all full-time, part-time,
25 volunteer, temporary and relief employees and independent contractors employed or
26 hired at any time during probation.

27 **34. Owners and Officers: Knowledge of the Law**

28 Respondent West Pacific Pharmacy shall provide, within thirty (30) days after the effective

1 date of this decision, signed and dated statements from its owners, including any owner or holder
2 of ten percent (10%) or more of the interest in Respondent or Respondent's stock, and any officer,
3 stating under penalty of perjury that said individuals have read and are familiar with state and
4 federal laws and regulations governing the practice of pharmacy. The failure to timely provide
5 said statements under penalty of perjury shall be considered a violation of probation.

6 **35. Posted Notice of Probation**

7 Respondent West Pacific Pharmacy shall prominently post a probation notice provided by
8 the Board in a place conspicuous and readable to the public. The probation notice shall remain
9 posted during the entire period of probation.

10 Respondent West Pacific Pharmacy shall not, directly or indirectly, engage in any conduct
11 or make any statement which is intended to mislead or is likely to have the effect of misleading
12 any patient, customer, member of the public, or other person(s) as to the nature of and reason for
13 the probation of the licensed entity.

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

15 **36. Violation of Probation**

16 If Respondent West Pacific Pharmacy has not complied with any term or condition of
17 probation, the Board shall have continuing jurisdiction over Respondent West Pacific Pharmacy's
18 license, and probation shall be automatically extended until all terms and conditions have been
19 satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply
20 as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

21 If Respondent West Pacific Pharmacy violates probation in any respect, the Board, after
22 giving Respondent West Pacific Pharmacy notice and an opportunity to be heard, may revoke
23 probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard
24 are not required for those provisions stating that a violation thereof may lead to automatic
25 termination of the stay and/or revocation of the license. If a petition to revoke probation or an
26 accusation is filed against Respondent West Pacific Pharmacy during probation, the Board shall
27 have continuing jurisdiction and the period of probation shall be automatically extended until the
28 petition to revoke probation or accusation is heard and decided. In any proceedings conducted

1 pursuant to this probation condition, all allegations and charges in Statement of Issues 5092 shall
2 be deemed to be admitted and true.

3 **37. Completion of Probation**

4 Upon written notice by the Board or its designee indicating successful completion of
5 probation, Respondent West Pacific Pharmacy's license will be fully restored.

6 **38. Community Services Program**

7 Within sixty (60) days of the effective date of this decision, Respondent West Pacific
8 Pharmacy shall submit to the Board or its designee, for prior approval, a community service
9 program in which Respondent West Pacific Pharmacy shall provide free or at a reduced cost
10 immunizations, brown bag consultations, or other health-care related services, to a community,
11 charitable facility, or agency valuing \$10,000.00.

12 Within thirty (30) days of Board approval thereof, Respondent West Pacific Pharmacy shall
13 submit documentation to the Board demonstrating commencement of the community service
14 program. Respondent West Pacific Pharmacy shall report on progress with the community
15 service program in the quarterly reports.

16 Failure to timely submit, commence, or comply with the program shall be considered a
17 violation of probation.

18 **39. Separate File of Records**

19 Respondent West Pacific Pharmacy shall maintain and make available for inspection a
20 separate file of all records pertaining to the acquisition or disposition of all controlled substances.
21 Failure to maintain such file or make it available for inspection shall be considered a violation of
22 probation.

23 **40. Posted Notice of Suspension**

24 Respondent West Pacific Pharmacy shall prominently post a suspension notice provided by
25 the Board in a place conspicuous and readable to the public. The suspension notice shall remain
26 posted during the entire period of suspension ordered by this decision.

27 Respondent West Pacific Pharmacy shall not, directly or indirectly, engage in any conduct
28 or make any statement, orally, electronically or in writing, 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 closure of the licensed entity.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 42046, Pharmacist License Number RPH 48441, and Community Pharmacy Permit application. On behalf of myself and Respondents Irvine Medical Pharmacy and West Pacific Pharmacy, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: _____

NASSER FATHI as an individual and as
authorized agent on behalf of IRVINE MEDICAL
PHARMACY, INC., DBA IRVINE MEDICAL
PHARMACY and WEST PACIFIC PHARMACY,
INC., DBA WEST PACIFIC PHARMACY
Respondents

I have read and fully discussed with Respondents the terms and conditions and other matters contained in this Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

11/25/2014


HERBERT L. WEINBERG
Attorney for Respondents

1 likely to have the effect of misleading any patient, customer, member of the public, or other
2 person(s) as to the nature of and reason for the closure of the licensed entity.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
5 discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the effect it
6 will have on Pharmacy Permit No. PIY 42046, Pharmacist License Number RPH 48441, and
7 Community Pharmacy Permit application. On behalf of myself and Respondents Irvine Medical
8 Pharmacy and West Pacific Pharmacy, I enter into this Stipulated Settlement and Disciplinary
9 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
10 of the Board of Pharmacy.

11
12 DATED: 11-25-14


13 NASSER FATHI as an individual and as
14 authorized agent on behalf of IRVINE MEDICAL
15 PHARMACY, INC., DBA IRVINE MEDICAL
16 PHARMACY and WEST PACIFIC PHARMACY
Respondents

17 I have read and fully discussed with Respondents the terms and conditions and other
18 matters contained in this Stipulated Settlement and Disciplinary Order. I approve its form and
19 content.

20
21 DATED: _____

22 HERBERT L. WEINBERG
23 Attorney for Respondents
24
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 12/9/2014

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



NICOLE R. TRAMA
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4969

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 NICOLE R. TRAMA
Deputy Attorney General
4 State Bar No. 263607
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2143
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4969

12 **IRVINE MEDICAL PHARMACY, INC.**
13 **DBA IRVINE MEDICAL PHARMACY**
14 **14130 Culver Drive, Suite D**
Irvine, CA 92714

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 42046**

16 **and**

17 **NASSER FATHI**
18 **25652 Nellie Gail Road**
Laguna Hills, CA 92653

19 **Pharmacist License No. RPH 48441**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about January 20, 1997, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 42046 to Irvine Medical Pharmacy, Inc., dba Irvine Medical Pharmacy
28 (Respondent) with Nasser Fathi as President and Pharmacist-in-Charge (PIC). The Pharmacy

1 Permit was in full force and effect at all times relevant to the charges brought herein and will
2 expire on January 1, 2015, unless renewed.

3 3. On or about December 6, 1995, the Board of Pharmacy issued Pharmacist License
4 Number RPH 48441 to Nasser Fathi (Respondent). The Pharmacist License was in full force and
5 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
6 unless renewed.

7 JURISDICTION

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

11 5. Section 4011 of the Code provides that the Board shall administer and enforce both
12 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
13 Act [Health & Safety Code, § 11000 et seq.].

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued
18 license by operation of law or by order or decision of the board or a court of law,
19 the placement of a license on a retired status, or the voluntary surrender of a
20 license by a licensee shall not deprive the board of jurisdiction to commence or
proceed with any investigation of, or action or disciplinary proceeding against, the
licensee or to render a decision suspending or revoking the license.

21 STATUTORY PROVISIONS

22 8. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe
24 for self-use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar import,
28 the blank to be filled in with the designation of the practitioner licensed to use or
order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully
2 dispensed only on prescription or furnished pursuant to Section 4006.

3 9. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be
4 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
5 to the practice of pharmacy."

6 10. Section 4301 of the Code states:

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

11

12 (c) Gross negligence.

13 (d) The clearly excessive furnishing of controlled substances in violation of
14 subdivision (a) of Section 11153 of the Health and Safety Code.

15

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

18

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

24

25 11. Health and Safety Code section 11153 states in pertinent part:

26 (a) A prescription for a controlled substance shall only be issued for a
27 legitimate medical purpose by an individual practitioner acting in the usual course
28 of his or her professional practice. The responsibility for the proper prescribing
and dispensing of controlled substances is upon the prescribing practitioner, but a
corresponding responsibility rests with the pharmacist who fills the prescription.
Except as authorized by this division, the following are not legal prescriptions: (1)
an order purporting to be a prescription which is issued not in the usual course of
professional treatment or in legitimate and authorized research; or (2) an order for
an addict or habitual user of controlled substances, which is issued not in the
course of professional treatment or as part of an authorized narcotic treatment

1 program, for the purpose of providing the user with controlled substances,
2 sufficient to keep him or her comfortable by maintaining customary use.

3 12. Health and Safety Code section 11165 states:

4 (a) To assist law enforcement and regulatory agencies in their efforts to
5 control the diversion and resultant abuse of Schedule II, Schedule III, and
6 Schedule IV controlled substances, and for statistical analysis, education, and
7 research, the Department of Justice shall, contingent upon the availability of
8 adequate funds from the Contingent Fund of the Medical Board of California, the
9 Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of
10 Registered Nursing Fund, and the Osteopathic Medical Board of California
11 Contingent Fund, maintain the Controlled Substance Utilization Review and
12 Evaluation System (CURES) for the electronic monitoring of, and Internet access
13 to information regarding, the prescribing and dispensing of Schedule II, Schedule
14 III, and Schedule IV controlled substances by all practitioners authorized to
15 prescribe or dispense these controlled substances.

16 (b) The reporting of Schedule III and Schedule IV controlled substance
17 prescriptions to CURES shall be contingent upon the availability of adequate funds
18 from the Department of Justice. The department may seek and use grant funds to
19 pay the costs incurred from the reporting of controlled substance prescriptions to
20 CURES. Funds shall not be appropriated from the Contingent Fund of the Medical
21 Board of California, the Pharmacy Board Contingent Fund, the State Dentistry
22 Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or
23 the Osteopathic Medical Board of California Contingent Fund to pay the costs of
24 reporting Schedule III and Schedule IV controlled substance prescriptions to
25 CURES.

26 (c) CURES shall operate under existing provisions of law to safeguard the
27 privacy and confidentiality of patients. Data obtained from CURES shall only be
28 provided to appropriate state, local, and federal persons or public agencies for
disciplinary, civil, or criminal purposes and to other agencies or entities, as
determined by the Department of Justice, for the purpose of educating practitioners
and others in lieu of disciplinary, civil, or criminal actions. Data may be provided
to public or private entities, as approved by the Department of Justice, for
educational, peer review, statistical, or research purposes, provided that patient
information, including any information that may identify the patient, is not
compromised. Further, data disclosed to any individual or agency as described in
this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV
controlled substance, as defined in the controlled substances schedules in federal
law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14,
respectively, of Title 21 of the Code of Federal Regulations, the dispensing
pharmacy or clinic shall provide the following information to the Department of
Justice on a weekly basis and in a format specified by the Department of Justice:

1 (1) Full name, address, and the telephone number of the ultimate user or
2 research subject, or contact information as determined by the Secretary of the
3 United States Department of Health and Human Services, and the gender, and date
4 of birth of the ultimate user.

5 (2) The prescriber's category of licensure and license number; federal
6 controlled substance registration number; and the state medical license number of
7 any prescriber using the federal controlled substance registration number of a
8 government-exempt facility.

9 (3) Pharmacy prescription number, license number, and federal controlled
10 substance registration number.

11 (4) NDC (National Drug Code) number of the controlled substance
12 dispensed.

13 (5) Quantity of the controlled substance dispensed.

14 (6) ICD-9 (diagnosis code), if available.

15 (7) Number of refills ordered.

16 (8) Whether the drug was dispensed as a refill of a prescription or as a
17 first-time request.

18 (9) Date of origin of the prescription.

19 (10) Date of dispensing of the prescription.

20 (e) This section shall become operative on January 1, 2005.

21 REGULATORY PROVISIONS

22 13. Code of Federal Regulations, title 21, section 1306.04 states in pertinent part:

23 (a) A prescription for a controlled substance to be effective must be issued for
24 a legitimate medical purpose by an individual practitioner acting in the usual
25 course of his professional practice. The responsibility for the proper prescribing
26 and dispensing of controlled substances is upon the prescribing practitioner, but a
27 corresponding responsibility rests with the pharmacist who fills the prescription.
28 An order purporting to be a prescription issued not in the usual course of
professional treatment or in legitimate and authorized research is not a prescription
within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the
person knowingly filling such a purported prescription, as well as the person
issuing it, shall be subject to the penalties provided for violations of the provisions
of law relating to controlled substances.

.....

1 14. California Code of Regulations, title 16, section 1707.5(d) states in pertinent part:

2 (a) Labels on drug containers dispensed to patients in California shall conform
3 to the following format:

4

5 (d) The pharmacy shall have policies and procedures in place to help patients
6 with limited or no English proficiency understand the information on the label as
7 specified in subdivision (a) in the patient's language. The pharmacy's policies and
8 procedures shall be specified in writing and shall include, at minimum, the
9 selected means to identify the patient's language and to provide interpretive
10 services in the patient's language. The pharmacy shall, at minimum, provide
11 interpretive services in the patient's language, if interpretive services in such
12 language are available, during all hours that the pharmacy is open, either in person
13 by pharmacy staff or by use of a third-party interpretive service available by
14 telephone at or adjacent to the pharmacy counter.

11

12 15. California Code of Regulations, title 16, section 1761 states:

13 (a) No pharmacist shall compound or dispense any prescription which
14 contains any significant error, omission, irregularity, uncertainty, ambiguity or
15 alteration. Upon receipt of any such prescription, the pharmacist shall contact the
16 prescriber to obtain the information needed to validate the prescription.

16 (b) Even after conferring with the prescriber, a pharmacist shall not
17 compound or dispense a controlled substance prescription where the pharmacist
18 knows or has objective reason to know that said prescription was not issued for a
19 legitimate medical purpose.

19 COST RECOVERY

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

DRUGS

17. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

18. Carisoprodol, the generic name for Soma, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, and is a dangerous drug pursuant to Business and Professions Code section 4022.

19. Opana, a brand name for oxymorphone hydrochloride, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b), and is a dangerous drug pursuant to Business and Professions Code section 4022.

20. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

21. Vicodin, a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

22. At all times mentioned herein and since January 20, 1997, Nasser Fathi (Respondent Fathi), has been the President and Pharmacist-in-Charge (PIC) of Irvine Medical Pharmacy, Inc., dba Irvine Medical Pharmacy (Respondent Irvine Medical Pharmacy).

23. In or around January 2013, the Board of Pharmacy initiated an investigation of Respondents. The Board inspector discovered that most Schedule II controlled substance prescriptions filled by Respondents came from the same five doctors, that patients traveled a distance to have their Schedule II prescriptions filled at the pharmacy, and that patients always paid in cash for controlled substances. The Board inspector also discovered that some patients came to Respondent Irvine Medical Pharmacy as a group in a van or SUV in order for them all to obtain controlled substances.

1 24. With respect to the verification of prescriptions, Respondents' ancillary staff
2 verified medications by contacting the patient's doctor. Staff only verified the drug, strength, and
3 quantity, and did not ask about indication or past medical history. Respondent Fathi did not
4 verify prescriptions written by Dr. W.¹ or Dr. C.² Instead, Respondents' practice was to have
5 ancillary staff call Dr. W.'s cell phone or speak with the receptionist at Dr. C.'s office, when
6 verifying prescriptions.

7 25. Some patients presented with what appeared to pharmacy staff to be "fake" IDs when
8 picking up the prescriptions from Respondents. Although this was brought to Respondent Fathi's
9 attention, Respondents instructed staff to fill prescriptions for individuals even if the IDs
10 appeared to be fake. Respondent Fathi also did not utilize the Prescription Drug Monitoring
11 Program (PDMP) or CURES³ to ensure that controlled substances were dispensed for a legitimate
12 medical purpose.

13 26. On May 30, 2012, Respondents dispensed 180 tablets of oxycodone 30 mg to a
14 person who posed as Patient MA pursuant to a prescription from Dr. C. MA's address was in
15 Inglewood, California, approximately 47 miles from Respondent Irvine Medical Pharmacy.
16 However, the Board inspector contacted the real MA and learned that MA's driver's license was
17 stolen in 2012, that someone had stolen his identity, that he has never been to Irvine before, that
18 he has never seen Dr. C. and that he has never taken oxycodone 30 mg.

19 27. Patient DG's address was approximately 45 miles from Respondent Irvine Medical
20 Pharmacy. DG did not receive any controlled substance medications from January 1, 2012
21 through October 11, 2012. However, between October 11, 2012 and March 2013, Respondents
22

23 ¹ Dr. W.'s office was located in Anaheim Hills, approximately 18 miles from Respondent
Irvine Medical Pharmacy. Dr. W. was convicted of Medicare fraud on April 14, 2013.

24 ² Dr. C. has an office in Toluca Lake and Studio City, approximately 51 miles and 49
miles from Respondent Irvine Medical Pharmacy, respectively.

25 ³ Controlled Substance Utilization Review and Evaluation System (CURES) is a database
26 in a program developed by the California Department of Justice, Bureau of Narcotic
Enforcement, which allows access to the Prescription Drug Monitoring Program system. The
27 Prescription Drug Monitoring Program allows pre-registered users including licensed healthcare
prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense
28 controlled substances, law enforcement, and regulatory boards to access patient controlled
substance history information.

1 dispensed 120 tablets of oxycodone 30 mg and 90 tablets of Norco 10mg/325 to DG pursuant to
2 prescriptions written by Dr. W. Respondents did not question the prescriber about the high
3 starting dose of oxycodone in addition to the Norco, for the treatment of an opioid naïve patient.
4 On October 11, 2012, Respondents also dispensed alprazolam 2mg to DG pursuant to a
5 prescription written by Dr. W. Respondents did not question the prescriber about why DG was
6 started on the highest dose of alprazolam before trying a low strength dose or requiring a follow-
7 up. DG was doctor and pharmacy shopping. DG also had insurance but did not use insurance to
8 pay for all of the medications.

9 28. Patient DW's address was approximately 43 miles from Respondent Irvine Medical
10 Pharmacy. From January 1, 2012 through February 21, 2012, DW did not receive any controlled
11 substance medications. However, between February 12, 2012 and January 7, 2013, DW was
12 doctor, pharmacy and medication shopping. In August 2012 and December 2012, Respondents
13 dispensed oxycodone 30 mg to DW pursuant to prescriptions written by Dr. W.

14 29. Patient RS's address was approximately 45 miles from Respondent Irvine Medical
15 Pharmacy. Between January 6, 2012 and August 2, 2013, RS was doctor, pharmacy, and
16 medication shopping. On August 24, 2012, Respondents dispensed 120 tablets of Oxycodone 30
17 mg to RS pursuant to a prescription written by Dr. W., even though RS had received a 30 day
18 supply of another pain medication from another pharmacy on August 23, 2012. On September
19 24, 2012, Respondents dispensed another 120 tablets of Oxycodone 30 mg to RS pursuant to a
20 prescription written by Dr. W., even though RS had received a 30 day supply of another pain
21 medication from another pharmacy on September 24, 2012.

22 30. Patient JW's address was approximately 32 miles from Respondent Irvine Medical
23 Pharmacy. From January 8, 2008 through April 19, 2012, JW was doctor, pharmacy and
24 medication shopping. On July 27, 2012, Respondents dispensed a 90 day supply of Oxycodone
25 30 mg and a 90 day supply of Vicodin to JW pursuant to prescriptions written by Dr. W., even
26 though JW had been dispensed several other controlled substance medications from several other
27 pharmacies and doctors shortly before this date.

1 31. Patient MC's address was approximately 29 miles from Respondent Irvine Medical
2 Pharmacy. On March 3, 2011, MC received 240 tablets of oxycodone 30 mg from Respondent
3 Irvine Medical Pharmacy, paying \$350 cash. On April 20, 2011, MC received another 240 tablets
4 of oxycodone 30 mg from Respondent Irvine Medical Pharmacy, paying \$350 cash. On March
5 14, 2012, MC received 180 tablets of oxycodone 30 mg pursuant to a prescription written by Dr.
6 C. from Respondent Irvine Medical Pharmacy, paying \$300 cash. On May 15, 2012, MC
7 received 180 tablets of oxycodone 30 mg pursuant to a prescription written by Dr. C., from
8 Respondent Irvine Medical Pharmacy, paying \$300 cash. On June 15, 2012, MC received 180
9 tablets of oxycodone 30 mg pursuant to a prescription written by Dr. C. from Respondent Irvine
10 Medical Pharmacy, paying \$300 cash. On July 17, 2012, MC received 180 tablets of oxycodone
11 30 mg pursuant to a prescription written by Dr. C. from Respondent Irvine Medical Pharmacy,
12 paying \$300 cash. On October 1, 2012, MC received 120 tablets of oxycodone 30 mg pursuant to
13 a prescription written by Dr. C. from Respondent Irvine Medical Pharmacy, paying \$200 cash.
14 Therefore, from March 3, 2011 to October 1, 2012, MC traveled from her home in Long Beach to
15 Dr. C.'s office in Studio City and then to Respondent Irvine Medical Pharmacy in Irvine to have
16 her oxycodone 30 mg prescriptions filled, paying a total of \$2,100.00 in cash to Respondent
17 Irvine Medical Pharmacy.

18 32. Patient PE's address was approximately 50 miles from Respondent Irvine Medical
19 Pharmacy. From April 30, 2009 to May 14, 2013, PE was doctor, pharmacy and medication
20 shopping. On January 31, 2012, Respondents dispensed a 30 day supply of oxycodone 30 mg to
21 PE, even though PE had received a 30 day supply of oxycodone 30 mg on January 16, 2012 (15
22 days prior) from a different doctor and at a different pharmacy. On February 21, 2012,
23 Respondents dispensed another 30 day supply (120 tablets) of oxycodone 30 mg to PE, even
24 though PE had received a 30 day supply of oxycodone 30 mg on February 13, 2012 (8 days prior)
25 from a different doctor and at a different pharmacy. On May 25, 2012, without verifying the
26 prescription with the prescriber, Respondents dispensed a 30 day supply (180 tablets) of
27 oxycodone 30 mg to PE, even though PE had received a 30 day supply of oxycodone 30 mg and a
28 25 day supply of Vicodin on May 11, 2012 (14 days prior).

33. Patient RD's address was approximately 29 miles from Respondent Irvine Medical Pharmacy. From January 1, 2012 through May 22, 2012, RD received no controlled medications in California. However, from May 22, 2012 to June 12, 2013, RD began doctor, pharmacy and medication shopping. On May 22, 2012, Respondents dispensed a 30 day supply (180 tablets) of oxycodone 30 mg to RD pursuant to a prescription written by Dr. C., paying Respondents \$300 cash. On July 3, 2012, Respondents dispensed a 45 day supply (180 tablets) of oxycodone 30 mg pursuant to a written prescription written by Dr. C., paying \$300 cash.

34. The average distance that Dr. W.'s patients traveled from their homes to Respondent Irvine Medical Pharmacy was 38.8 miles. From May 21, 2011 to January 28, 2013 (20 months), Respondent Irvine Medical Pharmacy dispensed the following total controlled substances for prescriptions written by Dr. W.:

Product Name	Total Tablets Dispensed
Alprazolam 2mg	400
APAP/Hydrocodone 10/325mg	1,280
APAP/Hydrocodone 7.5/750mg	360
Carisoprodol 350mg	270
OPANA ER 40mg	90
Oxycodone 30mg	7,510
GRAND TOTAL:	9,910

35. The average distance that Dr. C.'s patients traveled from their homes to Respondent Irvine Medical Pharmacy was 36.7 miles.⁴ From May 21, 2011 to January 28, 2013 (20 months), Respondent Irvine Medical Pharmacy dispensed a total of 10,370 tablets of oxycodone 30 mg from prescriptions written by Dr. C.

⁴ Two of Dr. C.'s patients have Louisiana addresses. Those addresses were not used in calculating the average distance that Dr. C.'s patient's traveled to have their prescriptions filled at Respondent Irvine Medical Pharmacy.

36. The Board inspector also obtained data from nearby pharmacies, including “big-box” retail pharmacies, and discovered that Respondent Irvine Medical Pharmacy was dispensing over three times the amount of oxycodone 30 mg when compared to neighboring pharmacies.

37. Respondents also acquired oxycodone 30 mg at an average price of \$30.12 per 100 tablet bottle, or \$.30 per tablet. Respondents charged their cash patients \$1.64 per tablet, for a total mark-up of 546 percent.

38. During the first inspection on July 8, 2013, the Board inspector discussed with Respondent Fathi the requirement to report to CURES on a weekly basis. The Board inspector showed Respondent Fathi the report reflecting that Respondents were not reporting regularly to CURES. The Board inspector also discovered that Respondents did not report to CURES from January 2010 through June 2010. Respondents also did not report CURES data from July 2010 to December 2010, until July 10, 2013 (after the Board inspection on July 8, 2013).

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Failure to Implement Corresponding Responsibility)

39. Respondent Irvine Medical Pharmacy and Respondent Fathi are subject to disciplinary action for unprofessional conduct under Code section 4301, subdivision (j), for violation of Health and Safety Code section 11153, subdivision (a), in that Respondents failed to comply with their corresponding responsibility to ensure that controlled substances are dispensed for a legitimate medical purpose. The circumstances are that Respondents failed to evaluate the totality of the circumstances (information from the patient, physician, CURES and other sources) to determine the prescriptions' were issued for a legitimate medical purpose in light of information showing that several patients demonstrated drug seeking behaviors such as doctor, pharmacy and drug shopping, numerous patients had addresses outside Respondents' normal trade area, patients paid only cash for their controlled substances, pharmacy staff questioned the validity of patients' identification, certain prescribers (Dr. C. and Dr. W.) wrote a disproportionate number of prescriptions for oxycodone, having no personal knowledge about prescribers' practice or patients' treatment histories, among other things, as set forth in paragraphs 22 through 38, which are incorporated herein by reference.

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1 to take appropriate steps upon which being presented with numerous prescriptions controlled
2 substances, including oxycodone 30mg, from a small group of prescribers, including but not
3 limited to, personally contacting the prescriber about the indication or past medical history and
4 performing additional investigation to determine whether the prescriptions were issued for a
5 legitimate medical purpose, as set forth in paragraphs 22 through 38, which are incorporated
6 herein by reference.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Failure to Report to CURES)**

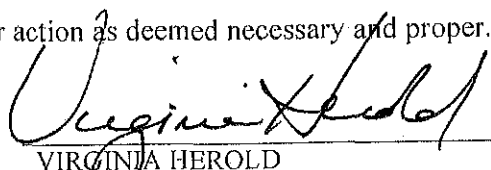
9 43. Respondent Irvine Medical Pharmacy and Respondent Fathi are subject to
10 disciplinary action for unprofessional conduct under Code section 4301(j) and (o), for violating
11 Health and Safety Code section 11165, subdivision (d), for failing to submit data to CURES on a
12 weekly basis, as set forth in paragraph 38, which is incorporated herein by reference.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Permit Number PHY 42046, issued to Irvine
17 Medical Pharmacy, Inc. dba Irvine Medical Pharmacy;
18 2. Revoking or suspending Pharmacist License Number RPH 48441 to Nasser Fathi;
19 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;
22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 3/12/14


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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Exhibit B

Statement of Issues Case No. 5092

1 KAMALA D. HARRIS
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Supervising Deputy Attorney General
3 NICOLE R. TRAMA
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Attorneys for Complainant

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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 5092

13 **WEST PACIFIC PHARMACY, INC.,**
14 **DBA WEST PACIFIC PHARMACY**
Nasser Fathi, President

STATEMENT OF ISSUES

15 **Community Pharmacy Permit Application**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about July 12, 2013, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Community Pharmacy Permit Application from West Pacific
24 Pharmacy, Inc., dba West Pacific Pharmacy with Nasser Fathi as President and Pharmacist-in-
25 Charge (Respondent). On or about June 20, 2013, Nasser Fathi certified under penalty of perjury
26 to the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on October 22, 2013.

1 JURISDICTION

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

5 4. Business and Professions Code section 480, subdivision (a)(3) states:

6 (a) A board may deny a license regulated by this code on the grounds that
7 the applicant has one of the following:

8

9 (3) (A) Done any act that if done by a licentiate of the business or
10 profession in question, would be grounds for suspension or revocation of license.

11

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

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

18 CAUSE FOR DENIAL OF APPLICATION

19 (Acts Done by Licentiate)

20 6. Respondent's application is subject to denial under section 480, subdivision (a)(3) in
21 that, Respondent engaged in acts which, if done by a licentiate, would constitute grounds for a
22 suspension or revocation of licensure. The circumstances are as follows:

23 a. Since January 20, 1997, Nasser Fathi (Pharmacist License No. RPH 48441) has
24 been the President and Pharmacist-in-Charge of Irvine Medical Pharmacy, Inc., dba Irvine
25 Medical Pharmacy (Pharmacy Permit No. PHY 42046) located at 14130 Culver Drive, Suite D, in
26 Irvine, CA 92714.

27 b. On or about July 12, 2013, the Board of Pharmacy, Department of Consumer
28 Affairs received an application for a Community Pharmacy Permit Application from West Pacific

1 Pharmacy, Inc., dba West Pacific Pharmacy with Nasser Fathi as President and Pharmacist-in-
2 Charge (Respondent). The Board denied the application on October 22, 2013.

3 c. Respondent's application is subject to denial based on the following acts, as
4 more fully set forth in Accusation No. 4969 filed by the Board of Pharmacy against Nasser Fathi
5 (Pharmacist License No. RPH 48441) and Irvine Medical Pharmacy, dba Irvine Medical
6 Pharmacy (Pharmacy Permit No. PHY 42046) on March 12, 2014:

7 1. Failing to implement their corresponding responsibility to ensure that
8 controlled substances are dispensed for a legitimate medical purpose in violation of Code section
9 4301, subdivision (j), and Health and Safety Code section 11153, subdivision (a).

10 2. Unprofessional conduct for excessively furnishing controlled substances
11 in violation Code section 4301, subdivision (d).

12 3. Gross negligence in dispensing controlled substances in violation of Code
13 section 4301, subdivision (c).

14 4. Negligence in dispensing controlled substances in violation of Code
15 section 4301.

16 5. Failing to submit data to CURES on a weekly basis in violation of Code
17 section 4301(j) and (o), and Health and Safety Code section 11165, subdivision (d).

18 d. A true and correct copy of Accusation No. 4969 is attached hereto as Exhibit
19 "A," and incorporated herein by reference.

20 PRAYER

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

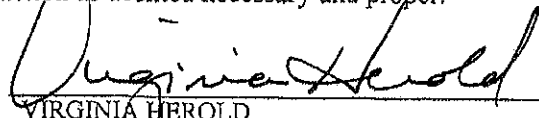
23 1. Denying the Community Pharmacy Permit Application of West Pacific Pharmacy,
24 Inc., dba West Pacific Pharmacy West Pacific Pharmacy with Nasser Fathi as President
25 (Respondent).

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

DATED:

4/24/14



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

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Exhibit A

Accusation No. 4969

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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4969

12 **IRVINE MEDICAL PHARMACY, INC.**
13 **DBA IRVINE MEDICAL PHARMACY**
14 **14130 Culver Drive, Suite D**
Irvine, CA 92714

ACCUSATION

15 **Pharmacy Permit No. PHY 42046**

16 **and**

17 **NASSER FATHI**
25652 Nellie Gail Road
18 **Laguna Hills, CA 92653**

19 **Pharmacist License No. RPH 48441**

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about January 20, 1997, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 42046 to Irvine Medical Pharmacy, Inc., dba Irvine Medical Pharmacy
28 (Respondent) with Nasser Fathi as President and Pharmacist-in-Charge (PIC). The Pharmacy

1 Permit was in full force and effect at all times relevant to the charges brought herein and will
2 expire on January 1, 2015, unless renewed.

3 3. On or about December 6, 1995, the Board of Pharmacy issued Pharmacist License
4 Number RPH 48441 to Nasser Fathi (Respondent). The Pharmacist License was in full force and
5 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
6 unless renewed.

7 JURISDICTION

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

11 5. Section 4011 of the Code provides that the Board shall administer and enforce both
12 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
13 Act [Health & Safety Code, § 11000 et seq.].

14 6. Section 4300(a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued
18 license by operation of law or by order or decision of the board or a court of law;
19 the placement of a license on a retired status, or the voluntary surrender of a
20 license by a licensee shall not deprive the board of jurisdiction to commence or
proceed with any investigation of, or action or disciplinary proceeding against, the
licensee or to render a decision suspending or revoking the license.

21 STATUTORY PROVISIONS

22 8. Section 4022 of the Code states:

23 "Dangerous drug" or "dangerous device" means any drug or device unsafe
24 for self-use in humans or animals, and includes the following:

25 (a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar import,
28 the blank to be filled in with the designation of the practitioner licensed to use or
order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Section 4113, subdivision (c) of the Code states: "The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy,"

10. 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.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

....

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

....

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

....

11. Health and Safety Code section 11153 states in pertinent part:

(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment

1 program, for the purpose of providing the user with controlled substances,
2 sufficient to keep him or her comfortable by maintaining customary use.

3 12. Health and Safety Code section 11165 states:

4 (a) To assist law enforcement and regulatory agencies in their efforts to
5 control the diversion and resultant abuse of Schedule II, Schedule III, and
6 Schedule IV controlled substances, and for statistical analysis, education, and
7 research, the Department of Justice shall, contingent upon the availability of
8 adequate funds from the Contingent Fund of the Medical Board of California, the
9 Pharmacy Board Contingent Fund, the State Dentistry Fund, the Board of
10 Registered Nursing Fund, and the Osteopathic Medical Board of California
11 Contingent Fund, maintain the Controlled Substance Utilization Review and
12 Evaluation System (CURES) for the electronic monitoring of, and Internet access
13 to information regarding, the prescribing and dispensing of Schedule II, Schedule
14 III, and Schedule IV controlled substances by all practitioners authorized to
15 prescribe or dispense these controlled substances.

16 (b) The reporting of Schedule III and Schedule IV controlled substance
17 prescriptions to CURES shall be contingent upon the availability of adequate funds
18 from the Department of Justice. The department may seek and use grant funds to
19 pay the costs incurred from the reporting of controlled substance prescriptions to
20 CURES. Funds shall not be appropriated from the Contingent Fund of the Medical
21 Board of California, the Pharmacy Board Contingent Fund, the State Dentistry
22 Fund, the Board of Registered Nursing Fund, the Naturopathic Doctor's Fund, or
23 the Osteopathic Medical Board of California Contingent Fund to pay the costs of
24 reporting Schedule III and Schedule IV controlled substance prescriptions to
25 CURES.

26 (c) CURES shall operate under existing provisions of law to safeguard the
27 privacy and confidentiality of patients. Data obtained from CURES shall only be
28 provided to appropriate state, local, and federal persons or public agencies for
disciplinary, civil, or criminal purposes and to other agencies or entities, as
determined by the Department of Justice, for the purpose of educating practitioners
and others in lieu of disciplinary, civil, or criminal actions. Data may be provided
to public or private entities, as approved by the Department of Justice, for
educational, peer review, statistical, or research purposes, provided that patient
information, including any information that may identify the patient, is not
compromised. Further, data disclosed to any individual or agency as described in
this subdivision shall not be disclosed, sold, or transferred to any third party.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV
controlled substance, as defined in the controlled substances schedules in federal
law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14,
respectively, of Title 21 of the Code of Federal Regulations, the dispensing
pharmacy or clinic shall provide the following information to the Department of
Justice on a weekly basis and in a format specified by the Department of Justice:

1 (1) Full name, address, and the telephone number of the ultimate user or
2 research subject, or contact information as determined by the Secretary of the
United States Department of Health and Human Services, and the gender, and date
of birth of the ultimate user.

3 (2) The prescriber's category of licensure and license number; federal
4 controlled substance registration number; and the state medical license number of
5 any prescriber using the federal controlled substance registration number of a
government-exempt facility.

6 (3) Pharmacy prescription number, license number, and federal controlled
7 substance registration number.

8 (4) NDC (National Drug Code) number of the controlled substance
dispensed.

9 (5) Quantity of the controlled substance dispensed.

10 (6) ICD-9 (diagnosis code), if available.

11 (7) Number of refills ordered.

12 (8) Whether the drug was dispensed as a refill of a prescription or as a
13 first-time request.

14 (9) Date of origin of the prescription.

15 (10) Date of dispensing of the prescription.

16 (e) This section shall become operative on January 1, 2005.

17 18 REGULATORY PROVISIONS

19 13. Code of Federal Regulations, title 21, section 1306.04 states in pertinent part:

20 (a) A prescription for a controlled substance to be effective must be issued for
21 a legitimate medical purpose by an individual practitioner acting in the usual
22 course of his professional practice. The responsibility for the proper prescribing
and dispensing of controlled substances is upon the prescribing practitioner, but a
corresponding responsibility rests with the pharmacist who fills the prescription.
23 An order purporting to be a prescription issued not in the usual course of
professional treatment or in legitimate and authorized research is not a prescription
24 within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the
person knowingly filling such a purported prescription, as well as the person
25 issuing it, shall be subject to the penalties provided for violations of the provisions
of law relating to controlled substances.
26

27

1 14. California Code of Regulations, title 16, section 1707.5(d) states in pertinent part:

2 (a) Labels on drug containers dispensed to patients in California shall conform
3 to the following format:

4

5 (d) The pharmacy shall have policies and procedures in place to help patients
6 with limited or no English proficiency understand the information on the label as
7 specified in subdivision (a) in the patient's language. The pharmacy's policies and
8 procedures shall be specified in writing and shall include, at minimum, the
9 selected means to identify the patient's language and to provide interpretive
10 services in the patient's language. The pharmacy shall, at minimum, provide
11 interpretive services in the patient's language, if interpretive services in such
12 language are available, during all hours that the pharmacy is open, either in person
13 by pharmacy staff or by use of a third-party interpretive service available by
14 telephone at or adjacent to the pharmacy counter.

11

12 15. California Code of Regulations, title 16, section 1761 states:

13 (a) No pharmacist shall compound or dispense any prescription which
14 contains any significant error, omission, irregularity, uncertainty, ambiguity or
15 alteration. Upon receipt of any such prescription, the pharmacist shall contact the
16 prescriber to obtain the information needed to validate the prescription.

17 (b) Even after conferring with the prescriber, a pharmacist shall not
18 compound or dispense a controlled substance prescription where the pharmacist
19 knows or has objective reason to know that said prescription was not issued for a
20 legitimate medical purpose.

21 COST RECOVERY

22 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
26 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
27 included in a stipulated settlement.
28

1 **DRUGS**

2 17. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
3 section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code
4 section 4022.

5 18. Carisoprodol, the generic name for Soma, is a Schedule IV controlled substance
6 pursuant to Health and Safety Code section 11057, and is a dangerous drug pursuant to Business
7 and Professions Code section 4022.

8 19. Opana, a brand name for oxymorphone hydrochloride, is a Schedule II controlled
9 substance as designated by Health and Safety Code section 11055, subdivision (b), and is a
10 dangerous drug pursuant to Business and Professions Code section 4022.

11 20. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code
12 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
13 section 4022.

14 21. Vicodin, a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule
15 III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e), and a
16 dangerous drug pursuant to Business and Professions Code section 4022.

17 **FACTUAL ALLEGATIONS**

18 22. At all times mentioned herein and since January 20, 1997, Nasser Fathi (Respondent
19 Fathi), has been the President and Pharmacist-In-Charge (PIC) of Irvine Medical Pharmacy, Inc.,
20 dba Irvine Medical Pharmacy (Respondent Irvine Medical Pharmacy).

21 23. In or around January 2013, the Board of Pharmacy initiated an investigation of
22 Respondents. The Board inspector discovered that most Schedule II controlled substance
23 prescriptions filled by Respondents came from the same five doctors, that patients traveled a
24 distance to have their Schedule II prescriptions filled at the pharmacy, and that patients always
25 paid in cash for controlled substances. The Board inspector also discovered that some patients
26 came to Respondent Irvine Medical Pharmacy as a group in a van or SUV in order for them all to
27 obtain controlled substances.

1 24. With respect to the verification of prescriptions, Respondents' ancillary staff
2 verified medications by contacting the patient's doctor. Staff only verified the drug, strength, and
3 quantity, and did not ask about indication or past medical history. Respondent Fathi did not
4 verify prescriptions written by Dr. W.¹ or Dr. C.² Instead, Respondents' practice was to have
5 ancillary staff call Dr. W.'s cell phone or speak with the receptionist at Dr. C.'s office, when
6 verifying prescriptions.

7 25. Some patients presented with what appeared to pharmacy staff to be "fake" IDs when
8 picking up the prescriptions from Respondents. Although this was brought to Respondent Fathi's
9 attention, Respondents instructed staff to fill prescriptions for individuals even if the IDs
10 appeared to be fake. Respondent Fathi also did not utilize the Prescription Drug Monitoring
11 Program (PDMP) or CURES³ to ensure that controlled substances were dispensed for a legitimate
12 medical purpose.

13 26. On May 30, 2012, Respondents dispensed 180 tablets of oxycodone 30 mg to a
14 person who posed as Patient MA pursuant to a prescription from Dr. C. MA's address was in
15 Inglewood, California, approximately 47 miles from Respondent Irvine Medical Pharmacy.
16 However, the Board inspector contacted the real MA and learned that MA's driver's license was
17 stolen in 2012, that someone had stolen his identity, that he has never been to Irvine before, that
18 he has never seen Dr. C. and that he has never taken oxycodone 30 mg.

19 27. Patient DG's address was approximately 45 miles from Respondent Irvine Medical
20 Pharmacy. DG did not receive any controlled substance medications from January 1, 2012
21 through October 11, 2012. However, between October 11, 2012 and March 2013, Respondents

22
23 ¹ Dr. W.'s office was located in Anaheim Hills, approximately 18 miles from Respondent
Irvine Medical Pharmacy. Dr. W. was convicted of Medicare fraud on April 14, 2013.

24 ² Dr. C. has an office in Toluca Lake and Studio City, approximately 51 miles and 49
miles from Respondent Irvine Medical Pharmacy, respectively.

25 ³ Controlled Substance Utilization Review and Evaluation System (CURES) is a database
26 in a program developed by the California Department of Justice, Bureau of Narcotic
Enforcement, which allows access to the Prescription Drug Monitoring Program system. The
27 Prescription Drug Monitoring Program allows pre-registered users including licensed healthcare
prescribers eligible to prescribe controlled substances, pharmacists authorized to dispense
28 controlled substances, law enforcement, and regulatory boards to access patient controlled
substance history information.

1 dispensed 120 tablets of oxycodone 30 mg and 90 tablets of Norco 10mg/325 to DG pursuant to
2 prescriptions written by Dr. W. Respondents did not question the prescriber about the high
3 starting dose of oxycodone in addition to the Norco, for the treatment of an opioid naïve patient.
4 On October 11, 2012, Respondents also dispensed alprazolam 2mg to DG pursuant to a
5 prescription written by Dr. W. Respondents did not question the prescriber about why DG was
6 started on the highest dose of alprazolam before trying a low strength dose or requiring a follow-
7 up. DG was doctor and pharmacy shopping. DG also had insurance but did not use insurance to
8 pay for all of the medications.

9 28. Patient DW's address was approximately 43 miles from Respondent Irvine Medical
10 Pharmacy. From January 1, 2012 through February 21, 2012, DW did not receive any controlled
11 substance medications. However, between February 12, 2012 and January 7, 2013, DW was
12 doctor, pharmacy and medication shopping. In August 2012 and December 2012, Respondents
13 dispensed oxycodone 30 mg to DW pursuant to prescriptions written by Dr. W.

14 29. Patient RS's address was approximately 45 miles from Respondent Irvine Medical
15 Pharmacy. Between January 6, 2012 and August 2, 2013, RS was doctor, pharmacy, and
16 medication shopping. On August 24, 2012, Respondents dispensed 120 tablets of Oxycodone 30
17 mg to RS pursuant to a prescription written by Dr. W., even though RS had received a 30 day
18 supply of another pain medication from another pharmacy on August 23, 2012. On September
19 24, 2012, Respondents dispensed another 120 tablets of Oxycodone 30 mg to RS pursuant to a
20 prescription written by Dr. W., even though RS had received a 30 day supply of another pain
21 medication from another pharmacy on September 24, 2012.

22 30. Patient JW's address was approximately 32 miles from Respondent Irvine Medical
23 Pharmacy. From January 8, 2008 through April 19, 2012, JW was doctor, pharmacy and
24 medication shopping. On July 27, 2012, Respondents dispensed a 90 day supply of Oxycodone
25 30 mg and a 90 day supply of Vicodin to JW pursuant to prescriptions written by Dr. W., even
26 though JW had been dispensed several other controlled substance medications from several other
27 pharmacies and doctors shortly before this date.

28

1 31. Patient MC's address was approximately 29 miles from Respondent Irvine Medical
2 Pharmacy. On March 3, 2011, MC received 240 tablets of oxycodone 30 mg from Respondent
3 Irvine Medical Pharmacy, paying \$350 cash. On April 20, 2011, MC received another 240 tablets
4 of oxycodone 30 mg from Respondent Irvine Medical Pharmacy, paying \$350 cash. On March
5 14, 2012, MC received 180 tablets of oxycodone 30 mg pursuant to a prescription written by Dr.
6 C. from Respondent Irvine Medical Pharmacy, paying \$300 cash. On May 15, 2012, MC
7 received 180 tablets of oxycodone 30 mg pursuant to a prescription written by Dr. C., from
8 Respondent Irvine Medical Pharmacy, paying \$300 cash. On June 15, 2012, MC received 180
9 tablets of oxycodone 30 mg pursuant to a prescription written by Dr. C. from Respondent Irvine
10 Medical Pharmacy, paying \$300 cash. On July 17, 2012, MC received 180 tablets of oxycodone
11 30 mg pursuant to a prescription written by Dr. C. from Respondent Irvine Medical Pharmacy,
12 paying \$300 cash. On October 1, 2012, MC received 120 tablets of oxycodone 30 mg pursuant to
13 a prescription written by Dr. C. from Respondent Irvine Medical Pharmacy, paying \$200 cash.
14 Therefore, from March 3, 2011 to October 1, 2012, MC traveled from her home in Long Beach to
15 Dr. C.'s office in Studio City and then to Respondent Irvine Medical Pharmacy in Irvine to have
16 her oxycodone 30 mg prescriptions filled, paying a total of \$2,100.00 in cash to Respondent
17 Irvine Medical Pharmacy.

18 32. Patient PE's address was approximately 50 miles from Respondent Irvine Medical
19 Pharmacy. From April 30, 2009 to May 14, 2013, PE was doctor, pharmacy and medication
20 shopping. On January 31, 2012, Respondents dispensed a 30 day supply of oxycodone 30 mg to
21 PE, even though PE had received a 30 day supply of oxycodone 30 mg on January 16, 2012 (15
22 days prior) from a different doctor and at a different pharmacy. On February 21, 2012,
23 Respondents dispensed another 30 day supply (120 tablets) of oxycodone 30 mg to PE, even
24 though PE had received a 30 day supply of oxycodone 30 mg on February 13, 2012 (8 days prior)
25 from a different doctor and at a different pharmacy. On May 25, 2012, without verifying the
26 prescription with the prescriber, Respondents dispensed a 30 day supply (180 tablets) of
27 oxycodone 30 mg to PE, even though PE had received a 30 day supply of oxycodone 30 mg and a
28 25 day supply of Vicodin on May 11, 2012 (14 days prior).

1 33. Patient RD's address was approximately 29 miles from Respondent Irvine Medical
2 Pharmacy. From January 1, 2012 through May 22, 2012, RD received no controlled medications
3 in California. However, from May 22, 2012 to June 12, 2013, RD began doctor, pharmacy and
4 medication shopping. On May 22, 2012, Respondents dispensed a 30 day supply (180 tablets) of
5 oxycodone 30 mg to RD pursuant to a prescription written by Dr. C., paying Respondents \$300
6 cash. On July 3, 2012, Respondents dispensed a 45 day supply (180 tablets) of oxycodone 30 mg
7 pursuant to a written prescription written by Dr. C., paying \$300 cash.

8 34. The average distance that Dr. W.'s patients traveled from their homes to Respondent
9 Irvine Medical Pharmacy was 38.8 miles. From May 21, 2011 to January 28, 2013 (20 months),
10 Respondent Irvine Medical Pharmacy dispensed the following total controlled substances for
11 prescriptions written by Dr. W.:

12

Product Name	Total Tablets Dispensed
Alprazolam 2mg	400
APAP/Hydrocodone 10/325mg	1,280
APAP/Hydrocodone 7.5/750mg	360
Carisoprodol 350mg	270
OPANA ER 40mg	90
Oxycodone 30mg	7,510
GRAND TOTAL:	9,910

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22 35. The average distance that Dr. C.'s patients traveled from their homes to Respondent
23 Irvine Medical Pharmacy was 36.7 miles.⁴ From May 21, 2011 to January 28, 2013 (20 months),
24 Respondent Irvine Medical Pharmacy dispensed a total of 10,370 tablets of oxycodone 30 mg
25 from prescriptions written by Dr. C.

26
27 ⁴ Two of Dr. C.'s patients have Louisiana addresses. Those addresses were not used in
28 calculating the average distance that Dr. C.'s patient's traveled to have their prescriptions filled at
Respondent Irvine Medical Pharmacy.

1 36. The Board inspector also obtained data from nearby pharmacies, including "big-
2 box" retail pharmacies, and discovered that Respondent Irvine Medical Pharmacy was dispensing
3 over three times the amount of oxycodone 30 mg when compared to neighboring pharmacies.

4 37. Respondents also acquired oxycodone 30 mg at an average price of \$30.12 per 100
5 tablet bottle, or \$.30 per tablet. Respondents charged their cash patients \$1.64 per tablet, for a
6 total mark-up of 546 percent.

7 38. During the first inspection on July 8, 2013, the Board inspector discussed with
8 Respondent Fathi the requirement to report to CURES on a weekly basis. The Board inspector
9 showed Respondent Fathi the report reflecting that Respondents were not reporting regularly to
10 CURES. The Board inspector also discovered that Respondents did not report to CURES from
11 January 2010 through June 2010. Respondents also did not report CURES data from July 2010 to
12 December 2010, until July 10, 2013 (after the Board inspection on July 8, 2013).

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Failure to Implement Corresponding Responsibility)**

15 39. Respondent Irvine Medical Pharmacy and Respondent Fathi are subject to
16 disciplinary action for unprofessional conduct under Code section 4301, subdivision (j), for
17 violation of Health and Safety Code section 11153, subdivision (a), in that Respondents failed to
18 comply with their corresponding responsibility to ensure that controlled substances are dispensed
19 for a legitimate medical purpose. The circumstances are that Respondents failed to evaluate the
20 totality of the circumstances (information from the patient, physician, CURES and other sources)
21 to determine the prescriptions' were issued for a legitimate medical purpose in light of
22 information showing that several patients demonstrated drug seeking behaviors such as doctor,
23 pharmacy and drug shopping, numerous patients had addresses outside Respondents' normal
24 trade area, patients paid only cash for their controlled substances, pharmacy staff questioned the
25 validity of patients' identification, certain prescribers (Dr. C. and Dr. W.) wrote a
26 disproportionate number of prescriptions for oxycodone, having no personal knowledge about
27 prescribers' practice or patients' treatment histories, among other things, as set forth in
28 paragraphs 22 through 38, which are incorporated herein by reference.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Excessive Furnishing of Controlled Substances)

3 40. Respondent Irvine Medical Pharmacy and Respondent Fathi are subject to
4 disciplinary action for unprofessional conduct under Code section 4301, subdivision (d), for
5 unprofessional conduct in that Respondents clearly excessively furnished controlled substances,
6 when from February 20, 2012 through July 17, 2012, Respondents dispensed 50 prescriptions of
7 oxycodone 30mg prescribed by Dr. C. for a total 10,370 tablets and from May 21, 2011 to
8 January 28, 2013, Respondents dispensed 93 controlled substance prescriptions prescribed by Dr.
9 W. for a total of 9,910 tablets, as set forth in paragraphs 22 through 38, which are incorporated
10 herein by reference.

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct - Gross Negligence)

13 41. Respondent Fathi is subject to disciplinary action for unprofessional conduct under
14 Code section 4301, subdivision (c), in that Respondent was grossly negligent in dispensing
15 controlled substances. The circumstances are that Respondent knew or should have known that
16 the controlled substances prescribed by Dr. C. and Dr. W. were likely to be used for other than a
17 legitimate medical purpose and Respondent failed to take appropriate steps when presented with
18 numerous prescriptions for controlled substances, including oxycodone 30mg, from a small group
19 of prescribers. Respondent failed to personally contact the prescriber about the indication or past
20 medical history and perform additional investigation to determine whether the prescriptions were
21 issued for a legitimate medical purpose, as set forth in paragraphs 22 through 38, which are
22 incorporated herein by reference.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct - Negligence)

25 42. Respondent Fathi is subject to disciplinary action for unprofessional conduct under
26 Code section 4301, in that Respondent was negligent in dispensing controlled substances when
27 Respondent knew or should have known that the controlled substances prescribed by Dr. C. and
28 Dr. W. were likely to be used for other than a legitimate medical purpose and Respondent failed

1 to take appropriate steps upon which being presented with numerous prescriptions controlled
2 substances, including oxycodone 30mg, from a small group of prescribers, including but not
3 limited to, personally contacting the prescriber about the indication or past medical history and
4 performing additional investigation to determine whether the prescriptions were issued for a
5 legitimate medical purpose, as set forth in paragraphs 22 through 38, which are incorporated
6 herein by reference.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Failure to Report to CURES)**

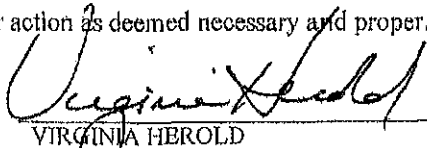
9 43. Respondent Irvine Medical Pharmacy and Respondent Fathi are subject to
10 disciplinary action for unprofessional conduct under Code section 4301(j) and (o), for violating
11 Health and Safety Code section 11165, subdivision (d), for failing to submit data to CURES on a
12 weekly basis, as set forth in paragraph 38, which is incorporated herein by reference.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Permit Number PHY 42046, issued to Irvine
17 Medical Pharmacy, Inc. dba Irvine Medical Pharmacy;
18 2. Revoking or suspending Pharmacist License Number RPH 48441 to Nasser Fathi;
19 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;
22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 3/12/14


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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