

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KIMBERLEE D. KING
Deputy Attorney General
4 State Bar No. 141813
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Second Amended
12 Accusation Against:

Case No. 3606

13 **IV SOLUTIONS INC.**
14 **Alireza Varastehpour-President**
15 **3384 Motor Avenue**
16 **Los Angeles, CA 90034**
17 **Original Pharmacy Permit No. PHY 45885**

OAH No. L-2010080069

SECOND AMENDED ACCUSATION

18 **And**

19 **RENEE SADOW**
20 **24 Union Jack St., #3**
21 **Marina del Rey, CA 90292-8600**
22 **Pharmacist License No. RPH 27398**

Respondents.

23 Complainant alleges:

24 **PARTIES**

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

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

1 times relevant to the charges brought herein and will expire on May 1, 2010, unless renewed.
2 Board records show that Jeannie Kim was the Pharmacist-in-Charge (PIC) from November 25,
3 2008 to February 16, 2009 and Renee Sadow has been the PIC from February 16, 2009 to the
4 present.

5 3. On or about April 25, 1971, the Board of Pharmacy issued Original Pharmacist
6 License Number RPH 27398 to Renee Sadow (Respondent PIC Sadow). The license was in full
7 force and effect at all times relevant to the charges brought herein and will expire on June 30,
8 2011, unless renewed.

9 JURISDICTION

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

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

15 6. Section 4301 of the Code states:

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

19

20 "(c) Gross negligence.

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

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

26

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

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

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

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

7. Section 4051 of the Code states:

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

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

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

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

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

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

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

1 10. Section 4081 of the code states:

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

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

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

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

16 13. Section 4305 of the Code states:

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

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

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

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

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

8 15. Section 4322 of the Code states that:

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

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

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

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

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

28 ///

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

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

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

8 (c) Identify, evaluate and interpret a prescription.

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

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

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

14 (g) Perform all functions which require professional judgment.”

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

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

28 ///

1 **DRUG DEVICE CLASSIFICATION(S)**

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

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

6 **FIRST CAUSE FOR DISCIPLINE**

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

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

14 **Patient JM**

15 26. From about November 6, 2009 to September 1, 2010, Respondent IV Solutions
16 furnished several prescription dispensings and sent excessively high bills to JM's insurance plan
17 provider in the amount of \$2,031,446.10 in drug treatments while Respondent IV Solutions only
18 incurred an acquisition cost of approximately \$34,187.87.

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

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

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

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

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

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

Patient RM

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

1 billed to insurance in amounts totaling over \$59,000. Patient RM was referred to Respondent IV
2 Solutions by the health care provider. Neither the health care provider nor Respondent IV
3 Solutions informed Patient RM that it was an out of network provider. Patient RM's insurance
4 paid out a total of \$514,769.43 to Respondent for drugs. Respondent incurred a total cost of
5 \$7,309.04 for the drugs.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Obtaining a Dangerous Device from an Unlicensed Wholesaler)**

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

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Performing the Duties of a Pharmacist without a License)**

18 29. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for
19 unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in
20 conjunction with California Code of Regulations 1793.1 subsection (b) which states that only a
21 pharmacist may consult with a patient or his agent regarding a prescription and subsection (e)
22 which states that only a pharmacist may consult with any prescriber, nurse or other health care
23 professional or authorized agent. The circumstances are that from about April 17, 2010 to April
24 19, 2010, as President of Respondent IV Solutions Inc located at 3384 Motor Avenue in Los
25 Angeles, Respondent Vara, a non-pharmacist, performed the duties of a registered pharmacist
26 without being licensed, by having calls delivered to him and/or responding to calls delivered to
27 the pharmacy for the following reasons:

28 ///

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

FOURTH CAUSE FOR DISCIPLINE

(Performing the Duties of a Pharmacist without a License)

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

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

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

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(False Representation of Licensure)**

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

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(False and Misleading Label on Prescription)**

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

24 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

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

3 Specifically, on April 2, 2010, Respondent IV Solutions, generated a Delivery Ticket to D.
4 Kordyak and sent wound care supplies including 3x1000ml Sodium Chloride Irrig.; 72 ABD Pads
5 7.5x8inches; 10 adhesive remover; 1 admission packet; 200 Alcohol Prep Pads; 15 Alcohol
6 Swabtx3; 50 Gauze soft sponge 2x2 6Ply; 100 Gauze sponge 4x4 8Ply; 12 Gauze Fluff Roll
7 4.5in.x 4.1Yd; 100 Gloves powder free latex (medium); 10 Povie Swabstix 3s; 10 Syringe with
8 Catheter Tip; and 3 Tape Paper 2” that were not ordered by the prescriber.

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

12 **EIGHTH CAUSE FOR DISCIPLINE**

13 **(Medication Error)**

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

17 On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the
18 intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment
19 as required. On April 17, 2010, D. Kordyak’s family discovered that the total 24 hour dose of
20 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the
21 continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every
22 six (6) hours.

23 **NINTH CAUSE FOR DISCIPLINE**

24 **(Quality Assurance Review Not Initiated)**

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

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

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

7 **TENTH CAUSE FOR DISCIPLINE**

8 **(Subvert or Attempt to Subvert an Investigation)**

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

16 **ELEVENTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct-Misuse of Education)**

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

26 ///

27 ///

28 ///

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to have Consultation Available)**

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

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

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

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

24 **THIRTEENTH CAUSE FOR DISCIPLINE**

25 **(Making Up False Document)**

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

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

7 **FOURTEENTH CAUSE FOR DISCIPLINE**

8 **(Making of False Documents)**

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

15 **FIFTEENTH CAUSE FOR DISCIPLINE**

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

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

23 **SIXTEENTH CAUSE FOR DISCIPLINE**

24 **(Noncompliant Ordering and Delivery to an Unlicensed Facility)**

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

1 **SEVENTEENTH CAUSE FOR DISCIPLINE**

2 **(Noncompliant Security)**

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

8 **EIGHTEENTH CAUSE FOR DISCIPLINE**

9 **(Pharmacy Operating without a Pharmacist Present)**

10 43. Respondent IV Solutions and Vara are subject to disciplinary action for
11 unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) and
12 4081 for violations of Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that
13 owner Respondent Vara opened the pharmacy for business on February 29, 2008 without a
14 pharmacist present. On April 17, 2008, Respondent Vara opened the pharmacy for business
15 without a pharmacist present and a pharmacy technician was allowed to mix an IV Solution at the
16 pharmacy while no pharmacist was present.

17 **NINETEENTH CAUSE FOR DISCIPLINE**

18 **(Noncompliant Pharmacist Identification)**

19 44. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct
20 within the meaning of Code Section 4301 subdivisions (j) and (o) for violation of Regulation
21 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the
22 pharmacy did not have a system to identify which pharmacist was responsible for the filling of a
23 prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that
24 the pharmacy still had not implemented a system after having been ordered to do so.

25 **TWENTIETH CAUSE FOR DISCIPLINE**

26 **(Non-Pharmacist Filling Prescriptions)**

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

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

3 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

4 **(Noncompliant Refilling of Controlled Substance)**

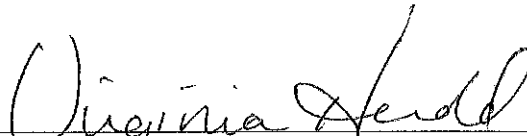
5 46. Respondent IV Solutions and Vara subject to disciplinary action under Code Section
6 4301 Subdivisions (j) and (o) in conjunction with Health and Safety Code Section 11200(c) for
7 refilling a Schedule II controlled substance on March 14, 2008.

8 **PRAYER**

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

- 11 1. Revoking or suspending Original Pharmacy Permit Number PHY 45885 issued to IV
12 Solutions, Inc.
- 13 2. Revoking or suspending Pharmacist License No. RPH 27398 issued to Renee Sadow.
- 14 3. Ordering Respondent IV Solutions, Inc. and PIC Sadow to pay the Board of
15 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;
- 17 4. Preventing Respondents IV Solutions, Inc., PIC Sadow, and Vara from serving as
18 managers, administrators, owners, members, officers, directors, associates, or partners of a
19 licensee.
- 20 5. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 1/17/13



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

27 LA2010601512
28 51166056.docx

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KIMBERLEE D. KING
Deputy Attorney General
4 State Bar No. 141813
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 3606

12 **IV SOLUTIONS INC.**
Alireza Varastehpour-President
13 **3384 Motor Avenue**
Los Angeles, CA 90034
14 **Original Pharmacy Permit No. PHY 45885**

OAH No. L-2010080069

FIRST AMENDED ACCUSATION

15 **And**

16 **RENEE SADOW**
24 Union Jack St., #3
17 **Marina del Rey, CA 90292-8600**
18 **Pharmacist License No. RPH 27398**

19 Respondents.

20 Complainant alleges:

21 **PARTIES**

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

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

1 Board records show that Jeannie Kim was the Pharmacist-in-Charge (PIC) from November 25,
2 2008 to February 16, 2009 and Renee Sadow has been the PIC from February 16, 2009 to the
3 present.

4 3. On or about April 25, 1971, the Board of Pharmacy issued Original Pharmacist
5 License Number RPH 27398 to Renee Sadow (Respondent PIC Sadow). The license was in full
6 force and effect at all times relevant to the charges brought herein and will expire on June 30,
7 2011, unless renewed.

8 JURISDICTION

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

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

14 6. Section 4301 of the Code states:

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

18

19 "(c) Gross negligence.

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

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

25

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

28

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

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

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

8 7. Section 4051 of the Code states:

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

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

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

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

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

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

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

28 ///

1 10. Section 4081 of the code states:

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

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

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

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

16 13. Section 4305 of the Code states:

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

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

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

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

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

8 15. Section 4322 of the Code states that:

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

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

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

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

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

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

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

4 (c) Identify, evaluate and interpret a prescription.

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

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

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

10 (g) Perform all functions which require professional judgment.”

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

20 21. Section 125.3 of the Code states, 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.

24 **DRUG CLASSIFICATION(S)**

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

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Performing the Duties of a Pharmacist without a license)**

3 23. Respondents IV Solutions, PIC Sadow, and Vara are subject to disciplinary action for
4 unprofessional conduct within the meaning of Code Section 4301 subdivisions (j), (o), and (p) in
5 conjunction with California Code of Regulations 1793.1 subsection (b) which states that only a
6 pharmacist may consult with a patient or his agent regarding a prescription and subsection (e)
7 which states that only a pharmacist may consult with any prescriber, nurse or other health care
8 professional or authorized agent. The circumstances are that from about April 17, 2010 to April
9 19, 2010, as President of Respondent IV Solutions Inc located at 3384 Motor Avenue in Los
10 Angeles, Respondent Vara, a non-pharmacist, performed the duties of a registered pharmacist
11 without being licensed, by having calls delivered to him and/or responding to calls delivered to
12 the pharmacy for the following reasons:

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

25 ///

26 ///

27 ///

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Performing the Duties of a Pharmacist without a License)**

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

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

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(False Representation of Licensure)**

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

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(False and Misleading Label on Prescription)**

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

13 **FIFTH CAUSE FOR DISCIPLINE**

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

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

20 Specifically, on April 2, 2010, Respondent IV Solutions, generated a Delivery Ticket to D.
21 Kordyak and sent wound care supplies including 3x1000ml Sodium Chloride Irrig.; 72 ABD Pads
22 7.5x8inches; 10 adhesive remover; 1 admission packet; 200 Alcohol Prep Pads; 15 Alcohol
23 Swabtx3; 50 Gauze soft sponge 2x2 6Ply; 100 Gauze sponge 4x4 8Ply; 12 Gauze Fluff Roll
24 4.5in.x 4.1Yd; 100 Gloves powder free latex (medium); 10 Povie Swabstix 3s; 10 Syringe with
25 Catheter Tip; and 3 Tape Paper 2" that were not ordered by the prescriber.

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

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Medication Error)**

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

6 On April 2, 2010, Respondent PIC Sadow programmed the Curlin pump #115698 using the
7 intermittent setting but failed to lock down the settings to secure the prescribed dosing regiment
8 as required. On April 17, 2010, D. Kordyak's family discovered that the total 24 hour dose of
9 13.5gm of Zosyn antibiotic was delivered to him by an unsecured Curlin pump #115698 on the
10 continuous setting instead of the intermittent setting of four divided doses of 3.375gm/dose every
11 six (6) hours.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Quality Assurance Review Not Initiated)**

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

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

24 **EIGHTH CAUSE FOR DISCIPLINE**

25 **(Subvert or Attempt to Subvert an Investigation)**

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

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

5 **NINTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct-Misuse of Education)**

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

15 **TENTH CAUSE FOR DISCIPLINE**

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

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

23 **ELEVENTH CAUSE FOR DISCIPLINE**

24 **(Noncompliant Ordering and Delivery to an Unlicensed Facility)**

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

1 **TWELTH CAUSE FOR DISCIPLINE**

2 **(Noncompliant Security)**

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

8 **THIRTEENTH CAUSE FOR DISCIPLINE**

9 **(Pharmacy Operating without a Pharmacist Present)**

10 35. Respondent IV Solutions and Vara are subject to disciplinary action for
11 unprofessional conduct within the meaning of Code Section 4301 subdivisions (j) and (o) and
12 4081 for violations of Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that
13 owner Respondent Vara opened the pharmacy for business on February 29, 2008 without a
14 pharmacist present. On April 17, 2008, Respondent Vara opened the pharmacy for business
15 without a pharmacist present and a pharmacy technician was allowed to mix an IV Solution at the
16 pharmacy while no pharmacist was present.

17 **FOURTEENTH CAUSE FOR DISCIPLINE**

18 **(Noncompliant Pharmacist Identification)**

19 36. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct
20 within the meaning of Code Section 4301 subdivisions (j) and (o) for violation of Regulation
21 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the
22 pharmacy did not have a system to identify which pharmacist was responsible for the filling of a
23 prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that
24 the pharmacy still had not implemented a system after having been ordered to do so.

25 **FIFTHTEENTH CAUSE FOR DISCIPLINE**

26 **(Non-Pharmacist Filling Prescriptions)**

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

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

3 **SIXTEENTH CAUSE FOR DISCIPLINE**

4 **(Noncompliant Refilling of Controlled Substance)**

5 38. Respondent IV Solutions and Vara subject to disciplinary action under Code Section
6 4301 Subdivisions (j) and (o) in conjunction with Health and Safety Code Section 11200(c) for
7 refilling a Schedule II controlled substance on March 14, 2008.

8 **SEVENTEENTH CAUSE FOR DISCIPLINE**

9 **(Making of False Documents)**

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

16 **PRAYER**

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

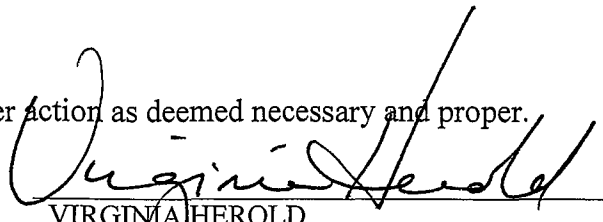
- 19 1. Revoking or suspending Original Pharmacy Permit Number PHY 45885 issued to IV
20 Solutions, Inc.
- 21 2. Revoking or suspending Pharmacist License No. RPH 27398 issued to Renee Sadow.
- 22 3. Ordering Respondent IV Solutions, Inc. and PIC Sadow to pay the Board of
23 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
24 Business and Professions Code section 125.3;
- 25 4. Preventing Respondents IV Solutions, Inc., PIC Sadow, and Vara from serving as
26 managers, administrators, owners, members, officers, directors, associates, or partners of a
27 licensee.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 7/25/11



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

LA2010600328
60623718.docx

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KIMBERLEE D. KING
Deputy Attorney General
4 State Bar No. 141813
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3606

12 **IV SOLUTIONS INC.**
13 **Alireza Varastehpour-President**
14 **3384 Motor Avenue**
Los Angeles, CA 90034
Original Pharmacy Permit No. PHY 45885

OAH No. L-2010080069

A C C U S A T I O N

15 Respondents.

17 Complainant alleges:

18 **PARTIES**

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

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

27 ///

28 ///

JURISDICTION

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

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

5. Section 4301 of the Code states:

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

....

"(c) Gross negligence.

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

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

....

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

....

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

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

///

///

1 6. Section 4051 of the Code states:

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

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

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

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

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

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

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

22 9. Section 4324 of the Code states:

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

27 ///

28 ///

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

4 10. Section 4305 of the Code states:

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

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

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

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

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

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

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

28 ///

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

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

5 (i) perform all functions which require professional judgment”.

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

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

12 FIRST CAUSE FOR DISCIPLINE

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

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

19 SECOND CAUSE FOR DISCIPLINE

20 (Noncompliant Ordering and Delivery to an Unlicensed Facility)

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

25 THIRD CAUSE FOR DISCIPLINE

26 (Noncompliant Security)

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

1 1714(d) and (e) in that its owner Alex Vara was in possession of the pharmacy key on February
2 29, 2008 and April 7, 2008, and opened the pharmacy without a pharmacist present.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Pharmacy Operating without a Pharmacist Present)

5 17. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct
6 within the meaning of Code Section 4301 Subdivisions (j) and (o) and 4081 for violations of
7 Code Sections 4113(b), 4305(b), 4305(b), and Regulation 1793.1, in that owner Alex Vara
8 opened the pharmacy for business on February 29, 2008 without a pharmacist present. On April
9 17, 2008, Alex Vara opened the pharmacy for business without a pharmacist present and a
10 pharmacy technician was allowed to mix an IV Solution at the pharmacy while no pharmacist was
11 present.

12 FIFTH CAUSE FOR DISCIPLINE

13 (Noncompliant Pharmacist Identification)

14 18. Respondent IV Solutions is subject to disciplinary action for unprofessional conduct
15 within the meaning of Code Section 4301 Subdivisions (j) and (o) for violation of Regulation
16 1717(f) in that during a Board investigation on February 29, 2008, an investigator found that the
17 pharmacy did not have a system to identify which pharmacist was responsible for the filling of a
18 prescription. Moreover, on April 7, 2008, upon further investigation, the investigator found that
19 the pharmacy still had not implemented a system after having been ordered to do so.

20 SIXTH CAUSE FOR DISCIPLINE

21 (Non-Pharmacist Filling Prescriptions)

22 19. Respondent IV Solutions is subject to disciplinary action under Code Section
23 4051 subdivision (a) in that during a Board investigation, the pharmacy was found to have non-
24 pharmacists filling multiple prescriptions for controlled substances and dangerous drugs from
25 March 1, 2008 to March 20, 2008.

26 ///

27 ///

28 ///

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Noncompliant Refilling of Controlled Substance)

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

6 EIGHTH CAUSE FOR DISCIPLINE

7 (Making of False Documents)

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

14 PRAYER

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

- 17 1. Revoking or suspending Original Pharmacy Permit Number PHY 45885, issued to IV
18 Solutions, Inc.
- 19 2. Ordering IV Solutions, Inc. 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 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 2/25/11

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

LA2010600328
60568433.doc