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

In the Matter of the Accusation Against: **COMMUNITY INFUSION SERVICES INC., DBA CDM DRUGS** **2865 East Coast Hwy., Suite 150** **Corona Del Mar, CA 92625** **Pharmacy License No. PHY 46007** **CHAD TRENOR KEARNS** **1601 Anita Lane** **Newport Beach, CA 92660** **Pharmacist License No. RPH 42817** Respondents.	Case No. 5267 OAH No. 2015101085

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 at 5:00 p.m. on May 26, 2016.

It is so ORDERED on April 26, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
DESIREE I. KELLOGG
Deputy Attorney General
State Bar No. 126461
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2996
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **COMMUNITY INFUSION SERVICES INC., DBA CDM DRUGS** **2865 East Coast Hwy., Suite 150** **Corona del Mar, CA 92625** **Pharmacy Permit No. PHY 46007** **CHAD TRENOR KEARNS** **1601 Anita Lane** **Newport Beach, CA 92660** **Pharmacist License No. RPH 42817** Respondents.	Case No. 5267 OAH No. 2015101085 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy Attorney General.

2. Community Infusion Services Inc., doing business as CDM Drugs and Chad Trenor Kearns are represented in this proceeding by attorney Gregory P. Matzen, whose address is 2104 Big Sandy Court, Gold River, CA 95670-8399.

3. On or about July 3, 2002, the Board of Pharmacy issued Pharmacy Permit No. PHY 46007 to Community Infusion Services Inc., doing business as CDM Drugs (Respondent CDM Drugs). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 5267 and was cancelled on November 19, 2015.

4. On or about August 10, 1989, the Board of Pharmacy issued Pharmacist License Number RPH 42817 to Chad Trenor Kearns (Respondent Chad Kearns). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 5267 and will expire on November 30, 2016, unless renewed.

JURISDICTION

5. Accusation No. 5267 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on February 10, 2015. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 5267 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5267. Respondents also have carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondents understand that the charges and allegations in Accusation No. 5267, if proven at a hearing, constitute cause for imposing discipline upon their Pharmacy Permit and Pharmacist License.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondents hereby give up their right to contest that cause for discipline exists based on those charges.

11. Respondent CDM Drugs understand that by signing this stipulation it enables the Board to issue an order accepting the surrender of its Pharmacy Permit without further process.

12. Respondent Chad Kearns agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

13. The admissions made by Respondents herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other regulatory agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

14. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of

no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

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

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

ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 46007, issued to Respondent Community Infusion Services Inc., doing business as CDM Drugs (Respondent CDM Drugs) is surrendered and accepted by the Board of Pharmacy.

1. Respondent CDM Drugs surrenders Pharmacy Permit No. PHY 46007 as of the effective date of this Decision. Respondent CDM Drugs shall relinquish the premises wall license and renewal license to the Board within ten (10) days of the effective date of this Decision.

2. The surrender of Respondent CDM Drugs' license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent CDM Drugs. This Decision constitutes a record of discipline and shall become a part of Respondent CDM Drugs' license history with the Board.

3. If Respondent CDM Drugs ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent

CDM Drugs must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 5267 shall be deemed to be true, correct and admitted by Respondent CDM Drugs when the Board determines whether to grant or deny the application or petition.

4. Respondent CDM Drugs shall pay the agency its costs of investigation and enforcement in the amount of $8,754.50, prior to issuance of a new or reinstated license.

IT IS FURTHER HEREBY ORDERED that Pharmacist License No. RPH 42817 issued to Chad Trenor Kearns (Respondent Chad Kearns) is revoked. However, the revocation is stayed and Respondent Kearns is placed on probation for five (5) years on the following terms and conditions:

1. **Obey All Laws**

Respondent Chad Kearns shall obey all state and federal laws and regulations.

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

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

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

2. **Report to the Board**

Respondent Chad Kearns shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed.

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

3. **Interview with the Board**

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

4. **Cooperate with Board Staff**

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

5. **Continuing Education**

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

6. **Notice to Employers**

During the period of probation, Respondent Chad Kearns shall notify all present and prospective employers of the Decision in case number 5267 and the terms, conditions and restrictions imposed on Respondent Chad Kearns by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of Respondent Chad Kearns undertaking any new employment, Respondent Chad Kearns shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in case number 5267, and

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

If Respondent Chad Kearns works for or is employed by or through a pharmacy employment service, Respondent Chad Kearns must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the Decision in case number 5267 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of Respondent Chad Kearns undertaking any new employment by or through a pharmacy employment service, Respondent Chad Kearns shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the Decision in case number 5267 and the terms and conditions imposed thereby. It shall be Respondent Chad Kearns' responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

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

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

8. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent Chad Kearns shall pay to the Board its costs of investigation and prosecution in the amount of $2,500.00 in a payment plan to be approved by the Board.

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

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

9. **Probation Monitoring Costs**

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

10. **Status of License**

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

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

11. **License Surrender While on Probation/Suspension**

Following the effective date of this Decision, should Respondent Chad Kearns cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the

license, Respondent Chad Kearns will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

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

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

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

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

13. **Tolling of Probation**

Except during periods of suspension, Respondent Kearns shall, at all times while on probation, be employed as a pharmacist in California for a minimum of thirty (30) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent Chad Kearns must nonetheless comply with all terms and conditions of probation.

Should Respondent Chad Kearns, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of thirty (30) hours per calendar month in California, Respondent Chad Kearns must notify the Board in writing within ten (10) days of

the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least thirty (30) hours, as defined by Business and Professions Code section 4000 et seq . "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least thirty (30) hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. **Violation of Probation**

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

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

15. **Completion of Probation**

Upon written notice by the Board or its designee indicating successful completion of probation, Respondent Chad Kearns' license will be fully restored.

16. **Remedial Education**

Within sixty (60) days of the effective date of this Decision, Respondent Chad Kearns shall submit to the Board or its designee, for prior approval, an appropriate program of remedial education related to pharmacy law, operations and the role of a pharmacist in charge. The program of remedial education shall consist of at least twenty (20) hours, which shall be completed within the first year of probation at Respondent Chad Kearns' own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

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

Following the completion of each course, the Board or its designee may require Respondent Chad Kearns, at his own expense, to take an approved examination to test Respondent Chad Kearns' knowledge of the course. If Respondent Chad Kearns does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the Board in the same subject area.

17. **Supervised Practice**

During the period of probation, Respondent Chad Kearns shall practice only under the supervision of a licensed pharmacist not on probation with the Board. Upon and after the effective date of this Decision, Respondent Chad Kearns shall not practice pharmacy and his license shall be automatically suspended until a supervisor is approved by the Board or its designee. The supervision shall be as follows:

- Daily Review- Supervisor's review of probationer's daily activities within

24 hours.

"Daily review" as this term is used herein shall not require that the supervising pharmacist be engaged in physical supervision of Respondent Chad Kearns' activities in real time, but shall require that the supervising pharmacist, by no later than close of business on each day following, review all transactions performed by Respondent Chad Kearns and records associated with those transactions to ensure compliance with state and federal statutes and regulations and with the requirements of this Decision.

The Board, or its designee, retains the discretion to increase the level of supervision during Respondent Chad Kearns' probation, if warranted by circumstances, or by violations or omissions discovered during Daily Review, to any of the following:

- Continuous- At least 75% of a work week
- Substantial- At least 50% of a work week
- Partial- At least 25% of a work week

Within thirty (30) days of the effective date of this Decision, Respondent Chad Kearns shall have his supervisor submit notification to the Board in writing stating that the supervisor has read the Decision in case number 5267 and is familiar with the required level of supervision as determined by the Board. It shall be Respondent Chad Kearns' responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered a violation of probation.

If Respondent Chad Kearns changes employment, it shall be Respondent Chad Kearns' responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Respondent Chad Kearns shall have his new supervisor, within fifteen (15) days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the Decision in case number 5267 and is familiar with the level of supervision as determined by the Board. Respondent Chad Kearns shall not practice pharmacy and his license shall be automatically suspended until the Board or its designee approves a new supervisor. Failure to cause the direct

supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered a violation of probation.

Within ten (10) days of leaving employment, Respondent Chad Kearns shall notify the Board in writing.

During suspension, Respondent Chad Kearns shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent Chad Kearns shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent Chad Kearns shall not resume practice until notified by the Board.

During suspension, Respondent Chad Kearns shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent Chad Kearns shall not direct or control any aspect of the practice of pharmacy. Respondent Chad Kearns shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, Respondent Chad Kearns may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this Decision becomes effective unless otherwise specified in this order.

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

18. **No Ownership of Licensed Premises**

Respondent Chad Kearns shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent Chad Kearns shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this Decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or

beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

19. **Restricted Practice**

Respondent shall not prepare, oversee or participate in the preparation of sterile compounded drug products during probation. Respondent shall submit proof satisfactory to the board of compliance with this term of probation. Failure to abide by this restriction or to timely submit proof to the board of compliance therewith shall be considered a violation of probation. Respondent may resume the preparation, oversight or participation in the preparation of sterile compounded drug products if he successfully completes at his own expense, thirty (30) hours of in-person, remedial education in the area of compounding sterile drug products which has been preapproved by the Board or its designee and submits satisfactory proof of such completion to the Board or its designee.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it will have on the Pharmacy Permit and Pharmacist License. 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: 3/3/16

CHAD TRENOR KEARNS, as an individual and as the authorized agent on behalf of COMMUNITY INFUSION SERVICES INC., DOING BUSINESS AS CDM DRUGS
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: 3/2/16

GREGORY P. MATZEN
Attorney for Respondents

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: 3/10/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

SD2014707705
81223085.doc

Exhibit A

Accusation No. 5267

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
DESIREE I. KELLOGG
Deputy Attorney General
State Bar No. 126461
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2996
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **COMMUNITY INFUSION SERVICES INC., DBA CDM DRUGS** **2865 East Coast Hwy., Suite 150** **Corona del Mar, CA 92625** **Pharmacy Permit No. PHY 46007** **CHAD TRENOR KEARNS** **1601 Anita Lane** **Newport Beach, CA 92660** **Pharmacist License No. RPH 42817** Respondents.	Case No. 5267 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about July 3, 2002, the Board of Pharmacy issued Pharmacy Permit Number PHY 46007 to Community Infusion Services Inc., doing business as CDM Drugs with Chad Trenor Kearns designated as the Pharmacist-in-Charge (Respondent Community Infusion

Services Pharmacy.) The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on July 1, 2015, unless renewed.

3. On or about August 10, 1989, the Board of Pharmacy issued Pharmacist License Number RPH 42817 to Chad Trenor Kearns (Respondent Chad Kearns). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2014, unless renewed.

JURISDICTION

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

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

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

7. Section 4300.1 of the Code states:

> The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a 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.

STATUTORY PROVISIONS

8. Section 4022 of the Code states:

> Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
>
> (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
>
> (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a ____," "Rx only," or words of similar import, 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 4076(a)(7) of the Code states:

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

....

The strength of the drug or drugs dispensed.

10. 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.

11. Section 4127.7 of the Code states:

On or after July 1, 2005, a pharmacy shall compound sterile injectable products from one or more nonsterile ingredients in one of the following environments:

(a) An ISO class 5 laminar airflow hood within an ISO class 7 cleanroom. The cleanroom must have a positive air pressure differential relative to adjacent areas.

(b) An ISO class 5 cleanroom.

(c) A barrier isolator that provides an ISO class 5 environment for compounding.

12. Section 4301 of the Code states in pertinent part:

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:

.....

(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.

....

(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.

. . . .

13. Section 4306.5 of the Code states, in pertinent part:

Unprofessional conduct for a pharmacist may include any of the following:

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

. . .

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

14. Section 4342(a) of the Code states:

The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

REGULATORY PROVISIONS

15. Title 16, California Code of Regulations, section 1735 (a) states in pertinent part:

"Compounding" means any of the following activities occurring in a licensed pharmacy, by or under the supervision of a licensed pharmacist, pursuant to a prescription:

(1) Altering the dosage form or delivery system of a drug

(2) Altering the strength of a drug

(3) Combining components or active ingredients

(4) Preparing a drug product from chemicals or bulk drug substances

. . .

16. Title 16, California Code of Regulations, section 1735.2 (d), (e) and (h) states:

(d) A drug product shall not be compounded until the pharmacy has first prepared a written master formula record that includes at least the following elements:

(1) Active ingredients to be used.

(2) Equipment to be used.

(3) Expiration dating requirements.

(4) Inactive ingredients to be used.

(5) Process and/or procedure used to prepare the drug.

(6) Quality reviews required at each step in preparation of the drug.

(7) Post-compounding process or procedures required, if any.

(e) Where a pharmacy does not routinely compound a particular drug product, the master formula record for that product may be recorded on the prescription document itself.

. . .

(h) Every compounded drug product shall be given an expiration date representing the date beyond which, in the professional judgment of the pharmacist performing or supervising the compounding, it should not be used. This "beyond use date" of the compounded drug product shall not exceed 180 days from preparation or the shortest expiration date of any component in the compounded drug product, unless a longer date is supported by stability studies of finished drugs or compounded drug products using the same components and packaging. Shorter dating than set forth in this subsection may be used if it is deemed appropriate in the professional judgment of the responsible pharmacist.

....

17. Title 16, California Code of Regulations, section 1735.3 (a), (b) and (c), states:

(a) For each compounded drug product, the pharmacy records shall include:

(1) The master formula record.

(2) The date the drug product was compounded.

(3) The identity of the pharmacy personnel who compounded the drug product.

(4) The identity of the pharmacist reviewing the final drug product.

(5) The quantity of each component used in compounding the drug product.

(6) The manufacturer, expiration date and lot number of each component. If the manufacturer name is demonstrably unavailable, the name of the supplier may be substituted. Exempt from the requirements in this paragraph are sterile products compounded on a one-time basis for administration within seventy-two (72) hours and stored in accordance with standards for "Redispensed CSPS" found in Chapter 797 of the United States Pharmacopeia - National Formulary (USP-NF) (35th Revision, Effective May 1, 2012), hereby incorporated by reference, to an inpatient in a health care facility licensed under section 1250 of the Health and Safety Code.

(7) A pharmacy assigned reference or lot number for the compounded drug product.

(8) The expiration date of the final compounded drug product.

(9) The quantity or amount of drug product compounded.

(b) Pharmacies shall maintain records of the proper acquisition, storage, and destruction of chemicals, bulk drug substances, drug products, and components used in compounding.

(c) Chemicals, bulk drug substances, drug products, and components used to compound drug products shall be obtained from reliable suppliers. The pharmacy shall acquire and retain any available certificates of purity or analysis for chemicals, bulk drug substances, drug products, and components used in compounding. Certificates of purity or analysis are not required for drug products that are approved by the Food and Drug Administration.

...

18. Title 16, California Code of Regulations, section 1735.4 (b) states:

A statement that the drug has been compounded by the pharmacy shall be included on the container or on the receipt provided to the patient.

19. Title 16, California Code of Regulations, section 1735.5 states:

(a) Any pharmacy engaged in compounding shall maintain a written policy and procedures manual for compounding that establishes procurement procedures, methodologies for the formulation and compounding of drugs, facilities and equipment cleaning, maintenance, operation, and other standard operating procedures related to compounding.

(b) The policy and procedure manual shall be reviewed on an annual basis by the pharmacist-in-charge and shall be updated whenever changes in processes are implemented.

(c) The policy and procedure manual shall include the following:

(1) Procedures for notifying staff assigned to compounding duties of any changes in processes or to the policy and procedures manual

(2) Documentation of a plan for recall of a dispensed compounded drug product where subsequent verification demonstrates the potential for adverse effects with continued use of a compounded drug product;

(3) The procedures for maintaining, storing, calibrating, cleaning, and disinfecting equipment used in compounding, and for training on those procedures as part of the staff training and competency evaluation process.

(4) Documentation of the methodology used to test integrity, potency, quality, and labeled strength of compounded drug products.

(5) Documentation of the methodology used to determine appropriate expiration dates for compounded drug products.

20. Title 16, California Code of Regulations, section 1735.6 (a) states:

Any pharmacy engaged in compounding shall maintain written documentation regarding the facilities and equipment necessary for safe and accurate compounded drug products. Where applicable, this shall include records of certification(s) of

facilities or equipment.

21. Title 16, California Code of Regulations, section 1735.7 (a) states:

Any pharmacy engaged in compounding shall maintain written documentation sufficient to demonstrate that the pharmacy personnel have the skills and training required to properly and accurately perform their assigned responsibilities relating to compounding.

22. Title 16, California Code of Regulations, section 1735.8 (a) states:

Any pharmacy engaged in compounding shall maintain, as part of its written policies and procedures, a written quality assurance plan designed to monitor and ensure the integrity, potency, quality, and labeled strength of compounded drug products.

23. Title 16, California Code of Regulations, section 1751 (b)(4) states:

(b) Any pharmacy compounding sterile injectable drug products shall have a designated area for the preparation of sterile injectable products which shall meet the following standards:

. . . .

(4) Be certified annually by a qualified technician who is familiar with the methods and procedures for certifying laminar air flow hoods and clean room requirements, in accordance with standards adopted by the United States General Services Administration. Certification records must be retained for at least 3 years.

24. Title 16, California Code of Regulations, section 1751.4 (d) states:

Exterior workbench surfaces and other hard surfaces in the designated area, such as walls, floors, ceilings, shelves, tables, and stools, must be disinfected weekly and after any unanticipated event that could increase risk of contamination.

25. Title 16, California Code of Regulations, section 1751.6 (e)(1) states:

(e) Pharmacies that compound sterile products from one or more non-sterile ingredients must comply with the following training requirements:

(1) The pharmacy must establish and follow a written program of training and performance evaluation designed to ensure that each person working in the designated area has the knowledge and skills necessary to perform their assigned tasks properly. This program of training and performance evaluation must address at least the following:

(A) Aseptic technique.

(B) Pharmaceutical calculations and terminology.

(C) Sterile product compounding documentation.

(D) Quality assurance procedures.

(E) Aseptic preparation procedures.

(F) Proper gowning and gloving technique.

(G) General conduct in the controlled area.

(H) Cleaning, sanitizing, and maintaining equipment used in the controlled area.

(I) Sterilization techniques.

(J) Container, equipment, and closure system selection.

26. Title 16, California Code of Regulations, section 1751.7 (b) and (c) states:

(b) Each individual involved in the preparation of sterile injectable products must first successfully complete a validation process on technique before being allowed to prepare sterile injectable products. The validation process shall be carried out in the same manner as normal production, except that an appropriate microbiological growth medium is used in place of the actual product used during sterile preparation. The validation process shall be representative of all types of manipulation, products and batch sizes the individual is expected to prepare. The same personnel, procedures, equipment, and materials must be involved. Completed medium samples must be incubated. If microbial growth is detected, then the sterile preparation process must be evaluation, corrective action taken, and the validation process repeated. Personnel competency must be revalidated at least every twelve months, whenever the quality assurance program yields an unacceptable result, when the compounding process changes, equipment used in the compounding of sterile injectable drug products is repaired or replaced, the facility is modified in a manner that affects airflow or traffic patterns, or whenever improper aseptic techniques are observed. Revalidation must be documented.

(c) Batch-produced sterile injectable drug products compounded from one or more non-sterile ingredients shall be subject to documented end product testing for sterility and pyrogens and shall be quarantined until the end product testing confirms sterility and acceptable levels of pyrogens.

COST RECOVERY

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

DRUGS

28. Sodium Phosphorous is a dangerous drug pursuant to Business and Professions Code section 4022.

29. Potassium Phosphorous is a dangerous drugs pursuant to Business and Professions Code section 4022.

30. Calcium Gluconate is a dangerous drugs pursuant to Business and Professions Code section 4022.

31. Sodium Chloride is a dangerous drugs pursuant to Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

32. Since July 3, 2002, Respondent Chad Kearns has been the Pharmacist-in-Charge of Respondent Community Infusion Services Pharmacy.

33. On April 20, 2012, the Board notified Respondents that they needed to maintain records of: (1) training and ongoing competence for the staff who were compounding drugs and (2) cleaning logs for the sterile compounding area. The Board issued a notice of correction to Respondents for their failure to identify drug products as compounded on their labels.

34. In 2013 and 2014, Respondents compounded and sold Total Parenteral Nutrition (TPN) sterile injectable drug products which contained the following dangerous drug components or ingredients, sodium phosphorous, potassium phosphorous, ascorbic folic acid, calcium gluconate or sodium chloride.

35. From June 24, 2013 through April 22, 2014, Respondents compounded sterile injectable batch products of sodium phosphate, potassium phosphate, calcium gluconate and concentrated sodium chloride from non-sterile sources and added them to the TPN sterile injectable drug products without compounding those dangerous drug products in either: (a) an ISO class 5 laminar airflow hood within an ISO class 7 cleanroom with a positive air pressure differential relative to the adjacent areas; (b) an ISO class 5 cleanroom or (c) a barrier isolator that provides an ISO class 5 environment for compounding.

36. From June 24, 2013 through March 4, 2014, Respondents utilized a horizontal laminar flow hood to compound TPN sterile injectable drug products. However, the horizontal laminar flow hood used to compound those sterile injectable drug products had not been certified since March 29, 2012, by a qualified technician who was familiar with the methods and procedures for certifying laminar air flow hoods and clean room requirements in accordance with standards adopted by the United States General Services Administration.

37. Respondents did not disinfect hard surfaces in the designated compounding area weekly and after any unanticipated event that could increase risk of contamination.

38. Respondents did not possess records showing that they had conducted documented end product testing to confirm sterility and acceptable levels of pyrogens for the components compounded from non-sterile ingredients which were used to compound TPN sterile injectable drug products. Respondents did not conduct that testing or quarantine the ingredients until the end product testing confirmed sterility and acceptable levels of pyrogens. Respondents also failed to produce and maintain documentation of the methodology used to test integrity, potency, quality and strength of compounded drug products.

39. Respondents did not possess training records, performance evaluations or records showing each individual involved in the preparation of sterile injectable drug products successfully completed a validation process on technique before being allowed to prepare sterile injectable drug products. Individuals involved in the preparation of sterile injectable drug products did not successfully complete a validation process on technique before being allowed to prepare sterile injectable drug products.

40. Similarly, Respondents did not possess updated compounding policies and procedures, a compounding quality assurance plan or documentation of facilities and equipment for compounding. The policy and procedure manual was not reviewed on an annual basis by the pharmacist-in-charge and not updated whenever changes in processes were implemented.

41. Respondents did not possess complete compounding records identifying all individuals who compounded the TPN sterile injectable drug products and the dates that those drug products were compound by them. Additionally, Respondents did not record the lot numbers and expiration dates for the dangerous drug components which were made from non-sterile sources. Also, there was a variance between the compounding records for TPN sterile injectable drug products in that the compounding record stated RX number 1144 contained 15 ml of potassium phosphate while the worksheets stated that they contained 4 ml of sodium phosphate and RX number 711 contained 4 ml of potassium phosphate while the worksheet stated that it contained 25 ml of sodium phosphate. Moreover, Respondents did not possess and produce the

prescriptions with the master formulas recorded on them for TPN sterile injectable drug products compounded by them.

42. Respondents did not accurately label certain TPN sterile injectable drug products in that they were labeled as containing 15 ml of potassium phosphate, but actually contained 4 ml of sodium phosphate.

43. In or about March 2014, Respondents maintained numerous expired dangerous drugs on the shelves of the pharmacy, including bulk quantities of the dangerous drug components used to compound drugs.

44. Respondents assigned a beyond use date of 365 days for a topical gel compounded by them (Rx number 132517) without adequate testing to support that beyond use date. Additionally, calcium gluconate compounded from a non sterile source and used in the TPN sterile injectable drug products was assigned beyond use dates of 365 days without adequate testing to support those beyond use dates.

45. Respondents did not record that a topical gel (Rx nmber 132517) was compounded on the label of the container when it had been compounded by Respondents.

46. On March 4, 2014, Respondent Chad Kearns informed the Board that he did not compound any sterile injectable drug products from non-sterile components when he had done so. On May 2, 2014, Respondent Chad Kearns informed the Board that he had purchased sterile dangerous drug components to compound the TPN sterile injectable drug products when he had in fact compounded those components from non-sterile sources. Respondent Chad Kearns also informed the Board that he had purchased an injectable ascorbic acid product from two manufacturers when he had not purchased that product from them.

FIRST CAUSE FOR DISCIPLINE

(Inadequate Record-Keeping)

47. Respondents are subject to disciplinary action under Code section 4301(o) for violating Pharmacy Law and regulations, as set forth in paragraphs 32 through 46, which are incorporated herein by reference and as described below:

a. **California Code of Regulations, title 16, sections 1735.7(a) and 1751.6(e)(1)**: Failure to maintain training records for compounding staff.

b. **California Code of Regulations, title 16, section 1735.5(a)**: Failure to maintain current written policies and procedures for compounding.

c. **California Code of Regulations, title 16, section 1735.5(b)**: Failure to review policy and procedures manual on an annual basis and update it.

d. **California Code of Regulations, title 16, section 1735.6(a)**: Failure to maintain written documentation of facilities and equipment for compounding.

e. **California Code of Regulations, title 16, section 1735.8(a)**: Failure to maintain a compounding quality assurance plan.

f. **California Code of Regulations, title 16, section 1735.5(c)(4)** : Failure to produce and maintain documentation of the methodology used to test integrity, potency, quality, and labeled strength of compounded drug products.

g. **California Code of Regulations, title 16, section 1735.3**: Failure to produce and maintain complete records or any records of compounded drugs, including failing to record the lot number, the expiration date of all components, the pharmacist who verified the compounded drugs and the identity of the pharmacy staff who compounded the drug product.

h. **California Code of Regulations, title 16, section 1735.2(d) and (e):** Failure to produce and maintain current prescriptions with the master formulas recorded on them for TPN sterile injectable drug products.

i. **California Code of Regulations, title 16, section 1751.7(b) and (c):** Failure to produce and maintain records for each individual involved in the preparation of sterile injectable drug products having completed a validation process on technique before being allowed to compound sterile injectable drug products. Failure to produce and maintain records of end product testing of batch-produced sterile injectable drug products compounded from one or more non-sterile ingredients.

SECOND CAUSE FOR DISCIPLINE

(Failure to Assign Proper Beyond Use Date)

48. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, section 1735.2(h), in that they did not assign a proper beyond use date for certain of the electrolyte components used to compound TPN sterile injectable drug products and the compounded topical gel (Rx 132517), as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Failure to Label Drug as Compounded)

49. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, section 1735.4(b), in that they did not label the compounded topical gel (Rx 132517) as being compounded, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Complete Validation Process on Technique)

50. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, title 21, section 1751.7(b), in that Respondent Chad Kearns and the pharmacy technician compounding sterile injectable drugs were not properly trained, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Compound Sterile Injectable Drugs in Authorized Environment)

51. Respondents are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4127.7, in that they compounded sterile injectable drugs from non-sterile ingredients, in an environment which was not authorized by law, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

SIXTH CAUSE FOR DISCIPLINE

(Compounded Sterile Injectable Drugs in Uncertified Hood)

52. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, title 16, section 1751(b)(4), in that in or about June 2013 through March 2014, they compounded sterile injectable drugs from non-sterile ingredients, in a horizontal laminar flow hood that had not been certified since March 2012, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Conduct End Product Testing for Sterile Injectable Drug Products)

53. Respondents are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, section 1751.7(c), in that they failed to properly test sterile injectable drug products, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Properly Label Strength of Compounded Sterile Injectable Drugs)

54. Respondents are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4076(a)(7), in that they labeled TPN sterile injectable drug product RX number 1144 as containing 15 ml of potassium phosphate when it actually contained 4 ml of sodium phosphate and TPN sterile injectable product RX number 711 as containing 4 ml of potassium phosphate when it actually contained 25 ml of sodium phosphate, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

NINTH CAUSE FOR DISCIPLINE

(Maintained Expired Dangerous Drugs on Shelves)

55. Respondents are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4342(a), in that they maintained expired dangerous drugs on the shelves of the pharmacy, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

TENTH CAUSE FOR DISCIPLINE

(Failure to Disinfect Hard Surfaces)

56. Respondents are subject to disciplinary action under Code section 4301(o), for violating California Code of Regulations, title 16, section 1751.4(d), in that they failed to disinfect hard surfaces in the designated compounding area, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

ELEVENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud or Deceit against Respondent Chad Kearns)

57. Respondent Chad Kearns is subject to disciplinary action under Code section 4301(f), in that he committed acts involving dishonesty, fraud or deceit, when he misrepresented facts to the Board, as set forth in paragraphs 32 through 46, which are incorporated herein by reference.

TWELFTH CAUSE FOR DISCIPLINE

(Failure to Exercise or Implement Best Professional Judgment When Compounding Drugs against Respondent Chad Kearns)

58. Respondent Chad Kearns is subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code sections 4306.5(a) and (c), in that he failed to exercise or implement his best professional judgment when he compounded and dispensed drugs, as set forth in paragraphs 32 through 46 above, which are incorporated herein by reference.

THIRTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

59. Respondents are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 32 through 46 above, which are incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 46007, issued to Community Infusion Services Inc., doing business as CDM Drugs;

2. Revoking or suspending Pharmacist License Number RPH 42817, issued to Chad Trenor Kearns;

3. Ordering Community Infusion Services Inc., doing business as CDM Drugs and Chad Trenor Kearns to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/7/15

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

SD2014707705
70970431.doc