AGREED BOARD ORDER #J-11-012

RE: IN THE MATTER OF
IV SOLUTIONS OF LUBBOCK
(PHARMACY LICENSE #17088)

BEFORE THE TEXAS STATE
BOARD OF PHARMACY

On this day came on to be considered by the Texas State Board of Pharmacy the matter of pharmacy license number 17088 issued to IV Solutions of Lubbock, 3706 A 20th Street, Lubbock, Texas 79410.

By letter dated July 29, 2011, the Texas State Board of Pharmacy gave preliminary notice to IV Solutions of Lubbock of its intent to take disciplinary action with respect to pharmacy license number 17088 issued to IV Solutions of Lubbock. This action was taken as a result of an investigation which produced evidence indicating that IV Solutions of Lubbock may have violated:

Section 565.001(a)(1), (2) and (12); and Section 565.002(a)(3) of the Texas Pharmacy Act, TEX. OCC. CODE ANN. Subtitle J (2005); and

Section 281.7(a)(12) and (13); Section 291.26(c)(1)(B)(vii); Section 291.31(1), (14) and (15); Section 291.32(a)(2)(H); Section 291.32(c)(1)(E) and (F); Section 291.32(c)(2)(B) and (D); and Section 295.3 of the Texas Pharmacy Board Rules, 22 TEX. ADMIN. CODE (2007), in that, allegedly:

COUNT

On or about March 20, 2007, Robby Don Timberlake, while acting as an employee (pharmacist-in-charge) of IV Solutions of Lubbock, 3706 A 20th Street, Lubbock, Texas 79410, dispensed to patient J.K. a compounded preparation of colistimethate 75mg per 3ml 0.225% NaCl in plastic ampules with directions to “inhale the contents of 1 ampule (75mg) via eFlow twice daily as directed.” A quantity of 60 plastic ampules was supplied to patient J.K. The prescription that was issued to J.K., a cystic fibrosis patient, called for colistimethate 150mg/6ml in sterile water with directions to “add 3ml (75mg) of colistimethate and 1ml of Bronchosaline to eFlow and nebulize twice daily as directed.” The prescription indicated a quantity of 30. On or about April 26, 2007, patient J.K. began therapy as instructed by the prescription’s label. The prescription was assigned prescription number 20008265.
An informal conference was held in the office of the Texas State Board of Pharmacy on September 7, 2011, with George Carlisle Birdsong, R.Ph., Corporate President of Maxor National Pharmacy Services, on behalf of IV Solutions of Lubbock, and Hector De Leon, Legal Counsel for IV Solutions of Lubbock, in attendance. The informal conference was heard by a Board panel comprised of: Jeanne D. Waggener, R.Ph., Board Member; Gay Dodson, R.Ph., Executive Director/Secretary; and Carol Fisher, R.Ph., M.P.A., Director of Enforcement; with Kerstin E. Arnold, General Counsel. Linda K. Townsend, Staff Attorney, was also in attendance.

At the aforementioned conference, Hector De Leon stated he was present for and on behalf of IV Solutions of Lubbock.

Subsequent to the informal conference, IV Solutions of Lubbock retained Julian L. Rivera as its Legal Counsel.

By George Carlisle Birdsong’s appearance at the informal conference, and by his signature and Julian L. Rivera’s signature on this Order, George Carlisle Birdsong and Julian L. Rivera agree that the Texas State Board of Pharmacy has jurisdiction in this matter, and do hereby waive the right to notice of hearing, to a formal administrative hearing, and to judicial review of this Order.

After discussion of the matters previously outlined in this Order, and subsequent communications, George Carlisle Birdsong and Julian L. Rivera, on behalf of IV Solutions of Lubbock, agreed to the entry of an Order disposing of the need for further disciplinary action in this matter. By their signatures on this Order, George Carlisle Birdsong and Julian L. Rivera neither admit nor deny the truth of the matters previously set out in this Order with respect to the above alleged violations.
Should this Order not be accepted by the Board, it is agreed that neither the presentation of the Order to the Board nor the Board’s consideration of the Order, will be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, will not be grounds for precluding the Board or any individual member of the Board from further participation in proceedings related to the matters set forth in the Order.

George Carlisle Birdsong and Julian L. Rivera, on behalf of IV Solutions of Lubbock, understand that any failure to comply with the terms of this Order is a basis for discipline under the Texas Pharmacy Act.

At the conclusion of the aforementioned conference, and subsequent communications, it was agreed among the parties that IV Solutions of Lubbock shall comply with the terms and conditions set forth in the ORDER OF THE BOARD below.

ORDER OF THE BOARD

THEREFORE, PREMISES CONSIDERED, the Texas State Board of Pharmacy (hereinafter referred to as “BOARD”) does hereby ORDER that pharmacy license number 17088 held by IV Solutions of Lubbock (hereinafter referred to as "Respondent") shall be, and such license is hereby reprimanded.

It is further ORDERED that Respondent shall develop and implement policies and procedures for a Continuous Quality Improvement Program for purposes of preventing and handling dispensing errors. The Continuous Quality Improvement Program shall include pharmacist peer review in compliance with guidelines approved by the Texas State Board of Pharmacy. In addition, the policies and procedures for pharmacist peer review shall state that:
(1) The peer review committee will:

- review incident reports;
- determine what caused errors;
- make recommendations to correct the problem that caused the errors; and
- monitor the changes to determine if the changes have improved the operation of Respondent and reduced errors.

(2) The peer review committee must be comprised of employees or staff independently contracted by Respondent, including the pharmacist-in-charge and other pharmacist(s) or personnel who are employees of Respondent, or staff independently contracted by Respondent. The committee shall not be solely comprised of a district or regional manager/supervisor and the pharmacist-in-charge and shall not be used for personnel evaluation purposes.

(3) The peer review committee will meet regularly, and no less than quarterly.

(4) The peer review committee will make a record indicating:

- date of meeting
- location of meeting;
- names of persons attending the meeting;
- description of activities;
- discussion of problems in Respondent's operation (e.g., work flow, dispensing process);
- findings;
- description of recommendations; and
- review of actions or changes relating to individuals, systems, or processes made as a result of previous recommendations.

Respondent shall submit a report and/or documentation of such policies and procedures to the Texas State Board of Pharmacy, Enforcement Division, within ninety (90) days after the entry of this Order. Copies of forms used by Respondent to collect the data on errors committed at the pharmacy (i.e., incident report forms) must be submitted to the Texas State Board of Pharmacy, as well as any other peer review forms that have been developed by Respondent. Additionally, records of the peer review committee, as described in subparagraph (4) above, shall be maintained for two (2) years at the location.
of Respondent and made available for inspection by Texas State Board of Pharmacy employees.

It is further ORDERED that Respondent shall pay an administrative penalty of one thousand five hundred dollars ($1,500) due ninety (90) days after the entry of this Order.

It is further ORDERED that Respondent shall allow the staff of the BOARD, Enforcement Division, to directly contact Respondent on any matter regarding the enforcement of this Order.

It is further ORDERED that any cost associated with compliance with the terms of this Order shall be the responsibility of Respondent.

It is finally ORDERED that failure to comply with any of the terms and conditions in this Order constitutes a violation and shall be grounds for further disciplinary action against the Texas pharmacy license held by Respondent.
And it is so ORDERED.

THIS ORDER IS A PUBLIC RECORD.

SIGNED AND ENTERED ON THIS 8th day of May, 2012.

MEMBER, TEXAS STATE BOARD OF PHARMACY

ATTRST:

Gay Dodson, R.Ph., Executive Director/Secretary
Texas State Board of Pharmacy

APPROVED AS TO FORM AND AGREED TO:

Carl Birdsong
George Carlisle Birdsong, R.Ph., Corporate President of Maxor National Pharmacy Services, on behalf of IV Solutions of Lubbock

John L. Rivera, Legal Counsel for IV Solutions of Lubbock
Brown McCarroll, L.L.P.
111 Congress Ave., Suite 1400
Austin, Texas 78701

APPROVED AS TO FORM:

Kathrin L. Arnold, General Counsel
Texas State Board of Pharmacy