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

12 In the Matter of the Accusation Against:

Case No. 3341

13 **COUNTY OF SACRAMENTO PRIMARY**  
14 **CARE**  
15 **4600 Broadway #1500**  
**Sacramento, Ca 95820**  
16 **Permit No. PHE 46273,**

**ACCUSATION**

17 and

18 **STEPHEN JAMES GOLKA**  
19 **75 Sandburg Dr.**  
**Sacramento, Ca 95819**  
20 **Pharmacist License No. RPH 32396,**

and

21 **ROBERT JOHN PAYNE**  
22 **428 J Street, Ste 610**  
**Sacramento, Ca 95814**  
23 **Pharmacist License No. RPH 26146**

24 Respondents.

25 Complainant alleges:

26 **PARTIES**

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



1 (b) 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.

2 (c) Every pharmacy shall notify the board within 30 days of the date when a  
3 pharmacist ceases to be a pharmacist-in-charge.

4 9. Code section 4301 states in part:

5 The board shall take action against any holder of a license who is guilty of  
6 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  
7 following:

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

9 . . . .

10 (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  
11 applicable federal and state laws and regulations governing pharmacy, including regulations  
established by the board or by any other state or federal regulatory agency.

12 10. Code section 4306.5 states, in part:

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

14 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or  
15 implement his or her best professional judgment or corresponding responsibility with  
regard to the dispensing or furnishing of controlled substances, dangerous drugs, or  
16 dangerous devices, or with regard to the provision of services.

17 11. Section 4059 of the Code states:

18 (a) A person may not furnish any dangerous drug, except upon the prescription  
of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
19 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
20 naturopathic doctor pursuant to Section 3640.7.

21 12. Section 4059.5 of the Code states, in part:

22 (b) A dangerous drug or dangerous device transferred, sold, or delivered to a  
23 person within this state shall be transferred, sold, or delivered only to an entity  
licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's  
24 agent.

25 13. Section 4126.5 of the Code states, in part:

26 (a) A pharmacy may furnish dangerous drugs only to the following:

27 (1) A wholesaler owned or under common control by the wholesaler from  
28 whom the dangerous drug was acquired.

1 (2) The pharmaceutical manufacturer from whom the dangerous drug was  
acquired.

2 (3) A licensed wholesaler acting as a reverse distributor.

3 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a  
4 dangerous drug that could result in the denial of health care. A pharmacy furnishing  
dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to  
5 alleviate the temporary shortage.

6 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise  
authorized by law.

7 (6) A health care provider that is not a pharmacy but that is authorized to  
8 purchase dangerous drugs.

9 (7) To another pharmacy under common control.

10 14. Section 4160 of the Code states that (a) a person may not act as a wholesaler of any  
11 dangerous drug or dangerous device unless he or she has obtained a license from the board.

12 15. California Code of Regulations, Title 16, Section 1714 states, in part:

13 (b) Each pharmacy licensed by the board shall maintain its facilities, space,  
14 fixtures, and equipment so that drugs are safely and properly prepared, maintained,  
secured and distributed. The pharmacy shall be of sufficient size and unobstructed  
15 area to accommodate the safe practice of pharmacy.

16 . . . .

17 (d) Each pharmacist while on duty shall be responsible for the security of the  
prescription department, including provisions for effective control against theft or  
18 diversion of dangerous drugs and devices, and records for such drugs and devices.  
Possession of a key to the pharmacy where dangerous drugs and controlled  
19 substances are stored shall be restricted to a pharmacist.

20 16. Section 4022 of the Code states

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

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

24 (b) Any device that bears the statement: "Caution: federal law restricts this  
25 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  
26 or order use of the device.

27 (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.

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17. Section 4043 of the Code states:

(a) "Wholesaler" means and includes a person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident wholesaler, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022. Unless otherwise authorized by law, a wholesaler may not store, warehouse, or authorize the storage or warehousing of drugs with any person or at any location not licensed by the board.

18. Code section 4307 states:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

**COST RECOVERY**

19. Code section 125.3 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 reason able costs of the investigation.

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1 districts/colleges and other locations, without a required Board wholesaler license (defined in  
2 section 4043), as further set forth in paragraphs 20-21, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Inadequate Pharmacy Security)**

5 24. Respondent Sacramento Primary Care is subject to disciplinary action under section  
6 4301, subdivision (o) for unprofessional conduct as defined in California Code of Regulations,  
7 Title 16, Section 1714, subdivision (b), in that Respondent failed to maintain appropriate security  
8 against theft or diversion of dangerous drugs, including records for the drugs.

9 25. A Pharmacy audit revealed that between or about March 2005 through February  
10 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen  
11 10/325 tablets, a schedule III controlled substance and dangerous drug. Additionally, in  
12 December 2007, pharmacist Marvin Gibson admitted to stealing approximately 480 tablets of  
13 hydrocodone/acetaminophen combination products for illegal self-administration between  
14 October and December 2007. The loss of the tablets, as well as Mr. Gibson's admitted theft  
15 demonstrate a lack of appropriate pharmacy security.

16 **STEPHEN JAMES GOLKA**

17 26. Respondent Golka received his Pharmacist license on August 25, 1978. He has been  
18 employed as the Pharmacist-in-Charge with Respondent Sacramento Primary Care from April 20,  
19 2007 to present.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unlawful Furnishing of Drugs and Controlled Substances)**

22 27. Respondent Golka is subject to disciplinary action under section 4301, subdivision (j)  
23 for unprofessional conduct, in that Respondent Golka violated the laws and provisions of the  
24 Code regulating dangerous drugs and controlled substances as set for in section 4059(a)  
25 (furnishing dangerous drugs and devices without a prescription), section 4059.5, subdivision (b)  
26 (dangerous drugs and devices sold /transferred/delivered to non-board licensed entities,  
27 manufacturer or ultimate user), and section 4126.5, subdivision (a) (furnishing dangerous drugs to  
28 non-approved entities), as more fully set forth in paragraphs 20-21, above.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Exercise Professional Judgment)**

3 28. Respondent Golka is subject to disciplinary action under sections 4301 for  
4 unprofessional conduct as defined in section 4306.5, subdivision (b), in that, during Respondent's  
5 status as Pharmacist-in-Charge, Respondent Golka failed to exercise or implement his best  
6 professional judgment or corresponding responsibility with regard to the dispensing or furnishing  
7 of controlled substances, dangerous drugs, or dangerous devices. Despite knowing that  
8 Respondent Sacramento Primary Care's activities of selling bulk controlled substances and  
9 dangerous drugs to unlicensed entities were illegal, Respondent Golka allowed such activities to  
10 continue, as further set forth in paragraph 20-23, above.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Unlicensed Activity)**

13 29. Respondent Stephen James Golka is subject to disciplinary action under section 4301,  
14 subdivision (o) for unprofessional conduct, in that as Pharmacist-in-Charge for Respondent  
15 Sacramento Primary Care, Respondent Golka violated the drug wholesaler licensing requirements  
16 as set for in section 4160, subdivision (a) (acting as a wholesaler without a license), as more fully  
17 set forth in paragraphs 20-23, above.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Inadequate Pharmacy Security)**

20 30. Respondent Golka is subject to disciplinary action under section 4301, subdivision (o)  
21 for unprofessional conduct as defined in California Code of Regulations, Title 16, Section 1714,  
22 subdivision (d), in that Respondent failed to maintain appropriate security against theft or  
23 diversion of dangerous drugs, including records for the drugs.

24 31. A Pharmacy audit revealed that between or about March 2005 through February  
25 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen  
26 10/325 tablets, a schedule III controlled substance and dangerous drug. Additionally in  
27 December 2007, pharmacist Marvin Gibson admitted to stealing approximately 480 tablets of  
28 hydrocodone/acetaminophen combination products for illegal self-administration between



1 October and December 2007. The loss of the tablets from April 20, 2007 to February 2008, as  
2 well as Mr. Gibson's admitted theft, occurred during Respondent Golka's status as Pharmacist-in-  
3 Charge.

4 **ROBERT JOHN PAYNE**

5 32. Respondent Payne received his license on July 24, 1969. He was employed as the  
6 Pharmacist-in-Charge with Respondent County of Sacramento Primary Care from December 8,  
7 2003 through March 23, 2007.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Unlawful Furnishing of Drugs and Controlled Substances)**

10 33. Respondent Payne is subject to disciplinary action under section 4301, subdivision (j)  
11 for unprofessional conduct, in that Respondent Payne violated the laws and provisions of the  
12 Code regulating dangerous drugs and controlled substances as set for in section 4059(a)  
13 (furnishing dangerous drugs and devices without a prescription), section 4059.5, subdivision (b)  
14 (dangerous drugs and devices sold /transferred/delivered to non-board licensed entities,  
15 manufacturer or ultimate user) and section 4126.5, subdivision (a) (furnishing dangerous drugs to  
16 non-approved entities), as more fully set forth in paragraphs 20-23, above.

17 **NINTH CAUSE FOR DISCIPLINE**

18 **(Unlicensed Activity)**

19 34. Respondent Robert John Payne is subject to disciplinary action under section 4301,  
20 subdivision (o) for unprofessional conduct, in that Respondent violated the board's drug  
21 wholesaler licensing requirements as set for in section 4160, subdivision (a) (acting as a  
22 wholesaler without a license), as more fully set forth in paragraphs 19-20, above.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Exercise Professional Judgment)**

25 35. Respondent Payne is subject to disciplinary action under sections 4301 for  
26 unprofessional conduct as defined in section 4306.5, subdivision (b), in that, during Respondent's  
27 status as Pharmacist-in-Charge, Respondent Payne to exercise or implement his best professional  
28 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled

1 substances, dangerous drugs, or dangerous devices. Despite knowing that Respondent  
2 Sacramento Primary Care's activities of selling bulk controlled substances and dangerous drugs  
3 to unlicensed entities were illegal, Respondent Payne allowed such activities to continue, as  
4 further set forth in paragraph 20-23, above.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 **(Inadequate Pharmacy Security)**

7 36. Respondent Robert John Payne is subject to disciplinary action under section 4301,  
8 subdivision (o) for unprofessional conduct as defined in California Code of Regulations, Title 16,  
9 Section 1714, subdivision (d), in that Respondent failed to maintain appropriate security against  
10 theft or diversion of dangerous drugs, including records for the drugs.

11 37. A Pharmacy audit revealed that between or about March 2005 through February  
12 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen  
13 10/325 tablets, a schedule III controlled substance and dangerous drug. The loss of tablets from  
14 December 8, 2003 through March 23, 2007 occurred during Respondent Payne's status as  
15 Pharmacist-in-Charge.

16 **OTHER MATTERS**

17 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number  
18 RPH 32396 issued to Stephen James Golka, Respondent Golka shall be prohibited from serving  
19 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

20 39. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License  
21 Number RPH 26146 issued to Robert John Payne, Respondent Payne shall be prohibited from  
22 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a  
23 licensee.

24 **PRAYER**

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

27 1. Revoking or suspending Permit Number PHE 46273, issued to County of Sacramento  
28 Primary Care.

1           2.    Revoking or suspending Pharmacist License Number RPH 32396, issued to Stephen  
2 James Golka.

3           3.    Prohibiting Stephen James Golka from serving as a manager, administrator, owner,  
4 member, officer, director, associate, or partner of a licensee during the period that discipline is  
5 imposed on Pharmacist License Number RPH 32396 issued to Stephen James Golka.

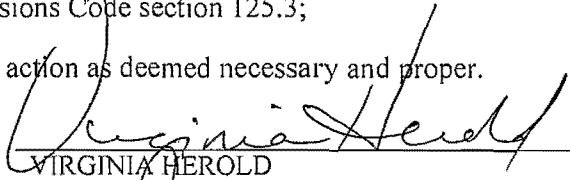
6           4.    Revoking or suspending Pharmacist License Number RPH 26146, issued to Robert  
7 John Payne.

8           5.    Prohibiting Robert John Payne from serving as a manager, administrator, owner,  
9 member, officer, director, associate, or partner of a licensee during the period that discipline is  
10 imposed on Pharmacist License Number RPH 26146 issued to Robert John Payne.

11          6.    Ordering County of Sacramento Primary Care, Stephen James Golka and Robert John  
12 Payne to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of  
13 this case, pursuant to Business and Professions Code section 125.3;

14          7.    Taking such other and further action as deemed necessary and proper.

15 DATED: 12/16/09

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

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