

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVER
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3767

13 **TAHOE CITY PLAZA PHARMACY, INC.,**
14 **DBA TAHOE CITY PHARMACY**

559 N. Lake Blvd.
Tahoe City, CA 96145

A C C U S A T I O N

15 Pharmacy Permit No. PHY 43340,

16 and

17 **GARY SABASTINA**

P.O. Box 1312
Kings Beach, CA 96143

18 Pharmacist License No. RPH 36143

19 Respondents.

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about August 25, 1998, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 43340 to Tahoe City Plaza Pharmacy, Inc., dba Tahoe City Pharmacy; Gary Paul
27 Sabistina; Dave R. Houston (Respondents). The Pharmacy Permit was in full force and effect at
28

1 all times relevant to the charges brought herein and will expire on August 1, 2010, unless
2 renewed.

3 3. On or about December 29, 1980, the Board of Pharmacy issued Pharmacist License
4 Number RPH 36143 to Gary Sabastina (Respondents). The Pharmacist License was in full force
5 and effect at all times relevant to the charges brought herein and will expire on February 28,
6 2011, unless renewed.

7 **JURISDICTION**

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

11 5. Section 4300 of the Code states, in pertinent part:

12 (a) Every license issued may be suspended or revoked.

13 (b) The board shall discipline the holder of any license issued by the board, whose
14 default has been entered or whose case has been heard by the board and found guilty,
by any of the following methods:

15 (1) Suspending judgment.

16 (2) Placing him or her upon probation.

17 (3) Suspending his or her right to practice for a period not exceeding one year.

18 (4) Revoking his or her license.

19 (5) Taking any other action in relation to disciplining him or her as the board in
20 its discretion may deem proper.

21 ...

22 6. Section 4301 of the Code states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 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:

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
2 the violation of or conspiring to violate any provision or term of this chapter or of the
3 applicable federal and state laws and regulations governing pharmacy, including
4 regulations established by the board or by any other state or federal regulatory
5 agency.

6 ...

7 7. Section 4081 states, in pertinent part:

8 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
9 drugs or dangerous devices shall be at all times during business hours open to
10 inspection by authorized officers of the law, and shall be preserved for at least three
11 years from the date of making. A current inventory shall be kept by every
12 manufacturer, wholesaler, pharmacy . . . who maintains a stock of dangerous drugs
13 or dangerous devices.

14 (b) The owner, officer, and partner of a pharmacy . . . shall be jointly responsible,
15 with the pharmacist-in-charge or designated representative-in-charge, for maintaining
16 the records and inventory described in this section.

17 ...

18 8. Section 4113 states, in pertinent part:

19 (a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
20 thereof, shall notify the board in writing of the identity and license number of that
21 pharmacist and the date he or she was designated.

22 ...

23 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with
24 all state and federal laws and regulations pertaining to the practice of pharmacy.

25 ...

26 9. California Code of Regulations, Title 16, Section 1714 states, in pertinent part:

27 ...

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

...

(d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
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
substances are stored shall be restricted to a pharmacist.

...

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1 10. California Code of Regulations, title 16, section 1718, states as follows:

2 "Current Inventory" as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all
4 dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

5 The controlled substances inventories required by Title 21, CFR, Section 1304 shall
6 be available for inspection upon request for at least 3 years after the date of the
7 inventory.

8 11. Section 118, subdivision (b), of the Code provides that the expiration of a license
9 shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action
10 during the period within which the license may be renewed, restored, reissued or reinstated.

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

15 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

16 13. "Vicodin" and "Norco", are brand names for hydrocodone/acetaminophen, which is a
17 dangerous drug, and a Schedule III controlled substances as designated by Health and Safety
18 Code section 11056(e)(4).

19 **GENERAL BACKGROUND**

20 ***Tahoe City Pharmacy's Controlled Substance Shortages***

21 14. From on or about October 8, 2008 through on or about February 9, 2010, Tahoe City
22 Pharmacy suffered thefts/losses of dangerous drugs/controlled substances. The estimated
23 thefts/losses are as follows:

- 24 a. 32,966 tablets of hydrocodone/apap 10/325, a schedule III controlled substance and
25 narcotic. This amount is approximately 49.5% of the total drug purchased by the
26 pharmacy during this time.

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28 ///

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1 ***Failure to Provide Effective Control of Security of Controlled***
2 ***Substances/Dangerous Drugs by Tahoe City Pharmacy***

3 15. From on or about October 8, 2008 through on or about February 9, 2010, Tahoe City
4 Pharmacy failed to provide an effective control on the security of its facilities, space, fixtures and
5 equipment to prevent theft, diversion or other loss of dangerous drugs/controlled substances as
6 alleged in paragraph 14, above.

7 ***Failure to Maintain Current Inventory of Dangerous Drugs/Controlled***
8 ***Substances by Tahoe City Pharmacy***

9 16. During the period of on or about October 8, 2008 through on or about February 9,
10 2010, Tahoe City Pharmacy failed to maintain a current inventory of its stock of dangerous drugs
11 and could not account for the dangerous drugs/controlled substances alleged in paragraph 14,
12 above.

13 ***Ineffective Security and Controlled Substances Shortages under PIC Sabistina***

14 17. From on or about October 8, 2008 through on or about February 9, 2010, Respondent
15 Gary Sabistina was Tahoe City Pharmacy's pharmacist-in-charge. During that time period,
16 Tahoe City Pharmacy suffered the thefts/losses of dangerous drugs/controlled substances as
17 alleged in paragraph 14, above.

18 ***Failure to Maintain Current Inventory by PIC Sabistina***

19 18. From on or about October 8, 2008 through on or about February 9, 2010, Respondent
20 Gary Sabistina was Tahoe City Pharmacy's pharmacist-in-charge. During that time period,
21 Tahoe City Pharmacy failed to maintain a current inventory of dangerous drugs, and could not
22 account for the dangerous drugs/controlled substances alleged in paragraph 14, above.

23 **FIRST CAUSE FOR DISCIPLINE**
24 **(Inadequate Pharmacy Security by Tahoe City Pharmacy)**

25 19. Paragraphs 14 through 18 above are herein incorporated by reference. Respondent
26 Tahoe City Plaza Pharmacy, Inc. is subject to disciplinary action under section 4301(j) and (o) on
27 the ground of unprofessional conduct. Respondent violated California Code of Regulations, Title
28 16, section 1714(d), by failing to maintain provisions for effective control against theft or

1 diversion of dangerous drugs.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Failure to Maintain Current Inventory of Dangerous Drugs by Tahoe City Pharmacy)**

4 20. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Tahoe
5 City Pharmacy is subject to disciplinary action pursuant to section 4301(j) and (o) on the ground
6 of unprofessional conduct. Respondent violated Code section 4081(a) and California Code of
7 Regulations, Title 16, section 1718, by failing to maintain a current inventory of its stock of
8 dangerous drugs and its inability to account for the dangerous drugs/controlled substances as
9 alleged in paragraph 14, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Inadequate Pharmacy Security by Gary Sabistina)**

12 21. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Gary
13 Sabistina is subject to disciplinary action under section 4301(j) and (o) on the ground of
14 unprofessional conduct. As the pharmacist in charge of Tahoe City Pharmacy under section
15 4113(b), Respondent violated section 4081 and California Code of Regulations, Title 16, section
16 1714(d), by failing to maintain provisions for effective control against theft or diversion of
17 dangerous drugs.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Current Inventory of Dangerous Drugs by Gary Sabistina)**

20 22. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Gary
21 Sabistina is subject to disciplinary action pursuant to section 4301(j) and (o) on the ground of
22 unprofessional conduct. As the pharmacist in charge of Tahoe City Pharmacy under section
23 4113(b), Respondent violated section 4081 and California Code of Regulations, Title 16, section
24 1718, by failing to maintain a current inventory of the stock of dangerous drugs at Tahoe City
25 Pharmacy so as to maintain complete accountability for all such dangerous drugs.

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1 DISCIPLINE CONSIDERATIONS

2 23. To determine the degree of discipline, if any, to be imposed on Respondent Tahoe
3 City Pharmacy, Complainant alleges that on or about February 9, 2004, in a prior action, the
4 Board of Pharmacy issued Citation Number CI 2002 25172 - a and ordered Respondent to pay
5 fines in the amount of \$750.00. That Citation is now final and is incorporated by reference as if
6 fully set forth.

7 24. To determine the degree of discipline, if any, to be imposed on Respondent Gary
8 Sabistina, Complainant alleges that on or about February 9, 2004, in a prior action, the Board of
9 Pharmacy issued Citation Number CI 2002 25172 - b and ordered Respondent to pay fines in the
10 amount of \$1,750.00. That Citation is now final and is incorporated by reference as if fully set
11 forth.

12 PRAYER

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

15 1. Revoking or suspending Pharmacy Permit No. PHY 43340, issued to Tahoe City
16 Pharmacy;

17 2. Revoking or suspending Pharmacist License No. RPH 36143, issued to Gary
18 Sabistina;

19 3. Ordering Respondent Tahoe City Pharmacy and Gary Sabistina to pay the Board of
20 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
21 Business and Professions Code section 125.3;

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

23 DATED: 11/2/10

Virginia Herold

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

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