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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation and Petition to  
11 Revoke Probation Against:

Case No. 5130

12 **GARY PAUL SABISTINA**  
13 **aka GARY SABASTINA**  
14 **P.O. Box 551**  
**Tahoe City, CA 96145**

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

15 **Pharmacist License No. RPH 36143**

16 Respondent.

17 Complainant alleges:

18  
19 PARTIES

20 1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke  
21 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,  
22 Department of Consumer Affairs.

23 2. On or about December 29, 1980, the Board issued Pharmacist License No. RPH  
24 36143 to Gary Paul Sabistina aka Gary Sabastina (Respondent). The License was in effect at all  
25 times relevant to the charges herein and will expire on February 28, 2015, unless renewed.

26 3. In a disciplinary action titled "In the Matter of the Accusation Against Tahoe City  
27 Plaza Pharmacy, Inc. dba Tahoe City Pharmacy and Gary Sabastina," Case No. 3767, the Board  
28 of Pharmacy issued a Decision and Order, effective June 22, 2011, in which Respondent's

1 Pharmacist License was revoked, with revocation stayed in favor of probation for a period of five  
2 (5) years with certain terms and conditions of probation. A copy of that Decision and Order is  
3 attached as exhibit A and is incorporated by reference.  
4

#### 5 JURISDICTION

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

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

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

14 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
15 suspension of a Board-issued license, the placement of a license on a retired status, or the  
16 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
17 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
18 licensee or to render a decision suspending or revoking the license.  
19

#### 20 STATUTORY AND REGULATORY PROVISIONS

21 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
22 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
23 not be limited to, any of the following:

24 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
25 of a licensee under this chapter.

26 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
27 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
28 to the qualifications, functions or duties of the license.

1           10. California Code of Regulations, title 16, section 1770, states:

2           “For the purpose of denial, suspension, or revocation of a personal or facility license  
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
6 licensee or registrant to perform the functions authorized by her license or registration in a  
7 manner consistent with the public health, safety, or welfare.”

8

9

COST RECOVERY

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

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FIRST CAUSE FOR DISCIPLINE

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(Conviction of Substantially Related Crime(s))

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12. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about August 6, 2013, in the criminal case *People v. Gary P. Sabistina*, Case No. 72-008415 in Placer County Superior Court, Respondent was convicted of violating Penal Code section 243, subdivision (e)(1) (Battery), a misdemeanor. The conviction was entered as follows:

a. On or about July 29, 2013, Placer County Sheriff’s Department officer(s) were dispatched to a residence in Tahoe Vista, CA shared by Respondent and his wife, in response to a report of domestic violence made by Respondent’s wife. Respondent’s wife said that Respondent came home drunk and angry, broke several items in or around the house, pinned her down on the bed and slapped her several times. The officer(s) observed damage inside the house. Based on his wife’s statements and the evidence they observed, Respondent was arrested. Respondent was also made the subject of an Emergency Protective Order in favor of his wife.





1           21. On or about August 4, 2011, Respondent was instructed to make eighteen (18)  
2 quarterly payments of \$257.00. Based on his failure to find employment, Respondent was  
3 granted an initial abeyance of his obligation to make payments of six (6) months. Despite the  
4 lapse of that period, Respondent has made no payments toward his cost recovery obligation. His  
5 failure to timely make cost recovery payments subjects Respondent's License to revocation.

6  
7   FOURTH CAUSE TO REVOKE PROBATION

8   (Failure to Timely Notify Board of Address Change)

9           22. At all times after the effective date (June 22, 2011) of the Decision and Order  
10 imposing probation on Respondent's License, Term and Condition 12 of that Order required that  
11 Respondent notify the Board in writing within ten (10) days of any change in name, residence  
12 address, mailing address, or phone number.

13           23. As described in paragraph 12, on or about July 29, 2013 Respondent was required to  
14 leave his residence address. Respondent did not notify the Board of this change in address within  
15 ten (10) days. Respondent first notified the Board of his change in address on or about October  
16 15, 2013. This failure to timely notify the Board subjects Respondent's License to revocation.

17  
18   FIFTH CAUSE TO REVOKE PROBATION

19   (Failure to Cooperate with Board Staff)

20           24. At all times after the effective date (September 5, 2011) of the Decision and Order  
21 imposing probation on Respondent's License, Term and Condition 4 of that Order required that  
22 Respondent cooperate with the Board's inspection program and with the Board's monitoring and  
23 investigation of Respondent's compliance with terms and conditions of his probation.

24           25. Per paragraphs 17-23 above, Respondent failed to timely cooperate on one or more  
25 occasions. His failure(s) to cooperate as required subject Respondent's License to revocation.

26           ///

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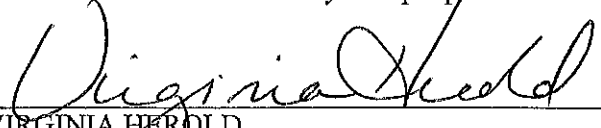


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4. Taking such other and further action as is deemed necessary and proper.

DATED: \_\_\_\_\_

6/5/14



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

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**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 3767**

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

In the Matter of the Accusation Against:

Case No. 3767

TAHOE CITY PLAZA PHARMACY, INC.,  
DBA TAHOE CITY PHARMACY  
559 N. Lake Blvd.  
Tahoe City, CA 96145  
Pharmacy Permit No. PHY 43340

and

GARY SABASTINA  
P.O. Box 1312  
Kings Beach 1312  
Pharmacist License No. RPH 36143

Respondent.

**DECISION AND ORDER**

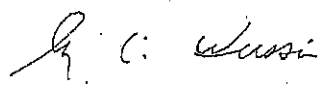
The attached Stipulated Settlement and Disciplinary Order, as to Respondent Gary Sabastina, RPH 36143, only, is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 22, 2011.

It is so ORDERED on May 23, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By \_\_\_\_\_

  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
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**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3767

12 **TAHOE CITY PLAZA PHARMACY, INC.,**  
**DBA TAHOE CITY PHARMACY**  
13 **559 N. Lake Blvd.**  
**Tahoe City, CA 96145**  
14 **Pharmacy Permit No. PHY 43340,**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO GARY**  
**SABASTINA ONLY**

15 and

16 **GARY SABASTINA**  
**P.O. Box 1312**  
17 **Kings Beach, CA 96143**  
18 **Pharmacist No. RPH 36143**

19 Respondents.  
20

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

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
25 She brought this action solely in her official capacity and is represented in this matter by Kamala  
26 D. Harris, Attorney General of the State of California, by Karen R. Denvir, Deputy Attorney  
27 General.

28 ///



1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation  
3 No. 3767.

4 9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees  
5 to be bound by the Board of Pharmacy (Board)'s probationary terms as set forth in the  
6 Disciplinary Order below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
9 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
10 communicate directly with the Board regarding this stipulation and settlement, without notice to  
11 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands  
12 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the  
13 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its  
14 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
15 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
16 and the Board shall not be disqualified from further action by having considered this matter.

17 11. The parties understand and agree that facsimile copies of this Stipulated Settlement  
18 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
19 effect as the originals.

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

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

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 36143 issued to Respondent  
3 Gary Sabastina (Respondent) is revoked. However, the revocation is stayed and Respondent is  
4 placed on probation for five (5) years on the following terms and conditions.

5 1. **Obey All Laws**

6 Respondent shall obey all state and federal laws and regulations.

7 Respondent shall report any of the following occurrences to the board, in writing, within  
8 seventy-two (72) hours of such occurrence:

- 9 • an arrest or issuance of a criminal complaint for violation of any provision of the  
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
11 substances laws  
12 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
13 criminal complaint, information or indictment  
14 • a conviction of any crime  
15 • discipline, citation, or other administrative action filed by any state or federal agency  
16 - which involves Respondent's Pharmacist License or which is related to the practice of  
17 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging  
18 for any drug, device or controlled substance.

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

20 2. **Report to the Board**

21 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
22 designee. The report shall be made either in person or in writing, as directed. Among other  
23 requirements, Respondent shall state in each report under penalty of perjury whether there has  
24 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
25 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
26 in submission of reports as directed may be added to the total period of probation. Moreover, if  
27 the final probation report is not made as directed, probation shall be automatically extended until  
28 such time as the final report is made and accepted by the board.

1           3.    **Interview with the Board**

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

7           4.    **Cooperate with Board Staff**

8           Respondent shall cooperate with the board's inspection program and with the board's  
9 monitoring and investigation of Respondent's compliance with the terms and conditions of his  
10 probation. Failure to cooperate shall be considered a violation of probation.

11          5.    **Continuing Education**

12          Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
13 pharmacist as directed by the board or its designee.

14          6.    **Notice to Employers**

15          During the period of probation, Respondent shall notify all present and prospective  
16 employers of the decision in case number 3767 and the terms, conditions and restrictions imposed  
17 on Respondent by the decision, as follows:

18                Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
19 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
22 individual(s) has/have read the decision in case number 3767, and terms and conditions imposed  
23 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
24 supervisor(s) submit timely acknowledgment(s) to the board.

25                If Respondent works for or is employed by or through a pharmacy employment service,  
26 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
27 licensed by the board of the terms and conditions of the decision in case number 3767 in advance  
28

1 of the Respondent commencing work at each licensed entity. A record of this notification must  
2 be provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
4 (15) days of Respondent undertaking any new employment by or through a pharmacy  
5 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
6 service to report to the board in writing acknowledging that they has read the decision in case  
7 number 3767 and the terms and conditions imposed thereby. It shall be Respondent's  
8 responsibility to ensure that their employer(s) and/or supervisor(s) submit timely  
9 acknowledgment(s) to the board.

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

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

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

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

23 **8. Reimbursement of Board Costs**

24 As a condition precedent to successful completion of probation, Respondent shall pay to the  
25 board its costs of investigation and prosecution in the amount of \$4,896.00. Respondent shall  
26 make said payments as approved by the Board.

27 ///

28 ///



1           There shall be no deviation from this schedule absent prior written approval by the board or  
2 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
3 probation.

4           The filing of bankruptcy by Respondent shall not relieve Respondent of their responsibility  
5 to reimburse the board its costs of investigation and prosecution.

6           **9. Probation Monitoring Costs**

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

11           **10. Status of License**

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

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

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

20           Following the effective date of this decision, should Respondent cease practice due to  
21 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
22 Respondent may tender his license to the board for surrender. The board or its designee shall  
23 have the discretion whether to grant the request for surrender or take any other action it deems  
24 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent  
25 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
26 record of discipline and shall become a part of the Respondent's license history with the board.

27           Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
28 to the board within ten (10) days of notification by the board that the surrender is accepted.

1 Respondent may not reapply for any license from the board for three (3) years from the effective  
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
3 of the date the application for that license is submitted to the board, including any outstanding  
4 costs.

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

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

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

14 **13. Tolling of Probation**

15 Except during periods of suspension, Respondent shall, at all times while on probation, be  
16 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any  
17 month during which this minimum is not met shall toll the period of probation, i.e., the period of  
18 probation shall be extended by one month for each month during which this minimum is not met.  
19 During any such period of tolling of probation, Respondent must nonetheless comply with all  
20 terms and conditions of probation.

21 Should Respondent, regardless of residency, for any reason (including vacation) cease  
22 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,  
23 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
24 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
25 failure to provide such notification(s) shall be considered a violation of probation.

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

1 "Cessation of practice" means any calendar month during which Respondent is not  
2 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code  
3 section 4000 et seq. "Resumption of practice" means any calendar month during which  
4 Respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by  
5 Business and Professions Code section 4000 et seq.

6 **14. Violation of Probation**

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

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

19 **15. Completion of Probation**

20 Upon written notice by the board or its designee indicating successful completion of  
21 probation, Respondent's license will be fully restored.

22 **16. Community Services Program**

23 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
24 board or its designee, for prior approval, a community service program in which Respondent shall  
25 provide free health-care related services on a regular basis to a community or charitable facility or  
26 agency for at least eighty (80) hours over the five (5) years of probation. Within thirty (30) days  
27 of board approval thereof, Respondent shall submit documentation to the board demonstrating  
28 commencement of the community service program. A record of this notification must be

1 provided to the board upon request. Respondent shall report on progress with the community  
2 service program in the quarterly reports. Failure to timely submit, commence, or comply with the  
3 program shall be considered a violation of probation.

4 **17. Remedial Education**

5 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the  
6 board or its designee, for prior approval, an appropriate program of remedial education related to  
7 pharmacy security, preventing drug losses, and inventory control. The program of remedial  
8 education shall consist of a total of 50 hours, with ten hours required to be completed during each  
9 year of probation at Respondent's own expense. All remedial education shall be in addition to,  
10 and shall not be credited toward, continuing education (CE) courses used for license renewal  
11 purposes.

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

16 Following the completion of each course, the board or its designee may require the  
17 Respondent, at their own expense, to take an approved examination to test the Respondent's  
18 knowledge of the course. If the Respondent does not achieve a passing score on the examination,  
19 this failure shall be considered a violation of probation. Any such examination failure shall  
20 require Respondent to take another course approved by the board in the same subject area.

21 **18. Supervised Practice**

22 During the period of probation, Respondent shall practice only under the supervision of a  
23 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
24 decision, Respondent shall not practice pharmacy and his license shall be automatically  
25 suspended until a supervisor is approved by the board or its designee. The supervision shall be,  
26 as required by the board or its designee, either:

27 Continuous – At least 75% of a work week

28 Substantial - At least 50% of a work week

1 Partial - At least 25% of a work week

2 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

3 Within thirty (30) days of the effective date of this decision, Respondent shall have his  
4 supervisor submit notification to the board in writing stating that the supervisor has read the  
5 decision in case number 3767 and is familiar with the required level of supervision as determined  
6 by the board or its designee. It shall be the Respondent's responsibility to ensure that his  
7 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
8 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
9 acknowledgements to the board shall be considered a violation of probation.

10 If Respondent changes employment, it shall be the Respondent's responsibility to ensure  
11 that their employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
12 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)  
13 days after employment commences, submit notification to the board in writing stating the direct  
14 supervisor and pharmacist-in-charge have read the decision in case number 3767 and is familiar  
15 with the level of supervision as determined by the board. Respondent shall not practice pharmacy  
16 and his license shall be automatically suspended until the board or its designee approves a new  
17 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
18 acknowledgements to the board shall be considered a violation of probation.

19 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

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

28 During suspension, Respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
3 designated representative for any entity licensed by the board.

4 Subject to the above restrictions, Respondent may continue to own or hold an interest in  
5 any licensed premises in which they holds an interest at the time this decision becomes effective  
6 unless otherwise specified in this order.

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

8 **19. No Ownership of Licensed Premises**

9 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
10 administrator, member, officer, director, trustee, associate, or partner of any business; firm,  
11 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
12 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
13 days following the effective date of this decision and shall immediately thereafter provide written  
14 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
15 documentation thereof shall be considered a violation of probation.

16 **20. Ethics Course**

17 Within sixty (60) calendar days of the effective date of this decision, Respondent shall  
18 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its  
19 designee. Failure to initiate the course during the first year of probation, and complete it within  
20 the second year of probation, is a violation of probation.

21 Respondent shall submit a certificate of completion to the board or its designee within five  
22 days after completing the course.

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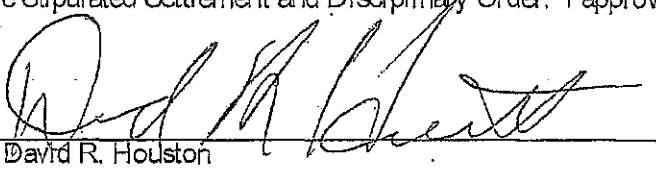
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David R. Houston. I understand the stipulation and the effect it will have on my Pharmacy Permit. 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: 4-4-2011   
GARY SABASTINA  
Respondent

I have read and fully discussed with Respondent Gary Sabastina the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4-4-2011   
David R. Houston  
Attorney for Respondent

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: March 8, 2011

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
ARTHUR D. TAGGART  
Supervising Deputy Attorney General

KAREN R. DENVIR  
Deputy Attorney General  
*Attorneys for Complainant*

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1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
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**

11 In the Matter of the Accusation Against:

Case No. 3767

12 **TAHOE CITY PLAZA PHARMACY, INC.,**  
13 **DBA TAHOE CITY PHARMACY**  
559 N. Lake Blvd.  
Tahoe City, CA 96145

**A C C U S A T I O N**

14 Pharmacy Permit No. PHY 43340,

15 and

16 **GARY SABASTINA**  
17 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 6. Section 4301 of the Code states, in pertinent part:

22 The board shall take action against any holder of a license who is guilty of  
23 unprofessional conduct or whose license has been procured by fraud or  
24 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 (c) 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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10. California Code of Regulations, title 16, section 1718, states as follows:

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

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

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

12. Section 125.3 of the Code states, 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.

**CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

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

**GENERAL BACKGROUND**

*Tahoe City Pharmacy’s Controlled Substance Shortages*

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

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

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

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

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

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

*Ineffective Security and Controlled Substances Shortages under PIC Sabistina*

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

*Failure to Maintain Current Inventory by PIC Sabistina*

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

**FIRST CAUSE FOR DISCIPLINE**

**(Inadequate Pharmacy Security by Tahoe City Pharmacy)**

19. Paragraphs 14 through 18 above are herein incorporated by reference. Respondent Tahoe City Plaza Pharmacy, Inc. is subject to disciplinary action under section 4301(j) and (o) on the ground of unprofessional conduct. Respondent violated California Code of Regulations, Title 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  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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