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

In The Matter of the Accusation Against: **Park Medical Center Pharmacy, Inc.** **dba Medical Center Pharmacy, (Chula Vista)** Pharmacy Permit No. PHY 35051 **Park Medical Center Pharmacy, Inc.** **dba Medical Center Pharmacy, (San Diego)** Pharmacy Permit No. PHY 44103 **John Carl Grasela** Pharmacist License No. RPH 32430 **Joseph Grasela** Pharmacist License No. RPH 29437 **Jack (Jack) Donlon, Jr.** Pharmacist License No. RPH 45064 **Phillip Cherlin** Pharmacist License No. RPH 24623 Respondents.	)	No. 2406 WITHDRAWAL OF ACCUSATION AGAINST: **Medical Center Pharmacy**, (San Diego), PHY 44103, **Joseph Grasela**, RPH 29437, **John Jack Donlon**, RPH 45064, **Phillip Cherlin**, RPH 24623

WITHDRAWAL OF ACCUSATION

Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, hereby withdraws the accusation in the above referenced matter.

Dated: 8/28/02

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy

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

In the Matter of the Accusation Against: **Park Medical Center Pharmacy, Inc. a.k.a., Medical Center Pharmacy (Chula Vista)** License No. PHY 35051 **Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, (San Diego)** License No. PHY 44103 **John Carl Grasela** License No. RPH 32430 **Joseph Grasela** License No. RPH 40868 **John (Jack) Donlon, Jr.** License No. 45064 **Phillip Cherlin** License No. RPH 24623 Respondents.	Case No. 2406 A C C U S A T I O N

Complainant alleges:

PARTIES

1. Patricia F. Harris (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 15, 1988, the Board of Pharmacy issued Original Pharmacy Permit No. PHY 35051 to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy (Respondent Medical Center Pharmacy, Chula Vista). The Pharmacy License was in full force and effect at all times relevant to the charges brought herein and will expire on July 1, 2002, unless renewed.

3. On or about September 5, 1978, the Board of Pharmacy issued Original Pharmacist License No. RPH 32430, to John Carl Grasela, (respondent John Grasela). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and said license will expire on June 30, 2002, unless renewed.

4. On or about March 5, 1992, the Board of Pharmacy issued Original Pharmacist License No. RPH 45064 to John E. Donlon, Pharmacist-in-Charge of Medical Center Pharmacy, Chula Vista (respondent Donlon). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2003, unless renewed.

5. On or about March 31, 1987, the Board of Pharmacy issued Original Pharmacist License No. RPH 40868 to Joseph Grasela, President (respondent Joseph Grasela). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2002, unless renewed.

6. On or about April 13, 1999, the Board issued Original Pharmacy Permit Number PHY 44103, to Park Medical Center Pharmacy, Inc., a.k.a. Medical Center Pharmacy (respondent Medical Center Pharmacy, San Diego). Said license was in full force and effect at all times relevant to the charges brought herein and will expire on April 1, 2003, unless renewed.

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7. On or about August 12, 1966, the Board of Pharmacy issued Original Pharmacist License No. RPH 40868 to Philip Cherlin, Pharmacist-in-Charge of Medical Center Pharmacy, San Diego (respondent Cherlin). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2003, unless renewed.

JURISDICTION

8. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

A. Section 4301 of the Code states:

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

B. Section 4076 of the Code states:

> (a) 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:
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> . . .
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> (6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.
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> . . .

C. Section 4110(a) of the Code states:

(a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

D. Section 4306.5 of the Code states:

Unprofessional conduct for a pharmacist may include acts or omissions that involve, in whole or in part, the 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.

E. Section 4081 of the Code states:

(a) All records of manufacturer and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or exemptee shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or she did not knowingly participate.

. . .

F. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from the licensed premises on a temporary basis for license-related purposes. However, a duplicate set of those records or other documentation shall be retained on the licensed premises.

(c) The records required by this section shall be retained on the licensed premises for a period of three years from the date of making.

(d) Any records that are maintained electronically shall be maintained so that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the exemptee, shall, at all times during which the licensed premises are open for business, be able to produce a hard copy and electronic copy of all records of acquisition or disposition or other drug or dispensing-related records maintained electronically.

. . .

G. Section 4332 of the Code states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

H. Section 4059(a) of the Code states:

"(a) No person shall furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. No person shall furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

I. Section 4115 states:

(a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

. . .

J. Section 4116 of the Code states:

(a) No person other than a pharmacist, an intern pharmacist, an authorized officer of the law, or a person authorized to prescribe shall be permitted in that area, place, or premises described in the license issued by the board wherein controlled substances or dangerous drugs or dangerous devices are stored, possessed, prepared, manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist shall be responsible for an individual who enters the pharmacy for the purposes of receiving consultation from the pharmacist or performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the pharmacist remains present in the pharmacy during all times as the authorized individual is present.

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K. Title 16 of the Code of Regulations section 1793.7 states:

(a) Any pharmacy which employs a pharmacy technician shall do so in compliance with applicable federal and state laws and regulations governing pharmacy.

(b) Any function performed by a pharmacy technician in connection with the dispensing of a prescription, including repackaging from bulk and storage of pharmaceuticals, must be verified and documented in writing by a pharmacist. Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, the pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

(c) Pharmacy technicians must work under the direct supervision of a registered pharmacist and in such a relationship that the supervising pharmacist is on the premises at all times and is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, a pharmacy technician may perform the duties, as specified in subdivision 1793.2, only under the immediate, personal supervision and control of a registered pharmacist and within the pharmacist's view.

. . .

(f) Except as otherwise provided herein, the ratio of pharmacists to pharmacy technicians performing the duties specified in subsection 1793.2 shall not be less than one pharmacist on duty for each pharmacy technician on duty. For the preparation of a prescription for an inpatient of a licensed health facility and for a patient of a licensed home health agency, the ratio shall not be less than one pharmacist on duty for a total of two pharmacy technicians on duty. Pursuant to Business and Professions Code section 4008.5(g)(1), these ratios shall not apply to the preparation of a prescription for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

L. Title 16 of the Code of Regulations section 1714(d) states:

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions of 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.

M. Title 16 of the Code of Regulations section 1714(e) states:

(e) The pharmacy owner, the building owner or manager, or a family member of a pharmacist owner (but not more than one of the aforementioned) may possess a key to the pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key to a pharmacist or 2) providing access in case of emergency. An emergency would include fire, flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that the pharmacist may readily determine whether the key has been removed from the container.

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N. Title 16 of the Code of Regulations section 1717(B)(1) states:

(b) In addition to the requirements of Section 4036, Business and Professions Code, the following information shall be maintained for each prescription on file and shall be readily retrievable:

(1) The date dispensed, and the name or initials of the dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be initialed by the preceptor before they are dispensed.

O. Title 16 of the Code of Regulations section 1707.1 states:

(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;

2. The prescriber's name and where appropriate, license number, DEA registration number or other unique identifier;

3. The date on which a drug was dispensed or refilled;

4. The prescription number for each prescription; and

5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy: patient allergies, idiosyncracies, current medications and relevant prior medications including nonprescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

(2) The patient medication record shall be maintained for at least one year from the date when the last prescription was filled.

9. 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

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violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

10. **DRUG CLASSIFICATIONS**

A. Infergen (Interferon Alfacon-1) is a dangerous drug as defined in Section 4022 of the Business and Professions Code and is an immunomodulator (recombinant non-naturally occurring type-1interferon) used to treat chronic hepatitis C infections.

B. Paxil (Paroxetine) is a dangerous drug as defined in Section 4022 of the Business and Profession Code and is an antidepressant used to treat depression.

C. Rebetron (a combination of Intron A and Rebetol [Ribavirin]) is a dangerous drug as defined in Section 4022 of the Business and Professions Code and is an immunomodulator. It is used in the treatment of chronic hepatitis C in patients with compensated liver disease that have relapsed following alpha interferon monotherapy.

D. Virazole (Ribavirin) is a dangerous drug as defined in Section 4022 of the Business and Professions Code and is an antiviral medication used to treat severe lower respiratory tract infections due to respiratory syncytial virus (RSV).

E. Wellbutrin SR (bupropion sustained release) is a dangerous drug as defined in Section 4022 of the Business and Professions Code and is an antidepressant used to treat depression.

FACTS CONCERNING MEDICAL CENTER PHARMACY, CHULA VISTA

11. Respondent Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy ("respondent Medical Center Pharmacy, Chula Vista "), John Donlon ("respondent Donlon"), John Grasela ("respondent John Grasela"), and Joseph Grasela ("respondent Joseph Grasela") are subject to disciplinary action based upon the following facts:

A. Respondent Donlon is and was at all relevant times the Pharmacist-in-Charge of respondent Medical Center Pharmacy, Chula Vista. Respondents John and Joseph Grasela are and were at all relevant times corporate officers and owners of respondent Medical Center Pharmacy, Chula Vista.

B. In or about 1990, respondent John Grasela was diagnosed with Hepatitis C.

C. In July of 1995, respondent John Grasela was treated with Interferon.

D. On August 8, 1996, respondent John Grasela sought medical treatment from P.P., M.D. for Hepatitis C. In his written consultation report, Dr. P.P. stated that respondent John Grasela was in to see him to discuss alternative treatments for Hepatitis C such as Ribavirin. Dr. P.P. concluded that respondent John Grasela was not a candidate for Ribavirin trial at that time. Nevertheless, the patient himself obtained Ribavirin from Mexico or Europe and tried combined treatment with Ribavirin and Interferon out of protocol. The risks of doing this were explained to respondent John Grasela along with the need for monitoring of his complete blood count.

E. Between November of 1997 and June of 1998, respondent John Grasela's insurance company, Blue Shield of California ("Blue Shield") received pharmacy claims from respondent Medical Center Pharmacy, Chula Vista for Ribavirin and Infergen, for respondent John Grasela.

F. Blue Shield investigated the claims for payment from respondent John Grasela. In their investigation they requested a copy of a prescription for Ribavirin. Respondent Donlon sent them a copy of a telephone order for Ribavirin, 400 mg., #100 ½ BID with 6 refills for respondent John Grasela.

G. Dr. P.P. never prescribed Ribavirin for respondent John Grasela.

H. In April of 1999, respondent John Grasela and his wife were mistakenly paid $13,775.15 by Blue Shield. Blue Shield's physician consultant approved drugs for respondent John Grasela in accord with FDA policy. Ribavirin in combination with Interferon alfa-2b distributed as Rebetron in the United States is FDA approved. It is a two-week treatment kit. Respondents' pharmacy drug bills for Ribavirin and Infergen were misinterpreted by the Blue Shield claims processor and assumed to be for the approved FDA plan. Infergen is another form of Interferon but is not Interferon alfa-2b.

I. In or about February of 2000, Blue Shield received a copy of respondent John Grasela's medical chart from Dr. P.P.'s office. Blue Shield compared it with the copy of the same medical record received from respondent John Grasela. There were significant differences. The copy received from respondent John Grasela had a different formatting style, the typeface was different and it did not contain key information that was contained in the copy sent by the medical office. The deleted portion of the medical record which was contained in Dr. P.P.'s copy of the chart contained the following information:

> " . . . In review, the patient is a compound pharmacist and has the ability to access his own medications and he creates his own regime of therapy. Although I do not condone his current treatment with combination therapy, I have agreed to monitor his laboratory tests and I have again warned him about possible adverse effects of the treatment."

J. The bills submitted to Blue Shield by respondent Medical Center Pharmacy, Chula Vista had been coded to permit coverage for medication that was not covered. The NDC code used permitted payment for Ribavirin, when in fact Ribavirin is not and has never been FDA approved for distribution in the United States. Medications that are not FDA approved are not covered by Blue Shield.

K. On February 17, 2000, respondent John Grasela's insurance coverage with Blue Shield was terminated for fraud and deception retroactive to December 1, 1998.

L. On May 9, 2000, Inspector Hokana, inspected respondent Medical Center Pharmacy, Chula Vista. He observed a computer printer containing labels with the name "World Share Medical Center Pharmacy," and nearby he also found labels for Medical Center Pharmacy. Advertising posted on the wall was in the name of World Share Pharmacy. The Retail Pharmacy Permit is in the name of and issued to Medical Center Pharmacy.

M. When asked to do so by the Inspector, respondent Donlon was unable to locate a complete biennial DEA inventory for the prior year. Respondent Donlon was also asked for specific prescriptions which he stated were not located in the pharmacy.

N. On May 11, 2000 during another inspection by Inspector Hokana, he found prescription containers filed with two different pharmacy names on the labels. A sign with the pharmacy's name was posted at the pharmacy's prior location, which was no longer respondent Medical Center Pharmacy, Chula Vista.

O. During the May 11, 2000 inspection, the Inspector saw four pharmacy technicians, and seven clerks working at Medical Center Pharmacy, Chula Vista. A technician filling prescriptions and a technician entering prescriptions were not within the view and immediate supervision of a pharmacist. Respondent Joseph Grasela said one of the technicians and one of the clerks for World Share Pharmacy entered prescriptions for only a couple of hours a day. The World Share Pharmacy technician and clerk were not within the view and immediate supervision of a pharmacist.

P. Also, during this same inspection the Inspector reviewed several prescriptions given to him for respondent John Grasela. He observed that four prescriptions were all on one document, but that only one prescription appeared on the patient profile for respondent John Grasela. Respondent Donlon said there were two patient profiles for respondent John Grasela and the Inspector was provided with the profile for "John O. Grasela" from January 1, 1996 to May 11, 2000.

Q. Respondent Donlon was asked for the DEA Inventory from May 31, 1999, which he was unable to locate, so he completed one on May 10, 2000.

R. In May of 1999, respondent Medical Center Pharmacy, Chula Vista did not have a waiver from the Board to maintain records of drug dispositions off of the licensed premises.

S. On June 13, 2000, the Inspector spoke to respondent John Grasela about obtaining missing prescriptions that pertained to his medical treatment. Respondent John Grasela told the inspector that he took his physician's acceptance of the medication plan as a verbal order for the medication, including Ribavirin. He also told the inspector he obtained the Ribavirin powder from Tijuana, Mexico before it was available in the United States and filled or compounded all of his own prescriptions.

Respondent John Grasela told the inspector that he probably forgot to transcribe the verbal orders from the physician or they were misfiled, but that he did not want to take the time to try and locate them.

T. Respondent John Grasela also told the inspector that the medical device business was part of Medical Center Pharmacy and that respondent Donlon was responsible for that area.

U. On May 20, 2000, the Inspector spoke to a nurse manager for Dr. P.P. and sent her a summary of the prescriptions dispensed in Dr. P.P.'s name for respondent John Grasela from Medical Center Pharmacy, Chula Vista and asked her to verify that Dr. P.P. in fact prescribed the medications.

V. On June 9, 2000, the Inspector received a reply from Dr. P.P. concerning the prescriptions he had authorized for respondent John Grasela. Dr. P.P. carefully reviewed respondent's medical chart and verified he had authorized Infergen, Paxil, Wellbutrin and prescriptions for Intron-A through September of 1997. He also stated that respondent "John Grasela obtained Ribavirin, which was not yet FDA approved in the United States, and compounded the chemical himself as he was a compound pharmacist. No prescription for Ribavirin was ever written for Mr. Grasela." Further, "[M]y records indicate that Mr. Grasela had informed us of his Ribavirin use and that he obtained it on his own."

W. Dr. P.P. did not authorize twelve prescriptions for 1200 Ribavirin tablets between August 21, 1997 and January 17, 2000.

FIRST CAUSE OF ACTION AGAINST JOHN GRASELA, JOSEPH GRASELA, JOHN DONLON AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Fraud, Dishonesty, Deceit or Corruption)

12. Respondents John Grasela, Joseph Grasela, John Donlon and Medical Center Pharmacy, Chula Vista are subject to disciplinary action under section 4301(f) of the Code, in that they committed unprofessional conduct by committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein;

B. Respondents dispensed twelve prescriptions for Ribavirin not authorized by a prescriber; and

C. Respondents submitted fraudulent claims to Blue Shield for payment of unauthorized prescriptions of Ribavirin.

SECOND CAUSE OF ACTION AGAINST JOHN GRASELA, JOSEPH GRASELA, JOHN DONLON AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Dispensing of Dangerous Drug)

13. Respondents are further subject to disciplinary action under section 4059(a) of the Code, in that they dispensed a dangerous drug without a prescription, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents dispensed twelve prescriptions for Ribavirin not authorized by a prescriber.

THIRD CAUSE OF ACTION AGAINST JOHN GRASELA, JOSEPH GRASELA, JOHN DONLON, AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Compounding and Distributing Ribavirin without a Prescription)

14. Respondents are further subject to disciplinary action under section 4306.5 of the Code, in that they compounded and distributed a dangerous drug without a prescription, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents committed unprofessional conduct by exercising their education, training, or experience as pharmacists to acquire, compound and dispense Ribavirin without an authorized prescription.

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FOURTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Failed to Maintain Disposition Records Open to Inspection)

15. Respondents are further subject to disciplinary action under sections 4081and 4105 of the Code, in that they failed to maintain all records of manufacturer, sale, acquisition, or disposition of dangerous drugs or dangerous devices at all times during business hours open to inspection by authorized officers of the law, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein;

B. Respondents failed to have disposition records of dangerous drugs open for inspection by authorized officers of the law; and

C. Respondents failed to have all records of disposition of dangerous drugs maintained on the licensed premises.

FIFTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOSEPH GRASELA, JOHN DONLON AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Failed to Produce Records)

16. Respondents are further subject to disciplinary action under section 4332 of the Code, in that they failed to produce the records required by Section 4081 when requested to do so by an authorized officer or a member of the board, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents failed to produce the records required by Section 4081 when required to do so by an authorized officer or a member of the Board, or they produced records which were false.

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SIXTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY, CHULA VISTA

17. Respondents are further subject to disciplinary action under Title 16, section 1707.1 of the Code of Regulations, in that they failed to maintain all patient information on one patient profile, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents failed to maintain an appropriate medication profile on respondent John Grasela.

SEVENTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Use of Two Different Names on Pharmacy Labels)

18. Respondents are subject to disciplinary action under section 4076 of the Code, in that they used two different names for the pharmacy on pharmacy labels, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents used two different names for the pharmacy on prescription labels.

EIGHTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY, CHULA VISTA
(Use of Two Pharmacy Names at One Location)

19. Respondents are subject to disciplinary action under section 4110(a) of the Code, in that two pharmacy names were used at one location, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents used two different names for the pharmacy on signs at the pharmacy location.

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NINTH CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY, CHULA VISTA

(Use of Education To Use Two Pharmacy Names at One Location)

20. Respondents are subject to disciplinary action under section 4306.5 of the Code, in that they used their education, training and experience to use two pharmacy names at one location, as follows:

A. Paragraphs 11A, through and including 11W, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents used their education, training and experience to use two different names for the pharmacy on prescription labels, and on signs at the pharmacy location.

FACTS CONCERNING MEDICAL CENTER PHARMACY, SAN DIEGO

21. Respondents Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, ("respondent Medical Center Pharmacy, San Diego"), Philip Cherlin ("respondent Cherlin"), John Grasela ("respondent John Grasela"), and Joseph Grasela ("respondent Joseph Grasela") are subject to disciplinary action based upon the following facts:

A. Respondent Cherlin is and was at all relevant times the Pharmacist-in-Charge of respondent Medical Center Pharmacy, San Diego. Respondents John and Joseph Grasela are and were at all relevant times corporate officers and owners of respondent Medical Center Pharmacy, San Diego.

B. On June 16, 2001, at approximately 10:15 a.m. Inspectors Nurse and Orlandella conducted an inspection of respondent Medical Center Pharmacy, San Diego. When they arrived the front door to the pharmacy was unlocked but there was a sign on the door saying the pharmacy was temporarily closed. Four persons were present behind the counter in the pharmacy. Two of these persons were clerks and two persons were pharmacy technicians. One of the technicians, L.L. said there had not been a pharmacist present since the pharmacy opened that day. She also stated she had a key to the

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pharmacy and that she had opened the pharmacy that day and that she had been the person who opened up the pharmacy in the past.

C. The store personnel were instructed to secure, vacate and lock the pharmacy pending the arrival of a responsible pharmacist. The key possessed by L.L. was confiscated.

D. At approximately 12:30 p.m. on June 16, 2001, the inspectors received a call from the pharmacy indicating a pharmacist was present, the pharmacy had been re-opened and the doors had been re-keyed. At 2:00 p.m., the inspectors arrived at the pharmacy. Pharmacist RPS stated that he was a relief pharmacist and did not normally work at that location.

FIRST CAUSE OF ACTION AGAINST JOHN GRASELA, JOSEPH GRASELA, PHILLIP CHERLIN AND MEDICAL CENTER PHARMACY-SAN DIEGO
(Unsupervised Pharmacy Technicians and Staff)

22. Respondents are further subject to disciplinary action under sections 4115 and 4116 of the Code, and under Title 16 of the California Code of Regulations Section 1793.7, in that they allowed pharmacy technicians to be in the pharmacy without a pharmacist either present, or directly supervising their activities, as follows:

A. Paragraphs 21A, through and including 21D , above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Pharmacy technicians and clerks were in the pharmacy alone without the presence of a licensed pharmacist; and

C. Pharmacy technicians and or clerks were present in the pharmacy outside the direct view and supervision of a licensed pharmacist.

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SECOND CAUSE OF ACTION AGAINST JOHN GRASELA, PHILLIP CHERLIN, JOSEPH GRASELA AND MEDICAL CENTER PHARMACY-SAN DIEGO
(Possession of Key to Pharmacy)

23. Respondents are further subject to disciplinary action under Title 16 of the California Code of Regulations Sections 1714(d) and 1714(e), in that they allowed a non-pharmacist or other unauthorized person to maintain keys to the pharmacy, as follows:

A. Paragraphs 21A, through and including 21D, above, are hereby realleged and incorporated by reference as if fully set forth herein; and

B. Respondents allowed a pharmacy technician to maintain keys to the pharmacy and open up the pharmacy for other employees in the absence of a licensed pharmacist.

CAUSE OF ACTION AGAINST JOHN GRASELA, JOHN DONLON, JOSEPH GRASELA, PHILIP CHERLIN, MEDICAL CENTER PHARMACY-CHULA VISTA AND MEDICAL CENTER PHARMACY- SAN DIEGO
(Unprofessional Conduct for Violation of Statute or Regulation)

24. Respondents are subject to disciplinary action under section 4301(j) and 4301(o) of the Code, in that they committed unprofessional conduct by violating laws and regulations regulating the practice of pharmacy, as follows:

Paragraphs 11A, through and including 11W, and 21A through and including 21D above, are hereby realleged and incorporated by reference as if fully set forth herein.

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 Pharmacist License No. RPH 32430, issued to John Carl Grasela, Vice president.

2. Revoking or suspending Pharmacist License No. RPH 45064, issued to John E. Donlon, Pharmacist-in-Charge.

3. Revoking or suspending Pharmacist License No. RPH 40868, issued to Joseph Grasela, President.

4. Revoking or suspending Original Pharmacy Permit No. PHY 35051, issued to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista;

5. Revoking or suspending Original Pharmacy Permit No. PHY 44103, issued to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, San Diego;

6. Revoking or suspending Pharmacist License No. RPH 24623, issued to Philip B. Cherlin, Pharmacist-in-Charge;

7. Ordering John Carl Grasela, John E. Donlon, Joseph Grasela, Philip Cherlin, Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista, and Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, San Diego 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; and

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

DATED: 5/7/02.

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant