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

12 In the Matter of the Accusation Against:

Case No. 2406

13 **Park Medical Center Pharmacy, Inc.**  
14 **a.k.a., Medical Center Pharmacy (Chula Vista)**

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

15 License No. PHY 35051

16 **Park Medical Center Pharmacy, Inc.**  
17 **a.k.a. Medical Center Pharmacy, (San Diego)**

18 License No. PHY 44103

19 **John Carl Grasela**

20 License No. RPH 32430

21 **Joseph Grasela**

22 License No. RPH 40868

23 **John (Jack) Donlon, Jr.**

24 License No. 45064

25 **Phillip Cherlin**

26 License No. RPH 24623

27 Respondents.  
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1 Complainant alleges:

2 PARTIES

3 1. Patricia F. Harris (Complainant) brings this Accusation solely in her  
4 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
5 Affairs.

6 2. On or about July 15, 1988, the Board of Pharmacy issued Original  
7 Pharmacy Permit No. PHY 35051 to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center  
8 Pharmacy (Respondent Medical Center Pharmacy, Chula Vista). The Pharmacy License was in  
9 full force and effect at all times relevant to the charges brought herein and will expire on July 1,  
10 2002, unless renewed.

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

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

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

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

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

7 D. Section 4306.5 of the Code states:

8 Unprofessional conduct for a pharmacist may include acts or omissions  
9 that involve, in whole or in part, the exercise of his or her education, training, or  
10 experience as a pharmacist, whether or not the act or omission arises in the course of the  
11 practice of pharmacy or the ownership, management, administration, or operation of a  
12 pharmacy or other entity licensed by the board.

13 E. Section 4081 of the Code states:

14 (a) All records of manufacturer and of sale, acquisition, or disposition of  
15 dangerous drugs or dangerous devices shall be at all times during business hours open to  
16 inspection by authorized officers of the law, and shall be preserved for at least three years  
17 from the date of making. A current inventory shall be kept by every manufacturer,  
18 wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,  
19 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently  
20 valid and unrevoked certificate, license, permit, registration, or exemption under Division  
21 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
22 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code  
23 who maintains a stock of dangerous drugs or dangerous devices.

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

27 (c) The pharmacist-in-charge or exemptee shall not be criminally  
28 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.

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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.

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

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10 G. Section 4332 of the Code states:

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

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

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

22  
23 I. Section 4115 states:

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

27 (b) This section does not authorize the performance of any tasks specified  
28 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.

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30 J. Section 4116 of the Code states:

31 (a) No person other than a pharmacist, an intern pharmacist, an authorized  
32 officer of the law, or a person authorized to prescribe shall be permitted in that area,  
33 place, or premises described in the license issued by the board wherein controlled  
34 substances or dangerous drugs or dangerous devices are stored, possessed, prepared,  
35 manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist  
36 shall be responsible for an individual who enters the pharmacy for the purposes of  
37 receiving consultation from the pharmacist or performing clerical, inventory control,  
38 housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the  
39 pharmacist remains present in the pharmacy during all times as the authorized individual  
40 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.

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

3           10.     **DRUG CLASSIFICATIONS**

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

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

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

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

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

20           **FACTS CONCERNING MEDICAL CENTER PHARMACY, CHULA VISTA**

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

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

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

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

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

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

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

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

21 H. In April of 1999, respondent John Grasela and his wife were  
22 mistakenly paid \$13,775.15 by Blue Shield. Blue Shield's physician consultant approved  
23 drugs for respondent John Grasela in accord with FDA policy. Ribavirin in combination  
24 with Interferon alfa-2b distributed as Rebetron in the United States is FDA approved. It  
25 is a two-week treatment kit. Respondents' pharmacy drug bills for Ribavirin and  
26 Infergen were misinterpreted by the Blue Shield claims processor and assumed to be for  
27 the approved FDA plan. Infergen is another form of Interferon but is not Interferon alfa-  
28 2b.

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

9 " . . . In review, the patient is a compound pharmacist and has the ability to access  
10 his own medications and he creates his own regime of therapy. Although I do not  
11 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."

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

17 K. On February 17, 2000, respondent John Grasela's insurance coverage  
18 with Blue Shield was terminated for fraud and deception retroactive to December 1,  
19 1998.

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

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

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

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

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

18 Q. Respondent Donlon was asked for the DEA Inventory from May 31,  
19 1999, which he was unable to locate, so he completed one on May 10, 2000.

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

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

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

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

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

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

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

22 **FIRST CAUSE OF ACTION AGAINST JOHN GASELA,**  
23 **JOSEPH GASELA, JOHN DONLON AND**  
24 **MEDICAL CENTER PHARMACY, CHULA VISTA**  
**(Fraud, Dishonesty, Deceit or Corruption)**

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

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

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

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

7 **SECOND CAUSE OF ACTION AGAINST JOHN GASELA,**  
8 **JOSEPH GASELA, JOHN DONLON**  
9 **AND MEDICAL CENTER PHARMACY, CHULA VISTA**  
10 **(Dispensing of Dangerous Drug)**

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

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

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

17 **THIRD CAUSE OF ACTION AGAINST JOHN GASELA,**  
18 **JOSEPH GASELA, JOHN DONLON, AND**  
19 **MEDICAL CENTER PHARMACY, CHULA VISTA**  
20 **(Compounding and Distributing Ribavirin without a Prescription)**

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

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

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

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

4                   15. Respondents are further subject to disciplinary action under sections 4081 and  
5 4105 of the Code, in that they failed to maintain all records of manufacturer, sale, acquisition, or  
6 disposition of dangerous drugs or dangerous devices at all times during business hours open to  
7 inspection by authorized officers of the law, as follows:

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

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

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

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

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

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

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

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1                                    **SIXTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
2                                    **JOHN DONLON, JOSEPH GASELA AND**  
3                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**

4                                    17. Respondents are further subject to disciplinary action under Title 16, section  
5                                    1707.1 of the Code of Regulations, in that they failed to maintain all patient information on one  
6                                    patient profile, as follows:

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

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

11                                    **SEVENTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
12                                    **JOHN DONLON, JOSEPH GASELA AND**  
13                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**  
14                                    **(Use of Two Different Names on Pharmacy Labels)**

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

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

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

21                                    **EIGHTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
22                                    **JOHN DONLON, JOSEPH GASELA AND**  
23                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**  
24                                    **(Use of Two Pharmacy Names at One Location)**

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

27                                    A. Paragraphs 11A, through and including 11W, above, are hereby  
28                                    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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1                                    **NINTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
2                                    **JOHN DONLON, JOSEPH GASELA AND**  
3                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**  
                                  **(Use of Education To Use Two Pharmacy Names at One Location)**

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

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

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

12                                    **FACTS CONCERNING MEDICAL CENTER PHARMACY, SAN DIEGO**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15                                   24. Respondents are subject to disciplinary action under section 4301(j) and  
16 4301(o) of the Code, in that they committed unprofessional conduct by violating laws and  
17 regulations regulating the practice of pharmacy, as follows:

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

20                                   **PRAYER**

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

23                                   1.       Revoking or suspending Pharmacist License No. RPH 32430, issued to  
24 John Carl Grasela, Vice president.

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

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

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

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

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

7                   7.       Ordering John Carl Grasela, John E. Donlon, Joseph Grasela, Philip  
8 Cherlin, Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista, and  
9 Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, San Diego to pay the  
10 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,  
11 pursuant to Business and Professions Code section 125.3; and

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

13                   DATED: 5/7/02

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