BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Petition for Early Termination of Probation of: PARK CENTER PHARMACY, INC., a.k.a. MEDICAL CENTER PHARMACY (CHULA VISTA) 340 4th Avenue Chula Vista, CA 91910 License PHY 35051 Petitioner.	Case No. 2406 OAH No. L2005010298
In the Matter of the Petition for Early Termination of Probation of: JOHN GRASELA 4767 Ocean Boulevard, #605 San Diego, CA 92109 License RPH 32430 Petitioner.	Case No. 2406 OAH No. L2004120431

DECISION

This matter came on regularly for hearing before a quorum of the Board of Pharmacy (Board) at El Segundo, California, on January 20, 2005. Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

John Cronin, Attorney at Law, represented John Grasela (Petitioner Grasela) and Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy (Petitioner Pharmacy).

(Petition). Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. On September 5, 1978, the Board issued Pharmacist License No. RPH 32430 to Petitioner Grasela.

2. On April 13, 1999, the Board issued Pharmacy Permit No. PHY 35051 Petitioner Pharmacy.

3. On July 30, 2002, Petitioners entered into a Stipulated Settlement and Disciplinary Order (Order) wherein they agreed to the discipline of their respective licenses, which Order became effective October 13, 2002, upon approval by the Board. Petitioner Grasela agreed that the allegations in an accusation filed on May 7, 2002 (Accusation) constituted grounds for imposing discipline, and stipulated to revocation of his pharmacist license; the revocation was to be stayed stayed for three years on terms and conditions that included a 90-day suspension and standard terms and conditions. Respondent Pharmacy similarly stipulated to revocation of the pharmacy permit, which revocation was to be stayed for three years on standard terms and conditions.

4. The Accusation contained the following pertinent allegations: Petitioner Grasela compounded and self-dispensed, without prescription, Ribavirin, a medication not approved by the Federal Drug Administration for use in the United States; Petitioner Pharmacy fraudulently sought reimbursement from Blue Shield Insurance for the Ribavirin in question; Petitioners failed to maintain an appropriate medication profile for Petitioner Grasela; Petitioners failed to have disposition records of dangerous drugs open for inspection by authorized officers; Petitioners failed to have all records of disposition of dangerous drugs in the licensed premises; Petitioners used two different names for the pharmacy on prescription labels; and Petitioners used two different names for the pharmacy on signs at the pharmacy location.

5. Petitioners have complied with all terms and conditions of probation.

6. Petitioners argue that the length of probation is disproportionate to the violations actually committed and that no public protection purpose is served by continued probation. They also maintain that complying with probation takes time away from other activities that benefit the community, such as Petitioner Grasela's teaching at the University of California, San Diego.

7. At the hearing, Petitioner Grasela testified he took the Ribavirin pursuant to physician prescription and monitoring, but did not produce medical records to support his testimony. He further testified and that he has not taken the drug for over five years.

8. Petitioners submitted letters of recommendation from four pharmacists (John E. Donlon, Jerry Greene, Joe McCloskey, and Robert Spada) and two from other individuals (Sharlene Nunez and Suzie Pimentel). These individuals have known Petitioner Grasela for fifteen, six, forty, thirty, fifteen, and fifteen years, respectively. All agreed that three years of probation was excessive and described Petitioner Grasela as an ethical pharmacist.

9. Petitioners have not established sufficient cause to grant the Petition. Their continued questioning of the factual basis for the disciplinary order indicates lack of full rehabilitation. Also, while it is commendable that they are complying with the terms and conditions of probation, Petitioners did not present compelling evidence to warrant modification of the agreed-upon disciplinary order.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Board concludes that cause was not established pursuant to Business and Professions Code section 4309 or Government Code section 11522 to grant the Petition.

ORDER

The Petition is denied.

DATED: March 30, 2005
EFFECTIVE DATE: March 30, 2005

Stanley Goldenberg, President
Board of Pharmacy
State of California

BILL LOCKYER, Attorney General
of the State of California
SHERRY LEDAKIS, State Bar No. 131767
Deputy Attorney General
California Department of Justice
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Attorneys for Complainant

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 OAH No. L2002060123 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Sherry Ledakis, Deputy Attorney General.

2. Respondents Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista, Park Medical Center Pharmacy, Inc., a.k.a. Medical Center Pharmacy, San Diego, John Carl Grasela, Joseph Grasela, John (Jack) Donlon, Jr., and Phillip Cherlin (Respondents) are represented in this proceeding by attorney Shari Weintraub, Esq., whose address is Fredrickson, Mazeika & Grant, 550 W. "C" St., Ste. 1410, San Diego, Ca. 92101.

3. 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, Chula Vista ("Medical Center Pharmacy, Chula Vista). The permit was in full force and effect at all times relevant to the charges brought in Accusation No. 2406 and will expire on July 1, 2003, unless renewed.

4. 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 expired on June 30, 2002.

5. On or about March 31, 1987, the Board of Pharmacy issued Original Pharmacist License No. RPH 40868 to Joseph Grasela, (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 March 5, 1992, the Board of Pharmacy issued Original Pharmacist License No. RPH 45064 to John Ernest Donlon, (respondent Donlon). The

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Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2002, unless renewed.

7. 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, San Diego (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.

8. On or about August 12, 1966, the Board of Pharmacy issued Original Pharmacist License No. RPH 24623 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

9. Accusation No. 2406 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on or about May 15, 2002. Respondents timely filed their respective Notices of Defense contesting the Accusation. A copy of Accusation No. 2406 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

10. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2406. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

11. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of

subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

12. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

13. Respondents understand that the charges and allegations in the Accusation, if proven at a hearing, constitute cause for imposing discipline upon their Original Pharmacist Licenses, and Original Pharmacy Permits.

14. Respondent John Grasela agrees that his Original Pharmacist License No. RPH 32430 is subject to discipline and agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

ISSUING OF PERMITS

15. Three Statements of Issue cases are currently pending against three pharmacies owned by respondents John and Joseph Grasela. The Statements of Issue were filed against Medical Center Pharmacy, (Medical Center Court, Chula Vista), Case No.2524; Medical Center Pharmacy, (Escondido), Case No. 2533; and University Compounding Pharmacy, Case No. 2525. These Statements of Issue cases shall be withdrawn and the permits issued in exchange for respondent John Grasela's agreement to comply with the foregoing disciplinary order as set forth in this stipulation.

WITHDRAWAL OF ACCUSATIONS

16. In consideration of respondent John Grasela's agreement to comply with the disciplinary order set forth below in this stipulation, the remaining allegations against Respondents Park Medical Center Pharmacy, Inc., a.k.a. Medical Center Pharmacy, (San Diego) License No. PHY 44103; Joseph Grasela License No. RPH 40868; John (Jack) Donlon, Jr. License No. 45064; and Phillip Cherlin License No. RPH 24623, shall be withdrawn.

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CONTINGENCY

17. This stipulation shall be subject to approval by the Board of Pharmacy. Respondents understand and agree that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

19. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Orders:

DISCIPLINARY ORDER AGAINST JOHN CARL GRASELA

IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 32430 issued to respondent John Carl Grasela is revoked. However, the revocation is stayed and respondent John Carl Grasela is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension - Pharmacist.** License number RPH 32430, issued to respondent John Grasela is suspended for a period of ninety (90) days from the date the stipulation is adopted by the Board.

During suspension, respondent John Grasela shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where

dangerous drugs and devices or controlled substances are maintained. Respondent John Grasela shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent John Grasela manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent John Grasela shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent John Grasela shall not direct or control any aspect of the practice of pharmacy. Respondent John Grasela shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, Respondent John Grasela may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. **Obey All Laws.** Respondent John Grasela shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent John Grasela shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent John Grasela's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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3. **Reporting to the Board.** Respondent John Grasela shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent John Grasela shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. **Interview with the Board.** Upon receipt of reasonable notice, respondent John Grasela shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. **Cooperation with Board Staff.** Respondent John Grasela shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of his compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

6. **Continuing Education.** Respondent John Grasela shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

7. **Notice to Employers.** Respondent John Grasela shall notify all present and prospective employers of the decision in case number 2406 and the terms, conditions and restrictions imposed on respondent John Grasela by the decision. Within 30 days of the effective date of this decision, and within 15 days of respondent John Grasela undertaking new employment, respondent John Grasela shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2406.

If respondent John Grasela works for or is employed by or through a pharmacy employment service, respondent John Grasela must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2406 in advance of the respondent John Grasela commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the respondent John Grasela is considered an employee or independent contractor.

8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent John Grasela shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall respondent John Grasela be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

9. **Probation Monitoring Costs.** Respondent John Grasela shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

10. **Status of License**. Respondent John Grasela shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If respondent John Grasela's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, respondent John Grasela's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should respondent John Grasela cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent John Grasela may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent John Grasela will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent John Grasela shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent John Grasela may not reapply for any license from the Board for three

years from the effective date of the surrender. Respondent John Grasela shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. **Notification of Employment/Mailing Address Change.** Respondent John Grasela shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent John Grasela shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

13. **Tolling of Probation.** Respondent John Grasela shall work at least 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months following his ninety (90) day suspension. Failure to do so will be a violation of probation. If respondent John Grasela has not complied with this condition during the probationary term, and respondent John Grasela has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent John Grasela's probation period up to one year without further hearing in order to comply with this condition.

14. **Tolling of Suspension.** If respondent John Grasela leaves California to reside or practice outside this state, for any period exceeding 10 days (including vacation), respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state - or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

Respondent shall not practice pharmacy upon returning to this state until notified by the Board that the period of suspension has been completed.

15. **Violation of Probation.** If respondent John Grasela violates probation in any respect, the Board, after giving respondent John Grasela notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent John Grasela during

probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If respondent John Grasela has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent John Grasela, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

16. **Completion of Probation.** Upon successful completion of probation, respondent John Grasela's license will be fully restored.

DISCIPLINARY ORDER AGAINST MEDICAL CENTER PHARMACY, CHULA VISTA

IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 35051 issued to respondent Park Medical Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista is revoked. However, the revocation is stayed and respondent Medical Center Pharmacy is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws**. Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws.
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- a conviction of any crime.
- discipline, citation, or other administrative action filed by any state and/or federal agency which involves respondent's permit or which is related to respondent's pharmacy license or which is related to the

practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

2. **Reporting to the Board**. Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

3. **Interview with the Board**. Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

4. **Cooperation with Board Staff**. Respondent shall cooperate with the boards' inspectional program and in the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

5. **Reimbursement of Board Costs**. Respondent shall pay to the board its costs of investigation and prosecution in the amount of $8,000. Respondent shall make monthly payments to the Board in the amount of $333.34, until the cost recovery amount is paid in full.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

6. **Probation Monitoring Costs**. Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

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7. **Status of License**. Respondent shall, at all times while on probation, maintain a current license with the board. If respondent submits an application to the board, and the application is approved, for a change of location, change of permit or change or ownership, the board shall retain continuing jurisdiction over the license, and the respondent shall remain on probation as determined by the board.

8. **License Surrender while on Probation/Suspension**. Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

9. **Notice to Employees**. Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions by posting a notice, circulating a notice, or both.

"Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

10. **Owners and Officers: Knowledge of the Law.** Respondent shall provide, within 30 days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of 10% or more of the interest in respondent or respondent's stock, and any officer, stating said individuals have read and are familiar with state and federal laws and regulations governing the practice of pharmacy.

11. **Violation of Probation.** If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

12. **Completion of Probation.** Upon successful completion of probation, respondent's license will be fully restored.

ACCEPTANCE

We have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with our attorney, Shari Weintraub, Esq. We understand the stipulation and the effect it will have on our Original Pharmacist Licenses, and Pharmacy Permits. We 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: 7/30/02

JOHN GRASELA, RPH

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DATED: 7/30/02

JOSEPH GRASELA, RPH

DATED: 7/30/02

John

JOSEPH GRASELA, PRESIDENT, Owner and on behalf of PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (CHULA VISTA)
Respondent

DATED: 7/30/02

JOSEPH GRASELA, PRESIDENT, Owner and on behalf of PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (SAN DIEGO)
Respondent

DATED: _____

JOHN DONLON, RPH, PHARMACIST-IN-CHARGE, PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (CHULA VISTA)
Respondent

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DATED:_____

_____
JOSEPH GRASELA, RPH

DATED:_____

_____
JOSEPH GRASELA, PRESIDENT, Owner and on behalf of PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (CHULA VISTA)
Respondent

DATED:_____

_____
JOSEPH GRASELA, PRESIDENT, Owner and on behalf of PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (SAN DIEGO)
Respondent

DATED: 7/30/02

John E. Donlon Jr.
_____
JOHN DONLON, RPH, PHARMACIST-IN-CHARGE, PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (CHULA VISTA)
Respondent

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DATED: July 30, 2002

PHILLIP CHERLIN, RPH, PHARMACIST-IN-CHARGE, PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (SAN DIEGO)
Respondent

I concur in this Stipulated Settlement and Disciplinary Order.

DATED: _____

SHARI WEINTRAUB, ESQ.
Attorney for Respondents

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: _____

BILL LOCKYER, Attorney General
of the State of California

SHERRY LEDAKIS
Deputy Attorney General

Attorneys for Complainant

DATED: _____

PHILLIP CHERLIN, RPH, PHARMACIST-IN-CHARGE, PARK MEDICAL CENTER PHARMACY, INC. A.K.A. MEDICAL CENTER PHARMACY (SAN DIEGO)
Respondent

I concur in this Stipulated Settlement and Disciplinary Order.

DATED: 30 July 2002.

Shari I. Weintraub

SHARI WEINTRAUB, ESQ.
Attorney for Respondents

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: August 1, 2002

BILL LOCKYER, Attorney General
of the State of California

Sherry Ledakis

SHERRY LEDAKIS
Deputy Attorney General

Attorneys for Complainant

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 OAH No. L2002060123

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 13, 2002.

It is so ORDERED September 13, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: _____
JOHN D. JONES
Board President

BILL LOCKYER, Attorney General
of the State of California
SHERRY LEDAKIS, State Bar No. 131767
Deputy Attorney General
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Attorneys for Complainant

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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> . . .
>
> (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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> . . .
>
> (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