

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

In the Matter of the Accusation Against:

Case No. 3341

ROBERT JOHN PAYNE

428 J. Street, Ste. 610
Sacramento, CA 95814

Pharmacist License No. RPH 26146

Respondent.

DECISION AND ORDER

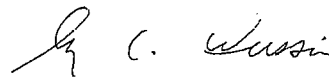
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 7, 2011.

It is so ORDERED on December 8, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 3341

13 **ROBERT JOHN PAYNE**
428 J Street, Ste 610
14 Sacramento, Ca 95814
Pharmacist License No. RPH 26146

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

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

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
20 She brought this action solely in her official capacity and is represented in this matter by Edmund
21 G. Brown Jr., Attorney General of the State of California, by Anahita S. Crawford, Deputy
22 Attorney General.

23 2. Respondent Robert John Payne (Respondent) is represented in this proceeding by
24 attorney Gregory P. Matzen, whose address is: 2850 Gateway Oaks Drive, Suite 450
25 Sacramento, CA 95833

26 3. On or about July 24, 1969, the Board of Pharmacy issued Pharmacist License No.
27 RPH 26146 to Robert John Payne (Respondent). The Pharmacist License was in full force and
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1 effect at all times relevant to the charges brought in Accusation No. 3341 and will expire on April
2 30, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3341 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on December 21, 2009.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3341 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 3341. Respondent has also carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
13 Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 3341.

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

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1 **1. Suspension**

2 As part of probation, respondent is suspended from the practice of pharmacy for sixty (60)
3 day beginning the effective date of this decision.

4 During suspension, respondent shall not enter any pharmacy area or any portion of the
5 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
6 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
7 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
8 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
9 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
10 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
11 and devices or controlled substances.

12 Respondent shall not engage in any activity that requires the professional judgment of a
13 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
14 Respondent shall not perform the duties of a pharmacy technician or a designated representative
15 for any entity licensed by the board.

16 Subject to the above restrictions, respondent may continue to own or hold an interest in any
17 licensed premises in which he holds an interest at the time this decision becomes effective unless
18 otherwise specified in this order.

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

20 **2. Obey All Laws**

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

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

- 24 • an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws
- 27 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
28 criminal complaint, information or indictment

- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board or its designee. Prior to the termination of his probation,

1 Respondent shall complete an additional 50 hours of continuing education which shall be
2 completed at 10 hours per year, at Respondent's own expense. All continuing education shall be
3 in addition to, and shall not be credited toward, continuing education courses used for license
4 renewal purposes.

5 Failure to timely submit or complete the continuing education shall be considered a
6 violation of probation. The period of probation will be automatically extended until such
7 continuing education is successfully completed and written proof, in a form acceptable to the
8 Board, is provided to the Board or its designee.

9 **7. Notice to Employers**

10 During the period of probation, respondent shall notify all present and prospective
11 employers of the decision in case number 3341 and the terms, conditions and restrictions imposed
12 on respondent by the decision, as follows:

13 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
14 respondent undertaking any new employment, respondent shall cause his direct supervisor,
15 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
16 tenure of employment) and owner to report to the board in writing acknowledging that the listed
17 individual(s) has/have read the decision in case number 3341, and terms and conditions imposed
18 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
19 submit timely acknowledgment(s) to the board.

20 If respondent works for or is employed by or through a pharmacy employment service,
21 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
22 licensed by the board of the terms and conditions of the decision in case number 3341 in advance
23 of the respondent commencing work at each licensed entity. A record of this notification must be
24 provided to the board upon request.

25 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
26 (15) days of respondent undertaking any new employment by or through a pharmacy employment
27 service, respondent shall cause his direct supervisor with the pharmacy employment service to
28 report to the board in writing acknowledging that he has read the decision in case number 3341

1 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
2 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

10 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
11 **Designated Representative-in-Charge, or Serving as a Consultant**

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

16 **9. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, respondent shall pay to the
18 board its costs of investigation and prosecution in the reduced amount of \$4,000.00. Respondent
19 shall make said payments as approved by the Board.

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

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

25 **10. Probation Monitoring Costs**

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

3 **11. Status of License**

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

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

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

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

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

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

25 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
26 **Employment**

27 Respondent shall notify the board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the board in writing within ten (10) days of a change in name, residence
3 address, mailing address, or phone number.

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

6 14. Tolling of Probation

7 Except during periods of suspension, respondent shall, at all times while on probation, be
8 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
9 month during which this minimum is not met shall toll the period of probation, i.e., the period of
10 probation shall be extended by one month for each month during which this minimum is not met.
11 During any such period of tolling of probation, respondent must nonetheless comply with all
12 terms and conditions of probation.

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

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

21 "Cessation of practice" means any calendar month during which respondent is
22 not practicing as a pharmacist for at least 40 hours, as defined by Business and
23 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
24 month during which respondent is practicing as a pharmacist for at least 40 hours as a
25 pharmacist as defined by Business and Professions Code section 4000 et seq.

26 15. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

4 If respondent violates probation in any respect, the board, after giving respondent notice
5 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
6 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
7 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
8 a petition to revoke probation or an accusation is filed against respondent during probation, the
9 board shall have continuing jurisdiction and the period of probation shall be automatically
10 extended until the petition to revoke probation or accusation is heard and decided.

11 **16. Completion of Probation**

12 Upon written notice by the board or its designee indicating successful completion of
13 probation, respondent's license will be fully restored.

14 **17. Community Services Program**

15 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
16 board or its designee, for prior approval, a community service program in which respondent shall
17 provide free health-care related services on a regular basis to a community or charitable facility or
18 agency for 500 hours during the term of probation. Within thirty (30) days of board approval
19 thereof, respondent shall submit documentation to the board demonstrating commencement of the
20 community service program. A record of this notification must be provided to the board upon
21 request. Respondent shall report on progress with the community service program in the
22 quarterly reports. Failure to timely submit, commence, or comply with the program shall be
23 considered a violation of probation.

24 **18. No Ownership of Licensed Premises**

25 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
26 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
27 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
28 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)

1 days following the effective date of this decision and shall immediately thereafter provide written
2 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
3 documentation thereof shall be considered a violation of probation.

4 **19. Separate File of Records**

5 Respondent shall maintain and make available for inspection a separate file of all records
6 pertaining to the acquisition or disposition of all controlled substances if working in a pharmacy
7 setting. Failure to maintain such file or make it available for inspection shall be considered a
8 violation of probation.

9 **20. Tolling of Suspension**

10 During the period of suspension, respondent shall not leave California for any period
11 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
12 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
13 absence from California during the period of suspension exceeding ten (10) days shall toll the
14 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
15 respondent is absent from California. During any such period of tolling of suspension,
16 respondent must nonetheless comply with all terms and conditions of probation.

17 Respondent must notify the board in writing within ten (10) days of departure, and must
18 further notify the board in writing within ten (10) days of return. The failure to provide such
19 notification(s) shall constitute a violation of probation. Upon such departure and return,
20 respondent shall not resume the practice of pharmacy until notified by the board that the period of
21 suspension has been satisfactorily completed.

22 **21. Ethics Course**

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

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

22. Cautionary Letter

Within sixty (60) calendar days of the effective date of this decision, respondent shall prepare a letter, for possible publication by the Board, of the role and duties of a pharmacist-in-charge, respondent's actions while in that role that are the basis for discipline, and the negative impact on patient care, pharmacy operations and a licensee that can occur from ignorance, mistake or refusal to perform duties.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

ROBERT JOHN PAYNE
Respondent

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

DATED:

GREGORY P. MATZEN
Attorney for Respondent

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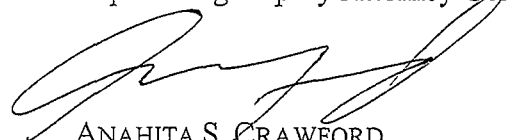
ENDORSEMENT

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: 9.7.10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General



ANAHITA S. CRAWFORD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3341

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
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9 BEFORE THE
BOARD OF PHARMACY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 3341

13 COUNTY OF SACRAMENTO PRIMARY
14 CARE
4600 Broadway #1500
15 Sacramento, Ca 95820
Permit No. PHE 46273,
16

ACCUSATION

17 and

18 STEPHEN JAMES GOLKA
75 Sandburg Dr.
Sacramento, Ca 95819
19 Pharmacist License No. RPH 32396,

20 and

21 ROBERT JOHN PAYNE
428 J Street, Ste 610
22 Sacramento, Ca 95814
Pharmacist License No. RPH 26146
23

24 Respondents.

25 Complainant alleges:

26 PARTIES

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

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

3 (c) Every pharmacy shall notify the board within 30 days of the date when a
4 pharmacist ceases to be a pharmacist-in-charge.

5 9. Code section 4301 states in part:

6 The board shall take action against any holder of a license who is guilty of
7 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
8 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
9 following:

10 (j) The violation of any of the statutes of this state, of any other state, or of the
11 United States regulating controlled substances and dangerous drugs.

12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
13 the violation of or conspiring to violate any provision or term of this chapter or of the
14 applicable federal and state laws and regulations governing pharmacy, including regulations
15 established by the board or by any other state or federal regulatory agency.

16 10. Code section 4306.5 states, in part:

17 Unprofessional conduct for a pharmacist may include any of the following:

18 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
19 implement his or her best professional judgment or corresponding responsibility with
20 regard to the dispensing or furnishing of controlled substances, dangerous drugs, or
21 dangerous devices, or with regard to the provision of services.

22 11. Section 4059 of the Code states:

23 (a) A person may not furnish any dangerous drug, except upon the prescription
24 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7. A person may not furnish any dangerous device, except
26 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
27 naturopathic doctor pursuant to Section 3640.7.

28 12. Section 4059.5 of the Code states, in part:

(b) A dangerous drug or dangerous device transferred, sold, or delivered to a
person within this state shall be transferred, sold, or delivered only to an entity
licensed by the board, to a manufacturer, or to an ultimate user or the ultimate user's
agent.

13. Section 4126.5 of the Code states, in part:

(a) A pharmacy may furnish dangerous drugs only to the following:

(1) A wholesaler owned or under common control by the wholesaler from
whom the dangerous drug was acquired.

1 (2) The pharmaceutical manufacturer from whom the dangerous drug was
acquired.

2 (3) A licensed wholesaler acting as a reverse distributor.

3 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a
4 dangerous drug that could result in the denial of health care. A pharmacy furnishing
dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to
5 alleviate the temporary shortage.

6 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise
authorized by law.

7 (6) A health care provider that is not a pharmacy but that is authorized to
8 purchase dangerous drugs.

9 (7) To another pharmacy under common control.

10 14. Section 4160 of the Code states that (a) a person may not act as a wholesaler of any
11 dangerous drug or dangerous device unless he or she has obtained a license from the board.

12 15. California Code of Regulations, Title 16, Section 1714 states, in part:

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

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17 (d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
18 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
19 substances are stored shall be restricted to a pharmacist.

20 16. Section 4022 of the Code states

21 Dangerous drug" or "dangerous device" means any drug or device unsafe for
22 self-use in humans or animals, and includes the following:

23 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

24 (b) Any device that bears the statement: "Caution: federal law restricts this
25 device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to use
26 or order use of the device.

27 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

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1 17. Section 4043 of the Code states:

2 (a) "Wholesaler" means and includes a person who acts as a wholesale
3 merchant, broker, jobber, customs broker, reverse distributor, agent, or a nonresident
4 wholesaler, who sells for resale, or negotiates for distribution, or takes possession of,
5 any drug or device included in Section 4022. Unless otherwise authorized by law, a
6 wholesaler may not store, warehouse, or authorize the storage or warehousing of
7 drugs with any person or at any location not licensed by the board.

8 18. Code section 4307 states:

9 (a) Any person who has been denied a license or whose license has been
10 revoked or is under suspension, or who has failed to renew his or her license while it
11 was under suspension, or who has been a manager, administrator, owner, member,
12 officer, director, associate, or partner of any partnership, corporation, firm, or
13 association whose application for a license has been denied or revoked, is under
14 suspension or has been placed on probation, and while acting as the manager,
15 administrator, owner, member, officer, director, associate, or partner had knowledge
16 of or knowingly participated in any conduct for which the license was denied,
17 revoked, suspended, or placed on probation, shall be prohibited from serving as a
18 manager, administrator, owner, member, officer, director, associate, or partner of a
19 licensee as follows:

20 (1) Where a probationary license is issued or where an existing license is placed
21 on probation, this prohibition shall remain in effect for a period not to exceed five
22 years.

23 (2) Where the license is denied or revoked, the prohibition shall continue until
24 the license is issued or reinstated.

25 (b) "Manager, administrator, owner, member, officer, director, associate, or
26 partner," as used in this section and Section 4308, may refer to a pharmacist or to any
27 other person who serves in that capacity in or for a licensee.

28 (c) The provisions of subdivision (a) may be alleged in any pleading filed
pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. However, no order may be issued in that case except as to a
person who is named in the caption, as to whom the pleading alleges the applicability
of this section, and where the person has been given notice of the proceeding as
required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of
the Government Code. The authority to proceed as provided by this subdivision shall
be in addition to the board's authority to proceed under Section 4339 or any other
provision of law.

COST RECOVERY

19. Code section 125.3 provides, in pertinent part, that the board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation.

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1 COUNTY OF SACRAMENTO PRIMARY CARE

2 FIRST CAUSE FOR DISCIPLINE

3 (Unlawful Furnishing of Dangerous Drugs and Controlled Substances)

4 20. Respondent Sacramento Primary Care is subject to disciplinary action under section
5 4301, subdivision (j) for unprofessional conduct, in that Respondent Sacramento Primary Care
6 violated the laws and provisions of the Code regulating dangerous drugs and controlled
7 substances as set forth in section 4059(a) (furnishing dangerous drugs and devices without a
8 prescription), section 4059.5, subdivision (b) (dangerous drugs and devices sold
9 /transferred/delivered to non-board licensed entities, manufacturer or ultimate user) and section
10 4126.5, subdivision (a) (furnishing dangerous drugs to non-approved entities). The circumstances
11 are as follows:

12 21. A Pharmacy audit revealed that between or about March 2005 through February
13 2008, Respondent Sacramento Primary Care illegally furnished bulk dangerous drugs, including
14 controlled substances, to various locations, including jail facilities, clinics, school
15 districts/colleges and other locations not permitted to receive such drugs pursuant to Section
16 4126.5. The locations to which these drugs were furnished did not have a license to obtain,
17 receive, or maintain the drugs and the drugs provided were not for patient-specific prescriptions.
18 The wholesale purchase value of bulk drugs furnished illegally to such locations was over
19 \$5,000,000.

20 SECOND CAUSE FOR DISCIPLINE

21 (Unlicensed Activity)

22 22. Respondent Sacramento Primary Care is subject to disciplinary action under section
23 4301, subdivision (o) for unprofessional conduct, in that Respondent Sacramento Primary Care
24 violated the drug wholesaler licensing requirements as set forth in section 4160, subdivision (a)
25 (acting as a wholesaler without a license). The circumstances are as follows:

26 23. A Pharmacy audit revealed that between or about March 2005 through February 2008
27 Sacramento County Primary Care Pharmacy illegally furnished bulk dangerous drugs, including
28 controlled substances, to various locations, including jail facilities clinics, school

1 districts/colleges and other locations, without a required Board wholesaler license (defined in
2 section 4043), as further set forth in paragraphs 20-21, above.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Inadequate Pharmacy Security)**

5 24. Respondent Sacramento Primary Care is subject to disciplinary action under section
6 4301, subdivision (o) for unprofessional conduct as defined in California Code of Regulations,
7 Title 16, Section 1714, subdivision (b), in that Respondent failed to maintain appropriate security
8 against theft or diversion of dangerous drugs, including records for the drugs.

9 25. A Pharmacy audit revealed that between or about March 2005 through February
10 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen
11 10/325 tablets, a schedule III controlled substance and dangerous drug. Additionally, in
12 December 2007, pharmacist Marvin Gibson admitted to stealing approximately 480 tablets of
13 hydrocodone/acetaminophen combination products for illegal self-administration between
14 October and December 2007. The loss of the tablets, as well as Mr. Gibson's admitted theft
15 demonstrate a lack of appropriate pharmacy security.

16 **STEPHEN JAMES GOLKA**

17 26. Respondent Golka received his Pharmacist license on August 25, 1978. He has been
18 employed as the Pharmacist-in-Charge with Respondent Sacramento Primary Care from April 20,
19 2007 to present.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unlawful Furnishing of Drugs and Controlled Substances)**

22 27. Respondent Golka is subject to disciplinary action under section 4301, subdivision (j)
23 for unprofessional conduct, in that Respondent Golka violated the laws and provisions of the
24 Code regulating dangerous drugs and controlled substances as set for in section 4059(a)
25 (furnishing dangerous drugs and devices without a prescription), section 4059.5, subdivision (b)
26 (dangerous drugs and devices sold /transferred/delivered to non-board licensed entities,
27 manufacturer or ultimate user), and section 4126.5, subdivision (a) (furnishing dangerous drugs to
28 non-approved entities), as more fully set forth in paragraphs 20-21, above.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Exercise Professional Judgment)

3 28. Respondent Golka is subject to disciplinary action under sections 4301 for
4 unprofessional conduct as defined in section 4306.5, subdivision (b), in that, during Respondent's
5 status as Pharmacist-in-Charge, Respondent Golka failed to exercise or implement his best
6 professional judgment or corresponding responsibility with regard to the dispensing or furnishing
7 of controlled substances, dangerous drugs, or dangerous devices. Despite knowing that
8 Respondent Sacramento Primary Care's activities of selling bulk controlled substances and
9 dangerous drugs to unlicensed entities were illegal, Respondent Golka allowed such activities to
10 continue, as further set forth in paragraph 20-23, above.

11 SIXTH CAUSE FOR DISCIPLINE

12 (Unlicensed Activity)

13 29. Respondent Stephen James Golka is subject to disciplinary action under section 4301,
14 subdivision (o) for unprofessional conduct, in that as Pharmacist-in-Charge for Respondent
15 Sacramento Primary Care, Respondent Golka violated the drug wholesaler licensing requirements
16 as set for in section 4160, subdivision (a) (acting as a wholesaler without a license), as more fully
17 set forth in paragraphs 20-23, above.

18 SEVENTH CAUSE FOR DISCIPLINE

19 (Inadequate Pharmacy Security)

20 30. Respondent Golka is subject to disciplinary action under section 4301, subdivision (o)
21 for unprofessional conduct as defined in California Code of Regulations, Title 16, Section 1714,
22 subdivision (d), in that Respondent failed to maintain appropriate security against theft or
23 diversion of dangerous drugs, including records for the drugs.

24 31. A Pharmacy audit revealed that between or about March 2005 through February
25 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen
26 10/325 tablets, a schedule III controlled substance and dangerous drug. Additionally in
27 December 2007, pharmacist Marvin Gibson admitted to stealing approximately 480 tablets of
28 hydrocodone/acetaminophen combination products for illegal self-administration between

1 October and December 2007. The loss of the tablets from April 20, 2007 to February 2008, as
2 well as Mr. Gibson's admitted theft, occurred during Respondent Golka's status as Pharmacist-in-
3 Charge.

4 **ROBERT JOHN PAYNE**

5 32. Respondent Payne received his license on July 24, 1969. He was employed as the
6 Pharmacist-in-Charge with Respondent County of Sacramento Primary Care from December 8,
7 2003 through March 23, 2007.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 **(Unlawful Furnishing of Drugs and Controlled Substances)**

10 33. Respondent Payne is subject to disciplinary action under section 4301, subdivision (j)
11 for unprofessional conduct, in that Respondent Payne violated the laws and provisions of the
12 Code regulating dangerous drugs and controlled substances as set for in section 4059(a)
13 (furnishing dangerous drugs and devices without a prescription), section 4059.5, subdivision (b)
14 (dangerous drugs and devices sold /transferred/delivered to non-board licensed entities,
15 manufacturer or ultimate user) and section 4126.5, subdivision (a) (furnishing dangerous drugs to
16 non-approved entities), as more fully set forth in paragraphs 20-23, above.

17 **NINTH CAUSE FOR DISCIPLINE**

18 **(Unlicensed Activity)**

19 34. Respondent Robert John Payne is subject to disciplinary action under section 4301,
20 subdivision (o) for unprofessional conduct, in that Respondent violated the board's drug
21 wholesaler licensing requirements as set for in section 4160, subdivision (a) (acting as a
22 wholesaler without a license), as more fully set forth in paragraphs 19-20, above.

23 **TENTH CAUSE FOR DISCIPLINE**

24 **(Failure to Exercise Professional Judgment)**

25 35. Respondent Payne is subject to disciplinary action under sections 4301 for
26 unprofessional conduct as defined in section 4306.5, subdivision (b), in that, during Respondent's
27 status as Pharmacist-in-Charge, Respondent Payne to exercise or implement his best professional
28 judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled

1 substances, dangerous drugs, or dangerous devices. Despite knowing that Respondent
2 Sacramento Primary Care's activities of selling bulk controlled substances and dangerous drugs
3 to unlicensed entities were illegal, Respondent Payne allowed such activities to continue, as
4 further set forth in paragraph 20-23, above.

5 ELEVENTH CAUSE FOR DISCIPLINE

6 (Inadequate Pharmacy Security)

7 36. Respondent Robert John Payne is subject to disciplinary action under section 4301,
8 subdivision (o) for unprofessional conduct as defined in California Code of Regulations, Title 16,
9 Section 1714, subdivision (d), in that Respondent failed to maintain appropriate security against
10 theft or diversion of dangerous drugs, including records for the drugs.

11 37. A Pharmacy audit revealed that between or about March 2005 through February
12 2008, there was an unexplained loss of approximately 215,994 hydrocodone/acetaminophen
13 10/325 tablets, a schedule III controlled substance and dangerous drug. The loss of tablets from
14 December 8, 2003 through March 23, 2007 occurred during Respondent Payne's status as
15 Pharmacist-in-Charge.

16 OTHER MATTERS

17 38. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License Number
18 RPH 32396 issued to Stephen James Golka, Respondent Golka shall be prohibited from serving
19 as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee.

20 39. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
21 Number RPH 26146 issued to Robert John Payne, Respondent Payne shall be prohibited from
22 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a
23 licensee.

24 PRAYER

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

27 1. Revoking or suspending Permit Number PHE 46273, issued to County of Sacramento
28 Primary Care.

2. Revoking or suspending Pharmacist License Number RPH 32396, issued to Stephen James Golka.

3. Prohibiting Stephen James Golka from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee during the period that discipline is imposed on Pharmacist License Number RPH 32396 issued to Stephen James Golka.

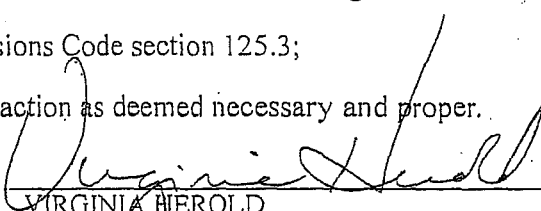
4. Revoking or suspending Pharmacist License Number RPH 26146, issued to Robert John Payne.

5. Prohibiting Robert John Payne from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee during the period that discipline is imposed on Pharmacist License Number RPH 26146 issued to Robert John Payne.

6. Ordering County of Sacramento Primary Care, Stephen James Golka and Robert John Payne 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;

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

DATED: 12/16/09


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

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VIRGINIA HEROLD
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