

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

In the Matter of the Accusation Against:

Case No. 3767

**TAHOE CITY PLAZA PHARMACY, INC.,
DBA TAHOE CITY PHARMACY**

559 N. Lake Blvd.
Tahoe City, CA 96145
Pharmacy Permit No. PHY 43340

and

GARY SABASTINA

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

Respondent.

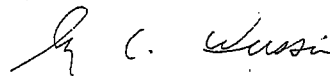
DECISION AND ORDER

The attached Stipulated Surrender of License and Order, as to Tahoe City Plaza Pharmacy, Inc., PHY 43340, only, is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 22, 2011.

It is so ORDERED May 23, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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. 3767

13 **TAHOE CITY PLAZA PHARMACY, INC.,**
14 **DBA TAHOE CITY PHARMACY**
15 **559 N. Lake Blvd.**
16 **Tahoe City, CA 96145**
17 **Pharmacy Permit No. PHY 43340,**

STIPULATED SURRENDER OF
LICENSE AND ORDER AS TO TAHOE
CITY PLAZA PHARMACY, INC. ONLY

18 **and**

19 **GARY SABASTINA**
20 **P.O. Box 1312**
21 **Kings Beach, CA 96143**
22 **Pharmacist No. RPH 36143**

23 Respondents.

24 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
25 proceeding that the following matters are true:

26 **PARTIES**

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

2. Tahoe City Plaza Pharmacy, Inc., dba Tahoe City Pharmacy is represented in this
proceeding by attorney David R. Houston, whose address is 432 Court Street, Reno, NV 89501.

1 3. On or about August 25, 1998, the Board of Pharmacy issued Pharmacy Permit No.
2 PHY 43340 to Tahoe City Plaza Pharmacy, Inc., dba Tahoe City Pharmacy (Respondent). The
3 Pharmacy Permit was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 3767 and expired on August 1, 2010.

5 **JURISDICTION**

6 4. Accusation No. 3767 was filed before the Board of Pharmacy (Board), Department of
7 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
8 statutorily required documents were properly served on Respondent on November 16, 2010.
9 Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation
10 No. 3767 is attached as Exhibit A and incorporated by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. 3767. Respondent also has carefully read, fully
14 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
15 Order.

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

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

25 **CULPABILITY**

26 8. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 3767, agrees that cause exists for discipline and hereby surrenders their Pharmacy Permit No.
28 PHY 43340 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation Entity enables the Board to issue an order accepting the surrender of their Pharmacy Permit without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or its counsel. By signing the stipulation, Respondent understands and agrees that they may not withdraw its agreement 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 Surrender 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.

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

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

13. 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 Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 43340, issued to Respondent Tahoe City Plaza Pharmacy, Inc., dba Tahoe City Pharmacy, is surrendered and accepted by the Board of Pharmacy.

///

1 1. The surrender of Respondent's Pharmacy Permit and the acceptance of the
2 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
3 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
4 license history with the Board.

5 2. Respondent shall lose all rights and privileges as a Pharmacy in California as of the
6 effective date of the Board's Decision and Order.

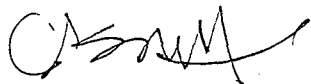
7 3. Respondent shall cause to be delivered to the Board its pocket license and, if one was
8 issued, its wall certificate on or before the effective date of the Decision and Order.

9 4. If they ever apply for licensure or petition for reinstatement in the State of California,
10 the Board shall treat it as a new application for licensure. Respondent must comply with all the
11 laws, regulations and procedures for licensure in effect at the time the application or petition is
12 filed, and all of the charges and allegations contained in Accusation No. 3767 shall be deemed to
13 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
14 the application or petition.

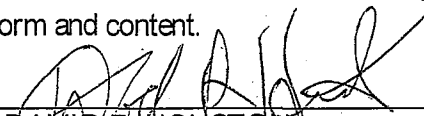
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1 **ACCEPTANCE**

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, David R. Houston. I understand the stipulation and the effect it
4 will have on my Pharmacy Permit. I enter into this Stipulated Surrender of License and Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 Board of Pharmacy.

7
8 DATED: 4-4-2011 
9 GARY PAUL SABASTINA
10 TAHOE CITY PLAZA PHARMACY, INC., DBA
11 TAHOE CITY PHARMACY
12 Respondent

11 I have read and fully discussed with Respondent Tahoe City Plaza Pharmacy, Inc., dba
12 Tahoe City Pharmacy the terms and conditions and other matters contained in this Stipulated
13 Surrender of License and Order. I approve its form and content.

14 DATED: 4-4-2011 
15 DAVID R. HOUSTON
16 Attorney for Respondent

17 **ENDORSEMENT**

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
19 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20 Dated: March 8, 2011 Respectfully submitted,
21 KAMALA D. HARRIS
22 Attorney General of California
23 ARTHUR D. TAGGART
24 Supervising Deputy Attorney General

25 KAREN R. DENVIR
26 Deputy Attorney General
27 *Attorneys for Complainant*

Exhibit A

Accusation No. 3767

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KAREN R. DENVIR
Deputy Attorney General
4 State Bar No. 197268
1300 I Street, Suite 125
5 P.O. Box 944255
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6 Telephone: (916) 324-5333
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

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

ACCUSATION

15 Pharmacy Permit No. PHY 43340,

16 and

17 **GARY SABASTINA**
P.O. Box 1312
Kings Beach, CA 96143

18 Pharmacist License No. RPH 36143

19 Respondents.
20

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about August 25, 1998, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 43340 to Tahoe City Plaza Pharmacy, Inc., dba Tahoe City Pharmacy; Gary Paul
27 Sabistina; Dave R. Houston (Respondents). The Pharmacy Permit was in full force and effect at
28

1 all times relevant to the charges brought herein and will expire on August 1, 2010, unless
2 renewed.

3 3. On or about December 29, 1980, the Board of Pharmacy issued Pharmacist License
4 Number RPH 36143 to Gary Sabastina (Respondents). The Pharmacist License was in full force
5 and effect at all times relevant to the charges brought herein and will expire on February 28,
6 2011, unless renewed.

7 JURISDICTION

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

11 5. Section 4300 of the Code states, in pertinent part:

12 (a) Every license issued may be suspended or revoked.

13 (b) The board shall discipline the holder of any license issued by the board, whose
14 default has been entered or whose case has been heard by the board and found guilty,
by any of the following methods:

15 (1) Suspending judgment.

16 (2) Placing him or her upon probation.

17 (3) Suspending his or her right to practice for a period not exceeding one year.

18 (4) Revoking his or her license.

19 (5) Taking any other action in relation to disciplining him or her as the board in
20 its discretion may deem proper.

21 ...
22 6. Section 4301 of the Code states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 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:

25 ...
26 (j) The violation of any of the statutes of this state, or any other state, or of the United
27 States regulating controlled substances and dangerous drugs.

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

6 ...
7 7. Section 4081 states, in pertinent part:

8 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
9 drugs or dangerous devices shall be at all times during business hours open to
10 inspection by authorized officers of the law, and shall be preserved for at least three
11 years from the date of making. A current inventory shall be kept by every
12 manufacturer, wholesaler, pharmacy . . . who maintains a stock of dangerous drugs
13 or dangerous devices.

14 (b) The owner, officer, and partner of a pharmacy . . . shall be jointly responsible,
15 with the pharmacist-in-charge or designated representative-in-charge, for maintaining
16 the records and inventory described in this section.

17 ...
18 8. Section 4113 states, in pertinent part:

19 (a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days
20 thereof, shall notify the board in writing of the identity and license number of that
21 pharmacist and the date he or she was designated.

22 ...
23 (c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with
24 all state and federal laws and regulations pertaining to the practice of pharmacy.

25 ...
26 9. California Code of Regulations, Title 16, Section 1714 states, in pertinent part:

27 ...
28 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures,
and equipment so that drugs are safely and properly prepared, maintained, secured
and distributed. The pharmacy shall be of sufficient size and unobstructed area to
accommodate the safe practice of pharmacy.

(d) Each pharmacist while on duty shall be responsible for the security of the
prescription department, including provisions for effective control against theft or
diversion of dangerous drugs and devices, and records for such drugs and devices.
Possession of a key to the pharmacy where dangerous drugs and controlled
substances are stored shall be restricted to a pharmacist.

///

1 10. California Code of Regulations, title 16, section 1718, states as follows:

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

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

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

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

13 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE**

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

17 **GENERAL BACKGROUND**

18 ***Tahoe City Pharmacy's Controlled Substance Shortages***

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

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

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

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

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

9 16. During the period of on or about October 8, 2008 through on or about February 9,
10 2010, Tahoe City Pharmacy failed to maintain a current inventory of its stock of dangerous drugs
11 and could not account for the dangerous drugs/controlled substances alleged in paragraph 14,
12 above.

13 *Ineffective Security and Controlled Substances Shortages under PIC Sabistina*

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

18 *Failure to Maintain Current Inventory by PIC Sabistina*

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

23 **FIRST CAUSE FOR DISCIPLINE**
24 **(Inadequate Pharmacy Security by Tahoe City Pharmacy)**

25 19. Paragraphs 14 through 18 above are herein incorporated by reference. Respondent
26 Tahoe City Plaza Pharmacy, Inc. is subject to disciplinary action under section 4301(j) and (o) on
27 the ground of unprofessional conduct. Respondent violated California Code of Regulations, Title
28 16, section 1714(d), by failing to maintain provisions for effective control against theft or

1 diversion of dangerous drugs.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Failure to Maintain Current Inventory of Dangerous Drugs by Tahoe City Pharmacy)**

4 20. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Tahoe
5 City Pharmacy is subject to disciplinary action pursuant to section 4301(j) and (o) on the ground
6 of unprofessional conduct. Respondent violated Code section 4081(a) and California Code of
7 Regulations, Title 16, section 1718, by failing to maintain a current inventory of its stock of
8 dangerous drugs and its inability to account for the dangerous drugs/controlled substances as
9 alleged in paragraph 14, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Inadequate Pharmacy Security by Gary Sabistina)**

12 21. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Gary
13 Sabistina is subject to disciplinary action under section 4301(j) and (o) on the ground of
14 unprofessional conduct. As the pharmacist in charge of Tahoe City Pharmacy under section
15 4113(b), Respondent violated section 4081 and California Code of Regulations, Title 16, section
16 1714(d), by failing to maintain provisions for effective control against theft or diversion of
17 dangerous drugs.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Current Inventory of Dangerous Drugs by Gary Sabistina)**

20 22. Paragraphs 14 through 18 are herein incorporated by reference. Respondent Gary
21 Sabistina is subject to disciplinary action pursuant to section 4301(j) and (o) on the ground of
22 unprofessional conduct. As the pharmacist in charge of Tahoe City Pharmacy under section
23 4113(b), Respondent violated section 4081 and California Code of Regulations, Title 16, section
24 1718, by failing to maintain a current inventory of the stock of dangerous drugs at Tahoe City
25 Pharmacy so as to maintain complete accountability for all such dangerous drugs.

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1 DISCIPLINE CONSIDERATIONS

2 23. To determine the degree of discipline, if any, to be imposed on Respondent Tahoe
3 City Pharmacy, Complainant alleges that on or about February 9, 2004, in a prior action, the
4 Board of Pharmacy issued Citation Number CI 2002 25172 - a and ordered Respondent to pay
5 fines in the amount of \$750.00. That Citation is now final and is incorporated by reference as if
6 fully set forth.

7 24. To determine the degree of discipline, if any, to be imposed on Respondent Gary
8 Sabistina, Complainant alleges that on or about February 9, 2004, in a prior action, the Board of
9 Pharmacy issued Citation Number CI 2002 25172 - b and ordered Respondent to pay fines in the
10 amount of \$1,750.00. That Citation is now final and is incorporated by reference as if fully set
11 forth.

12 PRAYER

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

- 15 1. Revoking or suspending Pharmacy Permit No. PHY 43340, issued to Tahoe City
16 Pharmacy;
- 17 2. Revoking or suspending Pharmacist License No. RPH 36143, issued to Gary
18 Sabistina;
- 19 3. Ordering Respondent Tahoe City Pharmacy and Gary Sabistina to pay the Board of
20 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
21 Business and Professions Code section 125.3;
- 22 4. Taking such other and further action as deemed necessary and proper.

23 DATED: 11/2/10

Virginia Herold
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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