

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

In the Matter of the Petition for Reduction in
Penalty of:

GARY SABISTINA,

Petitioner.

Case No. 3767

OAH No. 2012100341

DECISION

This matter was heard before a quorum of the Board of Pharmacy (Board¹) in Sacramento, California on October 26, 2012. Linda A. Cabatic, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing.

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

Gary Sabistina (petitioner) was present and represented himself.

Evidence was received, and the matter was submitted for decision on October 26, 2012.

FACTUAL FINDINGS

1. On or about December 29, 1980, the Board issued Pharmacist License No. RPH 36143 to petitioner, which expires on February 28, 2013, unless renewed.

2. On or about November 2, 2010, the Board's Executive Officer issued an Accusation against petitioner, which alleged that petitioner had engaged in unprofessional conduct by failing to maintain provisions for effective control against theft or diversion of dangerous drugs and for failing to maintain a current inventory of its stock of dangerous drugs so as to maintain complete accountability for such dangerous drugs.

¹ Board Members in attendance were Stanley C. Weisser, President; Randy Kajioka, Vice-President; Gregory N. Lippe; Debbie Veale; Amy Gutierrez; Victor Law; Shirley Wheat; and Albert Wong.

3. On April 4, 2011, petitioner signed a Stipulated Settlement and Disciplinary Order in which he admitted the truth of each and every charge and allegation against him contained in the Accusation. As a result of this stipulation, petitioner agreed to have his license placed on probation for five years subject to specified terms and conditions.

4. On May 23, 2011, the Board issued its Decision and Order adopting the Stipulated Settlement and Disciplinary Order, effective June 22, 2011.

5. On or about July 24, 2012, petitioner filed the instant petition seeking the elimination of the Supervised Practice provision in the Decision and Order for the Lake Tahoe/Truckee area. In his petition, petitioner states he has not been able to find employment with the Supervised Practice restriction in the Lake Tahoe/Truckee areas. There are 14 pharmacies in the area and budgetary restrictions allow only single shift store operations with no overlapping of pharmacist hours. He has been on probation for the last year and four months. He has completed 80 hours of community service, an Ethics Course, and eight of the ten hours of remedial education required.

6. Petitioner states in his petition that he was not the individual responsible for the diversion of the scheduled drugs, but rather, he was the person who failed to have adequate security in place to prevent the diversion. Petitioner was the owner of the pharmacy and was the pharmacist in charge. He employed his 18-year-old son to assist him. His son knew how to order prescriptions and would routinely check in and restock the wholesaler orders. Over the course of 18 months, his son began ordering one extra bottle of hydrocodone/apap 10/325 mg in the 500 tablet size, which his son diverted.

On or about February 9, 2010, petitioner was asked by the sheriff's department to prepare an accounting of the hydrocodone/apap 10/325 mg. The sheriff's department suspected his son was diverting the drugs.

On February 17, 2010, petitioner compared his list of purchases to his pharmacy's report of sales, discovered the drug shortages, and notified the sheriff. He told his son about the discrepancies and asked for his thoughts on the losses. That night, his son died from a drug overdose.

7. Both in his petition and at the hearing, petitioner accepted full responsibility for what occurred and recognized the importance of pharmacy security. Petitioner was credible when he stated that he has learned from his mistakes. If petitioner is allowed to practice unsupervised, he would be responsible for the inventory, would check all orders himself, and would check the controlled substances orders. If he was the pharmacist on duty for oversight, he would make sure the employees follow all the rules, review their work, and make sure that no one was stealing the drugs. He would sign for the drug inventory, acknowledge receipts, be aware of excess ordering and be more aware of incoming and outgoing drugs.

8. Pursuant to Business and Professions Code section 4309, subdivision (b),² petitioner submitted four letters of recommendation. The first was from Richard V. Collins II, RPh., dated July 10, 2012. Mr. Collins states he has discussed the disciplinary action at length and sympathizes with petitioner over the loss of his son. Mr. Collins believes petitioner has learned a valuable lesson that will remain with him for the rest of his life.

The second letter is from Yvonne Costello, R.Ph., dated July 12, 2012. Ms. Costello worked with petitioner over the past 20 years and is aware of the disciplinary action. Ms. Costello has observed petitioner's professional skills and interpersonal style and finds him to be pleasant and dedicated.

Petitioner's third letter comes from Dr. Hartwig Sonnenberg, who has known petitioner for 20 years. Dr. Sonnenberg is aware of the disciplinary action and states that the result was "disastrous in that not only was his pharmacist license suspended, but more tragically the death of his son to overdose of a controlled substance." He finds petitioner to be a capable pharmacist and an important member of the health team.

Petitioner's final letter comes from Karl Motsenbocker, dated July 20, 2012. Mr. Motsenbocker has known petitioner for over 15 years and has had petitioner fill prescriptions. He states petitioner is well liked and respected in the community. He is aware of petitioner's probation and believes petitioner has "paid a stiff price for his transgressions, with the loss of his son, the pharmacy and a general fall from your [the board's] grace."

LEGAL CONCLUSIONS

1. In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is ready to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 215.)

2. Petitioner's testimony was credible and he acknowledged his past mistakes. (Findings 6 and 7.) Petitioner understands the need for security and, as petitioner himself

² Business and Professions Code section 4309, subdivision (b) provides:

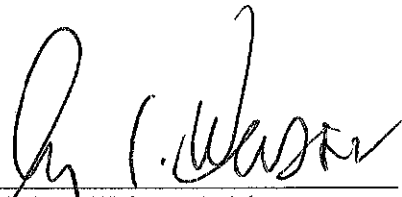
The petition shall state any facts required by the Board and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

noted, the loss of his son will forever remind him of the importance of security. (Finding 7.)
Good cause exists to grant Petitioner's Request for Modification of Penalty.

ORDER

The Petition for Modification of Penalty submitted by Gary Sabistina is hereby GRANTED. The Supervised Practice condition included in the Decision and Order is eliminated. All other conditions shall remain the same.

Dated: December 17, 2012



STAN C. Weisser, R.Ph.
President, Board of Pharmacy
Department of Consumer Affairs

**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.

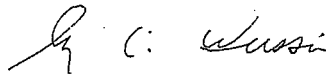
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order, as to Respondent Gary Sabastina, RPH 36143, 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 on May 23, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

STANLEY C. WEISSER
Board President

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Attorney General of California
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3767

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

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO GARY
SABASTINA ONLY

15 **and**

16 **GARY SABASTINA**
17 **P.O. Box 1312**
Kings Beach, CA 96143
18 **Pharmacist No. RPH 36143**

19 Respondents.

20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 **PARTIES**

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

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1 2. Respondent Gary Sabastina (Respondent), is represented in this proceeding by
2 attorney David R. Houston, whose address is: 432 Court Street, Reno, NV 89501.

3 3. On or about December 29, 1980, the Board of Pharmacy issued Pharmacist License
4 No. RPH 36143 to Gary Sabastina (Respondent). The Pharmacist License was in full force and
5 effect at all times relevant to the charges brought in Accusation No. 3767 and will expire on
6 February 28, 2013, unless renewed.

7 **JURISDICTION**

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

13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Accusation No. 3767. Respondent has also carefully read, fully
16 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
17 Order.

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

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

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 3767.

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

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
9 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
10 communicate directly with the Board regarding this stipulation and settlement, without notice to
11 or participation by Respondent or its counsel. By signing the stipulation, Respondent understands
12 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the
13 time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its
14 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
15 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
16 and the Board shall not be disqualified from further action by having considered this matter.

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

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

26 13. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following
28 Disciplinary Order:

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 36143 issued to Respondent
3 Gary Sabastina (Respondent) is revoked. However, the revocation is stayed and Respondent is
4 placed on probation for five (5) years on the following terms and conditions.

5 1. **Obey All Laws**

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

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

- 9 • an arrest or issuance of a criminal complaint for violation of any provision of the
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
11 substances laws
- 12 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
13 criminal complaint, information or indictment
- 14 • a conviction of any crime
- 15 • discipline, citation, or other administrative action filed by any state or federal agency
16 which involves Respondent's Pharmacist License or which is related to the practice of
17 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
18 for any drug, device or controlled substance.

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

20 2. **Report to the Board**

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

1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

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

11 **5. Continuing Education**

12 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
13 pharmacist as directed by the board or its designee.

14 **6. Notice to Employers**

15 During the period of probation, Respondent shall notify all present and prospective
16 employers of the decision in case number 3767 and the terms, conditions and restrictions imposed
17 on Respondent by the decision, as follows:

18 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
19 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed
22 individual(s) has/have read the decision in case number 3767, and terms and conditions imposed
23 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
24 supervisor(s) submit timely acknowledgment(s) to the board.

25 If Respondent works for or is employed by or through a pharmacy employment service,
26 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
27 licensed by the board of the terms and conditions of the decision in case number 3767 in advance
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1 of the Respondent commencing work at each licensed entity. A record of this notification must
2 be provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
4 (15) days of Respondent undertaking any new employment by or through a pharmacy
5 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
6 service to report to the board in writing acknowledging that they has read the decision in case
7 number 3767 and the terms and conditions imposed thereby. It shall be Respondent's
8 responsibility to ensure that their employer(s) and/or supervisor(s) submit timely
9 acknowledgment(s) to the board.

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

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

17 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
18 **Designated Representative-in-Charge, or Serving as a Consultant**

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

23 **8. Reimbursement of Board Costs**

24 As a condition precedent to successful completion of probation, Respondent shall pay to the
25 board its costs of investigation and prosecution in the amount of \$4,896.00. Respondent shall
26 make said payments as approved by the Board.

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

4 The filing of bankruptcy by Respondent shall not relieve Respondent of their responsibility
5 to reimburse the board its costs of investigation and prosecution.

6 **9. Probation Monitoring Costs**

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

11 **10. Status of License**

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

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

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

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

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

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

5 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
6 **Employment**

7 Respondent shall notify the board in writing within ten (10) days of any change of
8 employment. Said notification shall include the reasons for leaving, the address of the new
9 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
10 shall further notify the board in writing within ten (10) days of a change in name, residence
11 address, mailing address, or phone number.

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

14 **13. Tolling of Probation**

15 Except during periods of suspension, Respondent shall, at all times while on probation, be
16 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
17 month during which this minimum is not met shall toll the period of probation, i.e., the period of
18 probation shall be extended by one month for each month during which this minimum is not met.
19 During any such period of tolling of probation, Respondent must nonetheless comply with all
20 terms and conditions of probation.

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

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

1 "Cessation of practice" means any calendar month during which Respondent is not
2 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code
3 section 4000 et seq . "Resumption of practice" means any calendar month during which
4 Respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by
5 Business and Professions Code section 4000 et seq.

6 **14. Violation of Probation**

7 If a Respondent has not complied with any term or condition of probation, the board shall
8 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
9 until all terms and conditions have been satisfied or the board has taken other action as deemed
10 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
11 to impose the penalty that was stayed.

12 If Respondent violates probation in any respect, the board, after giving Respondent notice
13 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
14 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
15 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
16 a petition to revoke probation or an accusation is filed against Respondent during probation, the
17 board shall have continuing jurisdiction and the period of probation shall be automatically
18 extended until the petition to revoke probation or accusation is heard and decided.

19 **15. Completion of Probation**

20 Upon written notice by the board or its designee indicating successful completion of
21 probation, Respondent's license will be fully restored.

22 **16. Community Services Program**

23 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
24 board or its designee, for prior approval, a community service program in which Respondent shall
25 provide free health-care related services on a regular basis to a community or charitable facility or
26 agency for at least eighty (80) hours over the five (5) years of probation. Within thirty (30) days
27 of board approval thereof, Respondent shall submit documentation to the board demonstrating
28 commencement of the community service program. A record of this notification must be

1 provided to the board upon request. Respondent shall report on progress with the community
2 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
3 program shall be considered a violation of probation.

4 **17. Remedial Education**

5 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
6 board or its designee, for prior approval, an appropriate program of remedial education related to
7 pharmacy security, preventing drug losses, and inventory control. The program of remedial
8 education shall consist of a total of 50 hours, with ten hours required to be completed during each
9 year of probation at Respondent's own expense. All remedial education shall be in addition to,
10 and shall not be credited toward, continuing education (CE) courses used for license renewal
11 purposes.

12 Failure to timely submit or complete the approved remedial education shall be considered a
13 violation of probation. The period of probation will be automatically extended until such
14 remedial education is successfully completed and written proof, in a form acceptable to the board,
15 is provided to the board or its designee.

16 Following the completion of each course, the board or its designee may require the
17 Respondent, at their own expense, to take an approved examination to test the Respondent's
18 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
19 this failure shall be considered a violation of probation. Any such examination failure shall
20 require Respondent to take another course approved by the board in the same subject area.

21 **18. Supervised Practice**

22 During the period of probation, Respondent shall practice only under the supervision of a
23 licensed pharmacist not on probation with the board. Upon and after the effective date of this
24 decision, Respondent shall not practice pharmacy and his license shall be automatically
25 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
26 as required by the board or its designee, either:

27 Continuous – At least 75% of a work week

28 Substantial - At least 50% of a work week

1 Partial - At least 25% of a work week

2 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

3 Within thirty (30) days of the effective date of this decision, Respondent shall have his
4 supervisor submit notification to the board in writing stating that the supervisor has read the
5 decision in case number 3767 and is familiar with the required level of supervision as determined
6 by the board or its designee. It shall be the Respondent's responsibility to ensure that his
7 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
8 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
9 acknowledgements to the board shall be considered a violation of probation.

10 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
11 that their employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
12 acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15)
13 days after employment commences, submit notification to the board in writing stating the direct
14 supervisor and pharmacist-in-charge have read the decision in case number 3767 and is familiar
15 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
16 and his license shall be automatically suspended until the board or its designee approves a new
17 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
18 acknowledgements to the board shall be considered a violation of probation.

19 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

20 During suspension, Respondent shall not enter any pharmacy area or any portion of the
21 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
22 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
23 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
24 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
25 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
26 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
27 and controlled substances. Respondent shall not resume practice until notified by the board.

28 During suspension, Respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
3 designated representative for any entity licensed by the board.

4 Subject to the above restrictions, Respondent may continue to own or hold an interest in
5 any licensed premises in which they holds an interest at the time this decision becomes effective
6 unless otherwise specified in this order.

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

8 **19. No Ownership of Licensed Premises**

9 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
10 administrator, member, officer, director, trustee, associate, or partner of any business; firm,
11 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
12 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
13 days following the effective date of this decision and shall immediately thereafter provide written
14 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
15 documentation thereof shall be considered a violation of probation.

16 **20. Ethics Course**

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

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

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David R. Houston. I understand the stipulation and the effect it will have on my Pharmacy Permit. 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: 4-4-2011 
GARY SABASTINA
Respondent

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

DATED: 4-4-2011 
David R. Houston
Attorney for Respondent

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: March 8, 2011

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
ARTHUR D. TAGGART
Supervising Deputy Attorney General

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Attorney General of California
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6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3767

12 **TAHOE CITY PLAZA PHARMACY, INC.,**
DBA TAHOE CITY PHARMACY
13 559 N. Lake Blvd.
Tahoe City, CA 96145
14 Pharmacy Permit No. PHY 43340,
15 and
16 **GARY SABASTINA**
17 P.O. Box 1312
Kings Beach, CA 96143
18 Pharmacist License No. RPH 36143
19 Respondents.

ACCUSATION

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.

28 ...

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.

29 ...
30 (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.

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

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

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

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

Ineffective Security and Controlled Substances Shortages under PIC Sabistina

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

Failure to Maintain Current Inventory by PIC Sabistina

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

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

19. Paragraphs 14 through 18 above are herein incorporated by reference. Respondent Tahoe City Plaza Pharmacy, Inc. is subject to disciplinary action under section 4301(j) and (o) on the ground of unprofessional conduct. Respondent violated California Code of Regulations, Title 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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27 ///

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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.

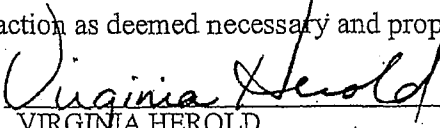
7 24. To determine the degree of discipline, if any, to be imposed on Respondent Gary
8 Sabistina, Complainant alleges that on or about February 9, 2004, in a prior action, the Board of
9 Pharmacy issued Citation Number CI 2002 25172 - b and ordered Respondent to pay fines in the
10 amount of \$1,750.00. 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
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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