

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

In the Matter of the Accusation Against:

Case No. 5130

GARY SABISTINA
P.O. Box 551
Tahoe City, CA 96145

Pharmacist License No. RPH 36143

Respondent.

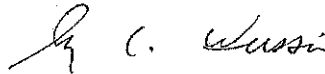
DECISION AND ORDER

The attached Stipulated Surrender of License and 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 September 29, 2014.

It is so ORDERED on September 24, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation/Petition to
11 Revoke Probation Against:

Case No. 5130

12 **GARY PAUL SABISTINA**
13 **P.O. Box 551**
Tahoe City, CA 96145

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Pharmacist License No. RPH 36143**

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs, the parties
19 hereby agree to this Stipulated Surrender of License and Order to be submitted to the Board for
20 approval and adoption as the final disposition of the Accusation and Petition to Revoke Probation.

21 PARTIES

22 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
23 this action solely in her official capacity and is represented herein by Kamala D. Harris, Attorney
24 General of the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

25 2. Gary Paul Sabistina (Respondent) is representing himself in this proceeding and has
26 chosen not to exercise his right to be represented by counsel.

27 3. On or about December 29, 1980, the Board of Pharmacy issued Pharmacist License
28 No. RPH 36143 to Gary Paul Sabistina (Respondent). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation/Petition to Revoke Probation
2 No. 5130 and will expire on February 28, 2015, unless renewed.

3 JURISDICTION

4 4. Accusation/Petition to Revoke Probation No. 5130 was filed before the Board of
5 Pharmacy (Board), Department of Consumer Affairs, and is pending against Respondent. The
6 Accusation/Petition to Revoke Probation and all other statutorily required documents were
7 properly served on Respondent on June 30, 2014. A copy of Accusation/Petition to Revoke
8 Probation No. 5130 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands, the charges and allegations in
11 Accusation/Petition to Revoke Probation No. 5130. Respondent also has carefully read, and
12 understands the effects of, this Stipulated Surrender of License and Order.

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

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

22 CULPABILITY

23 8. Respondent understands and agrees that the charges and allegations in Accusation
24 and Petition to Revoke Probation No. 5130, if proven at a hearing, constitute cause for imposing
25 discipline upon his Pharmacist License Respondent agrees that Complainant could establish a
26 factual basis for the charges in the Accusation/Petition to Revoke Probation. Respondent hereby
27 gives up his right to contest those charges, agrees that cause exists for discipline, and surrenders
28 his Pharmacist License No. RPH 36143 for the Board's formal acceptance.

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as a Pharmacist in California as of the
4 effective date of the Board's Decision and Order.

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

7 4. Respondent may not apply, reapply, or petition for any licensure or registration of the
8 Board for three (3) years from the effective date of the Decision and Order.

9 5. If he ever applies for licensure or petitions 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, including, but not limited to, completion of any and all examination or certification
13 requirements applicable to the license category, and all of the charges and allegations contained in
14 Accusation/Petition to Revoke Probation No. 5130 shall be deemed true, correct and admitted by
15 Respondent when the Board determines whether to grant or deny the application or petition.

16 6. If Respondent should ever apply or reapply for a new license or certification, or
17 petition for reinstatement of a license, by any other health care licensing agency in the State of
18 California, all of the charges and allegations contained in Accusation/Petition to Revoke
19 Probation, No. 5130 shall be deemed true, correct, and admitted by Respondent for the purpose of
20 any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

21 7. Respondent shall pay the Board its costs of investigation and enforcement in the
22 amount of \$2,117.50 prior to issuance of a new or reinstated license. This amount shall be in
23 addition to any amount remaining unpaid from the cost recovery previously ordered against
24 Respondent in Accusation Case No. 3767.

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 8.24.14 

GARY PAUL SABISTINA
Respondent

ENDORSEMENT

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

Dated: 8/28/2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK PACOE
Supervising Deputy Attorney General


JOSHUA A. ROOM
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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4 State Bar No. 214663
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 5130

12 **GARY PAUL SABISTINA**
13 **aka GARY SABASTINA**
14 **P.O. Box 551**
Tahoe City, CA 96145

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 **Pharmacist License No. RPH 36143**

16 Respondent.

17 Complainant alleges:

18
19 PARTIES

20 1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke
21 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,
22 Department of Consumer Affairs.

23 2. On or about December 29, 1980, the Board issued Pharmacist License No. RPH
24 36143 to Gary Paul Sabistina aka Gary Sabastina (Respondent). The License was in effect at all
25 times relevant to the charges herein and will expire on February 28, 2015, unless renewed.

26 3. In a disciplinary action titled "In the Matter of the Accusation Against Tahoe City
27 Plaza Pharmacy, Inc. dba Tahoe City Pharmacy and Gary Sabastina," Case No. 3767, the Board
28 of Pharmacy issued a Decision and Order, effective June 22, 2011, in which Respondent's

1 Pharmacist License was revoked, with revocation stayed in favor of probation for a period of five
2 (5) years with certain terms and conditions of probation. A copy of that Decision and Order is
3 attached as exhibit A and is incorporated by reference.

4 5 JURISDICTION

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

9 5. Section 4011 of the Code provides that the Board shall administer and enforce both
10 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
11 Act [Health & Safety Code, § 11000 et seq.].

12 6. Section 4300(a) of the Code provides that every license issued by the Board may be
13 suspended or revoked.

14 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
15 suspension of a Board-issued license, the placement of a license on a retired status, or the
16 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
17 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
18 licensee or to render a decision suspending or revoking the license.

19 20 STATUTORY AND REGULATORY PROVISIONS

21 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
22 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
23 not be limited to, any of the following:

24 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
25 of a licensee under this chapter.

26 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
27 revoke a license when it finds that the licensee has been convicted of a crime substantially related
28 to the qualifications, functions or duties of the license.

1 10. California Code of Regulations, title 16, section 1770, states:

2 "For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by her license or registration in a
7 manner consistent with the public health, safety, or welfare."
8

9 COST RECOVERY

10 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation of the licensing
12 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
13

14 FIRST CAUSE FOR DISCIPLINE

15 (Conviction of Substantially Related Crime(s))

16 12. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
17 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
18 substantially related crime(s), in that on or about August 6, 2013, in the criminal case *People v.*
19 *Gary P. Sabistina*, Case No. 72-008415 in Placer County Superior Court, Respondent was
20 convicted of violating Penal Code section 243, subdivision (e)(1) (Battery), a misdemeanor. The
21 conviction was entered as follows:

22 a. On or about July 29, 2013, Placer County Sheriff's Department officer(s) were
23 dispatched to a residence in Tahoe Vista, CA shared by Respondent and his wife, in response to a
24 report of domestic violence made by Respondent's wife. Respondent's wife said that Respondent
25 came home drunk and angry, broke several items in or around the house, pinned her down on the
26 bed and slapped her several times. The officer(s) observed damage inside the house. Based on his
27 wife's statements and the evidence they observed, Respondent was arrested. Respondent was
28 also made the subject of an Emergency Protective Order in favor of his wife.

1 b. On or about July 30, 2013, in Case No. 72-008415, Respondent was charged by
2 Misdemeanor Complaint with violating (1) Penal Code section 243, subdivision (e)(1) (Battery),
3 a misdemeanor, and (2) Penal Code section 594, subdivision (b)(2)(A) (Vandalism < \$400).

4 c. On or about August 6, 2013, Respondent pleaded nolo contendere to Count 1,
5 and was convicted. The second count was dismissed, pursuant to a Harvey waiver. Imposition of
6 sentence was suspended and Respondent was placed on conditional probation for three (3) years,
7 on terms and conditions including enrollment in a 52-week Domestic Violence program, required
8 compliance with the Protective Order(s), and payment of fines and fees.

9
10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

12 13. Respondent is subject to discipline under section 4301 of the Code in that, as
13 described in paragraph 12, Respondent engaged in unprofessional conduct.

14
15 JURISDICTION FOR PETITION TO REVOKE PROBATION

16 14. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
17 Department of Consumer Affairs under Probation Term and Condition Number 14 of the
18 Decision and Order in “In the Matter of the Accusation Against Tahoe City Plaza Pharmacy, Inc.
19 dba Tahoe City Pharmacy and Gary Sabastina,” Case No. 3767.

20
21 FACTUAL BACKGROUND

22 15. Pursuant to the Decision and Order of the Board effective June 22, 2011 in Case No.
23 3767, Respondent’s Pharmacist License No RPH 36143 was revoked, with revocation stayed in
24 favor of probation for a period of five (5) years with certain terms and conditions of probation,
25 including that Respondent practice only under the supervision of a licensed pharmacist.

26 16. By a subsequent Decision and Order of the Board issued December 17, 2012 pursuant
27 to Respondent’s Petition for Modification of Penalty filed July 24, 2012, the Board granted the
28 Petition and eliminated the Supervised Practice term included in the original Decision and Order.

1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Obey All Laws and/or Report Conviction)

3 17. At all times after the effective date (June 22, 2011) of the Decision and Order
4 imposing probation on Respondent's License, Term and Condition 1 of that Order required that
5 Respondent, inter alia, obey all state and federal laws and regulations, and that Respondent report
6 to the Board within seventy-two (72) hours any plea of guilty or nolo contendere in any state or
7 federal criminal proceeding, or any criminal conviction, and stated that failure to timely report
8 such occurrence would be considered a violation of probation.

9 18. As described in paragraph 12, Respondent was convicted pursuant to his plea of nolo
10 contendere on or about August 6, 2013. Respondent failed to timely report that conviction to the
11 Board. Respondent's failure to obey all laws, and/or his failure to timely report his criminal
12 conviction to the Board, subjects Respondent's License to revocation.

13
14 SECOND CAUSE TO REVOKE PROBATION

15 (Failure to Timely Submit Quarterly Report(s))

16 19. At all times after the effective date (June 22, 2011) of the Decision and Order
17 imposing probation on Respondent's License, Term and Condition 2 of that Order required that
18 Respondent report to the Board quarterly, on a schedule as directed by the Board or its designee,
19 either in person or in writing, as directed. Respondent was directed to report quarterly, in writing,
20 with the first report due on or before October 10, 2011. Respondent failed to submit quarterly
21 reports as required on April 10, 2012 and July 10, 2013. This failure to timely submit quarterly
22 report(s) subjects Respondent's License to revocation.

23
24 THIRD CAUSE TO REVOKE PROBATION

25 (Failure to Timely Pay Cost Recovery)

26 20. At all times after the effective date (June 22, 2011) of the Decision and Order
27 imposing probation on Respondent's License, Term and Condition 8 of that Order required that
28 Respondent pay the Board \$4,896.00 in cost recovery, on a payment plan approved by the Board.

1 21. On or about August 4, 2011, Respondent was instructed to make eighteen (18)
2 quarterly payments of \$257.00. Based on his failure to find employment, Respondent was
3 granted an initial abeyance of his obligation to make payments of six (6) months. Despite the
4 lapse of that period, Respondent has made no payments toward his cost recovery obligation. His
5 failure to timely make cost recovery payments subjects Respondent's License to revocation.

6
7 FOURTH CAUSE TO REVOKE PROBATION

8 (Failure to Timely Notify Board of Address Change)

9 22. At all times after the effective date (June 22, 2011) of the Decision and Order
10 imposing probation on Respondent's License, Term and Condition 12 of that Order required that
11 Respondent notify the Board in writing within ten (10) days of any change in name, residence
12 address, mailing address, or phone number.

13 23. As described in paragraph 12, on or about July 29, 2013 Respondent was required to
14 leave his residence address. Respondent did not notify the Board of this change in address within
15 ten (10) days. Respondent first notified the Board of his change in address on or about October
16 15, 2013. This failure to timely notify the Board subjects Respondent's License to revocation.

17
18 FIFTH CAUSE TO REVOKE PROBATION

19 (Failure to Cooperate with Board Staff)

20 24. At all times after the effective date (September 5, 2011) of the Decision and Order
21 imposing probation on Respondent's License, Term and Condition 4 of that Order required that
22 Respondent cooperate with the Board's inspection program and with the Board's monitoring and
23 investigation of Respondent's compliance with terms and conditions of his probation.

24 25. Per paragraphs 17-23 above, Respondent failed to timely cooperate on one or more
25 occasions. His failure(s) to cooperate as required subject Respondent's License to revocation.

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1 OTHER MATTERS – EXTENSION OF PROBATION

2 26. At all times after the effective date (September 5, 2011) of the Decision and Order
3 imposing probation on Respondent's License, Term and Condition 14 of that Order required:

4 **14. Violation of Probation.**

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

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

18
19 27. Pursuant to the operation of Term and Condition 14 of the probation order applicable
20 to Respondent's License, probation is automatically extended by the filing hereof, and/or by
21 Respondent's failure to comply with the terms and conditions of probation, until such time as this
22 Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken
23 other action as deemed appropriate to treat the failure to comply as a violation of probation.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
26 Accusation and Petition to Revoke Probation, and that following the hearing, the Board of
27 Pharmacy issue a decision:

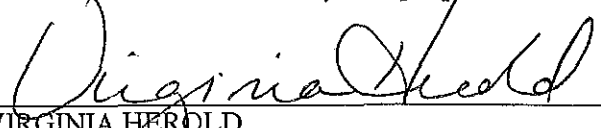
- 28 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3767
and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No.
RPH 36143 issued to Gary Paul Sabistina aka Gary Sabastina (Respondent);
2. Revoking or suspending Pharmacist License No. RPH 36143, issued to Respondent;
3. Ordering Respondent to pay the Board the reasonable costs of the investigation and
enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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4. Taking such other and further action as is deemed necessary and proper.

DATED:

6/5/14



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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3767

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

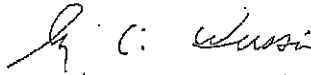
The attached Stipulated Settlement and Disciplinary Order, as to Respondent Gary Sabastina, RPH 36143, only, is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

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

1 KAMALA D. HARRIS
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
Sacramento, CA 94244-2550
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.,**
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.

28 ///

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.

27 ///

28 ///

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
28

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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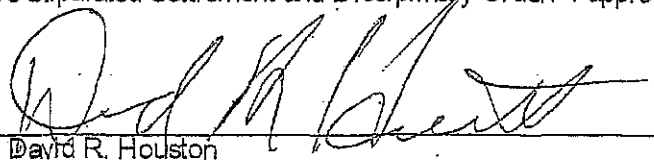
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ACCEPTANCE

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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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
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5333
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **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**
559 N. Lake Blvd.
14 Tahoe City, CA 96145

ACCUSATION

15 Pharmacy Permit No. PHY 43340,

16 and

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

19 Pharmacist License No. RPH 36143

20 Respondents.

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.

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

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