

BEFORE THE  
BOARD OF PHARMACY  
STATE OF CALIFORNIA

In the Matter of the Petition for Early  
Termination of Probation of:

PARK CENTER PHARMACY, INC., a.k.a.  
MEDICAL CENTER PHARMACY  
(CHULA VISTA)  
340 4<sup>th</sup> Avenue  
Chula Vista, CA 91910

License PHY 35051

Petitioner.

Case No. 2406

OAH No. L2005010298

In the Matter of the Petition for Early  
Termination of Probation of:

JOHN GRASELA  
4767 Ocean Boulevard, #605  
San Diego, CA 92109

License RPH 32430

Petitioner.

Case No. 2406

OAH No. L2004120431

**DECISION**

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

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

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

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

### FACTUAL FINDINGS

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

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

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

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

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

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

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

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

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

### LEGAL CONCLUSIONS

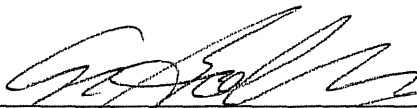
Pursuant to the foregoing factual findings, the Board concludes that cause was not established pursuant to Business and Professions Code section 4309 or Government Code section 11522 to grant the Petition.

### ORDER

The Petition is denied.

DATED: March 30, 2005

EFFECTIVE DATE: March 30, 2005



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Stanley Goldenberg, President  
Board of Pharmacy  
State of California

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHERRY LEDAKIS, State Bar No. 131767  
Deputy Attorney General  
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7 Attorneys for Complainant  
8

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

11 In the Matter of the Accusation Against:

Case No. 2406

12 **Park Medical Center Pharmacy, Inc.,**  
13 **a.k.a. Medical Center Pharmacy (Chula**  
14 **Vista)**

OAH No. L2002060123

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 License No. PHY 35051

16 **Park Medical Center Pharmacy, Inc.,**  
17 **a.k.a. Medical Center Pharmacy, (San Diego)**

18 License No. PHY 44103

19 **John Carl Grasela**

20 License No. RPH 32430

21 **Joseph Grasela**

22 License No. RPH 40868

23 **John (Jack) Donlon, Jr.**

24 License No. 45064

25 **Phillip Cherlin**

26 License No. RPH 24623

Respondents.

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

3 PARTIES

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

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

13 3. On or about July 15, 1988, the Board of Pharmacy issued Original  
14 Pharmacy Permit No. PHY 35051 to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center  
15 Pharmacy, Chula Vista ("Medical Center Pharmacy, Chula Vista). The permit was in full force  
16 and effect at all times relevant to the charges brought in Accusation No. 2406 and will expire on  
17 July 1, 2003, unless renewed.

18 4. On or about September 5, 1978, the Board of Pharmacy issued Original  
19 Pharmacist License No. RPH 32430, to John Carl Grasela, (respondent John Grasela). The  
20 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
21 and said license expired on June 30, 2002.

22 5. On or about March 31, 1987, the Board of Pharmacy issued Original  
23 Pharmacist License No. RPH 40868 to Joseph Grasela, (respondent Joseph Grasela). The  
24 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
25 and will expire on November 30, 2002, unless renewed.

26 6. On or about March 5, 1992, the Board of Pharmacy issued Original  
27 Pharmacist License No. RPH 45064 to John Ernest Donlon, (respondent Donlon). The

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

3 7. On or about April 13, 1999, the Board issued Original Pharmacy Permit  
4 Number PHY 44103, to Park Medical Center Pharmacy, Inc., a.k.a. Medical Center Pharmacy,  
5 San Diego (respondent Medical Center Pharmacy, San Diego). Said license was in full force and  
6 effect at all times relevant to the charges brought herein and will expire on April 1, 2003, unless  
7 renewed.

8 8. On or about August 12, 1966, the Board of Pharmacy issued Original  
9 Pharmacist License No. RPH 24623 to Philip Cherlin, Pharmacist-in-Charge of Medical Center  
10 Pharmacy, San Diego (respondent Cherlin). The Pharmacist License was in full force and effect  
11 at all times relevant to the charges brought herein and will expire on October 31, 2003, unless  
12 renewed.

### 13 JURISDICTION

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

### 20 ADVISEMENT AND WAIVERS

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

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

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

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

6 CULPABILITY

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

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

13 ISSUING OF PERMITS

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

21 WITHDRAWAL OF ACCUSATIONS

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

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CONTINGENCY

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

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

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

**DISCIPLINARY ORDER AGAINST JOHN CARL GASELA**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **11. License Surrender while on Probation/Suspension.** Following the  
20 effective date of this decision, should respondent John Grasele cease practice due to retirement  
21 or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent  
22 John Grasele may tender his license to the Board for surrender. The Board shall have the  
23 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,  
25 respondent John Grasele will no longer be subject to the terms and conditions of probation.

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

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

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

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

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

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

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

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

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

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

10 **DISCIPLINARY ORDER AGAINST MEDICAL CENTER**  
11 **PHARMACY, CHULA VISTA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

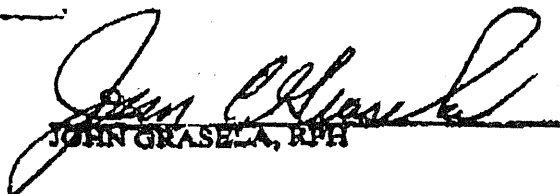
6 11. **Violation of Probation.** If respondent violates probation in any  
7 respect, the board, after giving respondent notice and an opportunity to be heard, may revoke  
8 probation and carry out the disciplinary order which was stayed. If a petition to revoke  
9 probation or an accusation is filed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

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

16 **ACCEPTANCE**

17 We have carefully read the above Stipulated Settlement and Disciplinary Order  
18 and have fully discussed it with our attorney, Shari Weintraub, Esq. We understand the  
19 stipulation and the effect it will have on our Original Pharmacist Licenses, and Pharmacy  
20 Permits. We enter into this Stipulated Settlement and Disciplinary Order voluntarily,  
21 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of  
22 Pharmacy.

23 DATED: 7/30/02

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25 JOHN GRASEKA, RPH  
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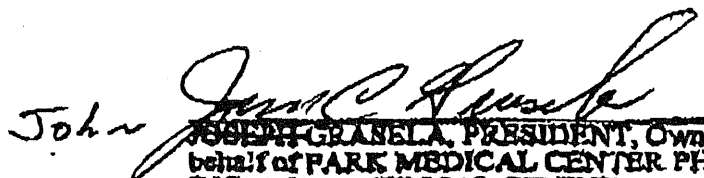


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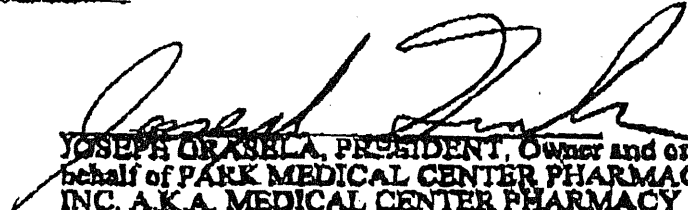
DATED: 7/30/02

  
JOSEPH GRASELA, RPH

DATED: 7/30/02

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

DATED: 7/30/02

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

DATED: \_\_\_\_\_

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

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Jul 30 02 12:23p

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JOSEPH GRASELA, RPH

6 DATED: \_\_\_\_\_

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

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14 DATED: \_\_\_\_\_

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

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21 DATED: 7/30/02

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

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DATED: July 30, 2002

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

I concur in this Stipulated Settlement and Disciplinary Order.

DATED: \_\_\_\_\_

\_\_\_\_\_  
SHARI WEINTRAUB, ESQ.  
Attorney for Respondents

**ENDORSEMENT**

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

DATED: \_\_\_\_\_

BILL LOCKYER, Attorney General  
of the State of California

\_\_\_\_\_  
SHERRY LEDAKIS  
Deputy Attorney General  
Attorneys for Complainant

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DATED: \_\_\_\_\_

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

I concur in this Stipulated Settlement and Disciplinary Order.

DATED: 30 July 2002

Shari J. Weintraub  
SHARI WEINTRAUB, ESQ.  
Attorney for Respondents

ENDORSEMENT

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

DATED: August 1, 2002

BILL LOCKYER, Attorney General  
of the State of California

Sherry Ledakis  
SHERRY LEDAKIS  
Deputy Attorney General  
Attorneys for Complainant

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

In the Matter of the Accusation Against:

**Park Medical Center Pharmacy, Inc.,  
a.k.a. Medical Center Pharmacy (Chula  
Vista)**

License No. PHY 35051

**Park Medical Center Pharmacy, Inc.,  
a.k.a. Medical Center Pharmacy, (San  
Diego)**

License No. PHY 44103

**John Carl Grasela**

License No. RPH 32430

**Joseph Grasela**

License No. RPH 40868

**John (Jack) Donlon, Jr.**

License No. 45064

**Phillip Cherlin**

License No. RPH 24623

Respondents.

Case No. 2406

OAH No. L2002060123

**DECISION AND ORDER**

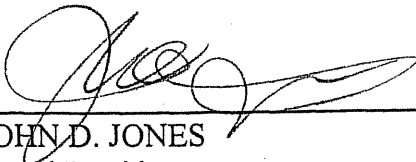
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 13, 2002.

It is so ORDERED September 13, 2002.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By: \_\_\_\_\_

  
JOHN D. JONES  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHERRY LEDAKIS, State Bar No. 131767  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, CA 92101

5 P.O. Box 85266  
San Diego, CA 92186-5266  
6 Telephone: (619) 645-2078  
Facsimile: (619) 645-2061

7 Attorneys for Complainant  
8

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

12 In the Matter of the Accusation Against:

Case No. 2406

13 **Park Medical Center Pharmacy, Inc.**  
14 **a.k.a., Medical Center Pharmacy (Chula**  
**Vista)**

**A C C U S A T I O N**

15 License No. PHY 35051

16 **Park Medical Center Pharmacy, Inc.**  
17 **a.k.a. Medical Center Pharmacy, (San Diego)**

18 License No. PHY 44103

19 **John Carl Grasela**

20 License No. RPH 32430

21 **Joseph Grasela**

22 License No. RPH 40868

23 **John (Jack) Donlon, Jr.**

24 License No. 45064

25 **Phillip Cherlin**

26 License No. RPH 24623

27 Respondents.  
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1 Complainant alleges:

2 PARTIES

3 1. Patricia F. Harris (Complainant) brings this Accusation solely in her  
4 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
5 Affairs.

6 2. On or about July 15, 1988, the Board of Pharmacy issued Original  
7 Pharmacy Permit No. PHY 35051 to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center  
8 Pharmacy (Respondent Medical Center Pharmacy, Chula Vista). The Pharmacy License was in  
9 full force and effect at all times relevant to the charges brought herein and will expire on July 1,  
10 2002, unless renewed.

11 3. On or about September 5, 1978, the Board of Pharmacy issued Original  
12 Pharmacist License No. RPH 32430, to John Carl Grasela, (respondent John Grasela). The  
13 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
14 and said license will expire on June 30, 2002, unless renewed.

15 4. On or about March 5, 1992, the Board of Pharmacy issued Original  
16 Pharmacist License No. RPH 45064 to John E. Donlon, Pharmacist-in-Charge of Medical Center  
17 Pharmacy, Chula Vista (respondent Donlon). The Pharmacist License was in full force and  
18 effect at all times relevant to the charges brought herein and will expire on September 30, 2003,  
19 unless renewed.

20 5. On or about March 31, 1987, the Board of Pharmacy issued Original  
21 Pharmacist License No. RPH 40868 to Joseph Grasela, President (respondent Joseph Grasela).  
22 The Pharmacist License was in full force and effect at all times relevant to the charges brought  
23 herein and will expire on November 30, 2002, unless renewed.

24 6. On or about April 13, 1999, the Board issued Original Pharmacy Permit  
25 Number PHY 44103, to Park Medical Center Pharmacy, Inc., a.k.a. Medical Center Pharmacy  
26 (respondent Medical Center Pharmacy, San Diego). Said license was in full force and effect at  
27 all times relevant to the charges brought herein and will expire on April 1, 2003, unless renewed.

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7. On or about August 12, 1966, the Board of Pharmacy issued Original Pharmacist License No. RPH 40868 to Philip Cherlin, Pharmacist-in-Charge of Medical Center Pharmacy, San Diego (respondent Cherlin). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2003, unless renewed.

JURISDICTION

8. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code).

A. Section 4301 of the Code states:

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

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

...

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

...

B. Section 4076 of the Code states:

(a) A pharmacist shall not dispense any prescription except in a container that meets the requirements of state and federal law and is correctly labeled with all of the following:

...

(6) The name and address of the pharmacy, and prescription number or other means of identifying the prescription.

...

C. Section 4110(a) of the Code states:



1 (a) No person shall conduct a pharmacy in the State of California unless  
2 he or she has obtained a license from the board. A license shall be required for each  
3 pharmacy owned or operated by a specific person. A separate license shall be required  
4 for each of the premises of any person operating a pharmacy in more than one location.  
5 The license shall be renewed annually. The board may, by regulation, determine the  
6 circumstances under which a license may be transferred.

7 D. Section 4306.5 of the Code states:

8 Unprofessional conduct for a pharmacist may include acts or omissions  
9 that involve, in whole or in part, the exercise of his or her education, training, or  
10 experience as a pharmacist, whether or not the act or omission arises in the course of the  
11 practice of pharmacy or the ownership, management, administration, or operation of a  
12 pharmacy or other entity licensed by the board.

13 E. Section 4081 of the Code states:

14 (a) All records of manufacturer and of sale, acquisition, or disposition of  
15 dangerous drugs or dangerous devices shall be at all times during business hours open to  
16 inspection by authorized officers of the law, and shall be preserved for at least three years  
17 from the date of making. A current inventory shall be kept by every manufacturer,  
18 wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist,  
19 veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently  
20 valid and unrevoked certificate, license, permit, registration, or exemption under Division  
21 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
22 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code  
23 who maintains a stock of dangerous drugs or dangerous devices.

24 (b) The owner, officer, and partner of any pharmacy, wholesaler, or  
25 veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-  
26 charge or exemptee for maintaining the records and inventory described in this section.

27 (c) The pharmacist-in-charge or exemptee shall not be criminally  
28 responsible for acts of the owner, officer, partner, or employee that violate this section  
and of which the pharmacist-in-charge or exemptee had no knowledge, or in which he or  
she did not knowingly participate.

...

F. Section 4105 of the Code states:

(a) All records or other documentation of the acquisition and disposition  
of dangerous drugs and dangerous devices by any entity licensed by the board shall be  
retained on the licensed premises in a readily retrievable form.

(b) The licensee may remove the original records or documentation from  
the licensed premises on a temporary basis for license-related purposes. However, a  
duplicate set of those records or other documentation shall be retained on the licensed  
premises.

(c) The records required by this section shall be retained on the licensed  
premises for a period of three years from the date of making.

1 (d) Any records that are maintained electronically shall be maintained so  
2 that the pharmacist-in-charge, the pharmacist on duty if the pharmacist-in-charge is not  
3 on duty, or, in the case of a veterinary food-animal drug retailer or wholesaler, the  
4 exemptee, shall, at all times during which the licensed premises are open for business, be  
5 able to produce a hard copy and electronic copy of all records of acquisition or  
6 disposition or other drug or dispensing-related records maintained electronically.

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10 G. Section 4332 of the Code states:

11 Any person who fails, neglects, or refuses to maintain the records required  
12 by Section 4081 or who, when called upon by an authorized officer or a member of the  
13 board, fails, neglects, or refuses to produce or provide the records within a reasonable  
14 time, or who willfully produces or furnishes records that are false, is guilty of a  
15 misdemeanor.

16 H. Section 4059(a) of the Code states:

17 "(a) No person shall furnish any dangerous drug, except upon the  
18 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. No person  
19 shall furnish any dangerous device, except upon the prescription of a physician, dentist,  
20 podiatrist, optometrist, or veterinarian.

21 I. Section 4115 states:

22 (a) Notwithstanding any other provision of law, a pharmacy technician  
23 may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only  
24 while assisting, and while under the direct supervision and control of, a pharmacist.

25 (b) This section does not authorize the performance of any tasks specified  
26 in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this  
27 section authorize the use of a pharmacy technician to perform tasks specified in  
28 subdivision (a) except under the direct supervision and control of a pharmacist.

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31 J. Section 4116 of the Code states:

32 (a) No person other than a pharmacist, an intern pharmacist, an authorized  
33 officer of the law, or a person authorized to prescribe shall be permitted in that area,  
34 place, or premises described in the license issued by the board wherein controlled  
35 substances or dangerous drugs or dangerous devices are stored, possessed, prepared,  
36 manufactured, derived, compounded, dispensed, or repackaged. However, a pharmacist  
37 shall be responsible for an individual who enters the pharmacy for the purposes of  
38 receiving consultation from the pharmacist or performing clerical, inventory control,  
39 housekeeping, delivery, maintenance, or similar functions relating to the pharmacy if the  
40 pharmacist remains present in the pharmacy during all times as the authorized individual  
41 is present.

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K. Title 16 of the Code of Regulations section 1793.7 states:

(a) Any pharmacy which employs a pharmacy technician shall do so in compliance with applicable federal and state laws and regulations governing pharmacy.

(b) Any function performed by a pharmacy technician in connection with the dispensing of a prescription, including repackaging from bulk and storage of pharmaceuticals, must be verified and documented in writing by a pharmacist. Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, the pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

(c) Pharmacy technicians must work under the direct supervision of a registered pharmacist and in such a relationship that the supervising pharmacist is on the premises at all times and is fully aware of all activities involved in the preparation and dispensing of medications, including the maintenance of appropriate records.

Except for the preparation of prescriptions for an inpatient of a hospital and for an inmate of a correctional facility, a pharmacy technician may perform the duties, as specified in subdivision 1793.2, only under the immediate, personal supervision and control of a registered pharmacist and within the pharmacist's view.

...

(f) Except as otherwise provided herein, the ratio of pharmacists to pharmacy technicians performing the duties specified in subsection 1793.2 shall not be less than one pharmacist on duty for each pharmacy technician on duty. For the preparation of a prescription for an inpatient of a licensed health facility and for a patient of a licensed home health agency, the ratio shall not be less than one pharmacist on duty for a total of two pharmacy technicians on duty. Pursuant to Business and Professions Code section 4008.5(g)(1), these ratios shall not apply to the preparation of a prescription for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

L. Title 16 of the Code of Regulations section 1714(d) states:

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

M. Title 16 of the Code of Regulations section 1714(e) states:

(e) The pharmacy owner, the building owner or manager, or a family member of a pharmacist owner (but not more than one of the aforementioned) may possess a key to the pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key to a pharmacist or 2) providing access in case of emergency. An emergency would include fire, flood or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that the pharmacist may readily determine whether the key has been removed from the container.

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N. Title 16 of the Code of Regulations section 1717(B)(1) states:

(b) In addition to the requirements of Section 4036, Business and Professions Code, the following information shall be maintained for each prescription on file and shall be readily retrievable:

(1) The date dispensed, and the name or initials of the dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be initialed by the preceptor before they are dispensed.

O. Title 16 of the Code of Regulations section 1707.1 states:

(a) A pharmacy shall maintain medication profiles on all patients who have prescriptions filled in that pharmacy except when the pharmacist has reasonable belief that the patient will not continue to obtain prescription medications from that pharmacy.

(1) A patient medication record shall be maintained in an automated data processing or manual record mode such that the following information is readily retrievable during the pharmacy's normal operating hours.

(A) The patient's full name and address, telephone number, date of birth (or age) and gender;

(B) For each prescription dispensed by the pharmacy:

- 1. The name, strength, dosage form, route of administration, if other than oral, quantity and directions for use of any drug dispensed;
- 2. The prescriber's name and where appropriate, license number, DEA registration number or other unique identifier;
- 3. The date on which a drug was dispensed or refilled;
- 4. The prescription number for each prescription; and
- 5. The information required by section 1717.

(C) Any of the following which may relate to drug therapy: patient allergies, idiosyncracies, current medications and relevant prior medications including nonprescription medications and relevant devices, or medical conditions which are communicated by the patient or the patient's agent.

(D) Any other information which the pharmacist, in his or her professional judgment, deems appropriate.

(2) The patient medication record shall be maintained for at least one year from the date when the last prescription was filled.

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or

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1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3           10.     **DRUG CLASSIFICATIONS**

4                   A. Infergen (Interferon Alfacon-1) is a dangerous drug as defined in  
5                   Section 4022 of the Business and Professions Code and is an immunomodulator  
6                   (recombinant non-naturally occurring type-1interferon) used to treat chronic hepatitis C  
7                   infections.

8                   B. Paxil (Paroxetine) is a dangerous drug as defined in Section 4022 of  
9                   the Business and Profession Code and is an antidepressant used to treat depression.

10                  C. Rebetron (a combination of Intron A and Rebetol [Ribavirin]) is a  
11                  dangerous drug as defined in Section 4022 of the Business and Professions Code and is  
12                  an immunomodulator. It is used in the treatment of chronic hepatitis C in patients with  
13                  compensated liver disease that have relapsed following alpha interferon monotherapy.

14                  D. Virazole (Ribavirin) is a dangerous drug as defined in Section 4022 of  
15                  the Business and Professions Code and is an antiviral medication used to treat severe  
16                  lower respiratory tract infections due to respiratory syncytial virus (RSV).

17                  E. Wellbutrin SR (bupropion sustained release) is a dangerous drug as  
18                  defined in Section 4022 of the Business and Professions Code and is an antidepressant  
19                  used to treat depression.

20           **FACTS CONCERNING MEDICAL CENTER PHARMACY, CHULA VISTA**

21                   11.     Respondent Park Medical Center Pharmacy, Inc. a.k.a. Medical Center  
22     Pharmacy ("respondent Medical Center Pharmacy, Chula Vista "), John Donlon ("respondent  
23     Donlon"), John Grasela ("respondent John Grasela"), and Joseph Grasela ("respondent Joseph  
24     Grasela") are subject to disciplinary action based upon the following facts:

25                   A. Respondent Donlon is and was at all relevant times the Pharmacist-in-  
26     Charge of respondent Medical Center Pharmacy, Chula Vista. Respondents John and  
27     Joseph Grasela are and were at all relevant times corporate officers and owners of  
28     respondent Medical Center Pharmacy, Chula Vista.

1 B. In or about 1990, respondent John Grasela was diagnosed with  
2 Hepatitis C.

3 C. In July of 1995, respondent John Grasela was treated with Interferon.

4 D. On August 8, 1996, respondent John Grasela sought medical treatment  
5 from P.P., M.D. for Hepatitis C. In his written consultation report, Dr. P.P. stated that  
6 respondent John Grasela was in to see him to discuss alternative treatments for Hepatitis  
7 C such as Ribavirin. Dr. P.P. concluded that respondent John Grasela was not a  
8 candidate for Ribavirin trial at that time. Nevertheless, the patient himself obtained  
9 Ribavirin from Mexico or Europe and tried combined treatment with Ribavirin and  
10 Interferon out of protocol. The risks of doing this were explained to respondent John  
11 Grasela along with the need for monitoring of his complete blood count.

12 E. Between November of 1997 and June of 1998, respondent John  
13 Grasela's insurance company, Blue Shield of California ("Blue Shield") received  
14 pharmacy claims from respondent Medical Center Pharmacy, Chula Vista for Ribavirin  
15 and Infergen, for respondent John Grasela.

16 F. Blue Shield investigated the claims for payment from respondent John  
17 Grasela. In their investigation they requested a copy of a prescription for Ribavirin.  
18 Respondent Donlon sent them a copy of a telephone order for Ribavirin, 400 mg., #100 ½  
19 BID with 6 refills for respondent John Grasela.

20 G. Dr. P.P. never prescribed Ribavirin for respondent John Grasela.

21 H. In April of 1999, respondent John Grasela and his wife were  
22 mistakenly paid \$13,775.15 by Blue Shield. Blue Shield's physician consultant approved  
23 drugs for respondent John Grasela in accord with FDA policy. Ribavirin in combination  
24 with Interferon alfa-2b distributed as Rebetron in the United States is FDA approved. It  
25 is a two-week treatment kit. Respondents' pharmacy drug bills for Ribavirin and  
26 Infergen were misinterpreted by the Blue Shield claims processor and assumed to be for  
27 the approved FDA plan. Infergen is another form of Interferon but is not Interferon alfa-  
28 2b.

1 I. In or about February of 2000, Blue Shield received a copy of  
2 respondent John Grasela's medical chart from Dr. P.P.'s office. Blue Shield compared it  
3 with the copy of the same medical record received from respondent John Grasela. There  
4 were significant differences. The copy received from respondent John Grasela had a  
5 different formatting style, the typeface was different and it did not contain key  
6 information that was contained in the copy sent by the medical office. The deleted  
7 portion of the medical record which was contained in Dr. P.P.'s copy of the chart  
8 contained the following information:

9 " . . . In review, the patient is a compound pharmacist and has the ability to access  
10 his own medications and he creates his own regime of therapy. Although I do not  
11 condone his current treatment with combination therapy, I have agreed to monitor  
his laboratory tests and I have again warned him about possible adverse effects of  
the treatment."

12 J. The bills submitted to Blue Shield by respondent Medical Center  
13 Pharmacy, Chula Vista had been coded to permit coverage for medication that was not  
14 covered. The NDC code used permitted payment for Ribavirin, when in fact Ribavirin is  
15 not and has never been FDA approved for distribution in the United States. Medications  
16 that are not FDA approved are not covered by Blue Shield.

17 K. On February 17, 2000, respondent John Grasela's insurance coverage  
18 with Blue Shield was terminated for fraud and deception retroactive to December 1,  
19 1998.

20 L. On May 9, 2000, Inspector Hokana, inspected respondent Medical  
21 Center Pharmacy, Chula Vista. He observed a computer printer containing labels with  
22 the name "World Share Medical Center Pharmacy," and nearby he also found labels for  
23 Medical Center Pharmacy. Advertising posted on the wall was in the name of World  
24 Share Pharmacy. The Retail Pharmacy Permit is in the name of and issued to Medical  
25 Center Pharmacy.

26 M. When asked to do so by the Inspector, respondent Donlon was unable  
27 to locate a complete biennial DEA inventory for the prior year. Respondent Donlon was  
28 also asked for specific prescriptions which he stated were not located in the pharmacy.

1 N. On May 11, 2000 during another inspection by Inspector Hokana, he  
2 found prescription containers filed with two different pharmacy names on the labels. A  
3 sign with the pharmacy's name was posted at the pharmacy's prior location, which was  
4 no longer respondent Medical Center Pharmacy, Chula Vista.

5 O. During the May 11, 2000 inspection, the Inspector saw four pharmacy  
6 technicians, and seven clerks working at Medical Center Pharmacy, Chula Vista. A  
7 technician filling prescriptions and a technician entering prescriptions were not within the  
8 view and immediate supervision of a pharmacist. Respondent Joseph Grasela said one of  
9 the technicians and one of the clerks for World Share Pharmacy entered prescriptions for  
10 only a couple of hours a day. The World Share Pharmacy technician and clerk were not  
11 within the view and immediate supervision of a pharmacist.

12 P. Also, during this same inspection the Inspector reviewed several  
13 prescriptions given to him for respondent John Grasela. He observed that four  
14 prescriptions were all on one document, but that only one prescription appeared on the  
15 patient profile for respondent John Grasela. Respondent Donlon said there were two  
16 patient profiles for respondent John Grasela and the Inspector was provided with the  
17 profile for "John O. Grasela" from January 1, 1996 to May 11, 2000.

18 Q. Respondent Donlon was asked for the DEA Inventory from May 31,  
19 1999, which he was unable to locate, so he completed one on May 10, 2000.

20 R. In May of 1999, respondent Medical Center Pharmacy, Chula Vista did  
21 not have a waiver from the Board to maintain records of drug dispositions off of the  
22 licensed premises.

23 S. On June 13, 2000, the Inspector spoke to respondent John Grasela  
24 about obtaining missing prescriptions that pertained to his medical treatment.  
25 Respondent John Grasela told the inspector that he took his physician's acceptance of the  
26 medication plan as a verbal order for the medication, including Ribavirin. He also told  
27 the inspector he obtained the Ribavirin powder from Tijuana, Mexico before it was  
28 available in the United States and filled or compounded all of his own prescriptions.



1 Respondent John Grasela told the inspector that he probably forgot to transcribe the  
2 verbal orders from the physician or they were misfiled, but that he did not want to take  
3 the time to try and locate them.

4 T. Respondent John Grasela also told the inspector that the medical  
5 device business was part of Medical Center Pharmacy and that respondent Donlon was  
6 responsible for that area.

7 U. On May 20, 2000, the Inspector spoke to a nurse manager for Dr. P.P.  
8 and sent her a summary of the prescriptions dispensed in Dr. P.P.'s name for respondent  
9 John Grasela from Medical Center Pharmacy, Chula Vista and asked her to verify that Dr.  
10 P.P. in fact prescribed the medications.

11 V. On June 9, 2000, the Inspector received a reply from Dr. P.P.  
12 concerning the prescriptions he had authorized for respondent John Grasela. Dr. P.P.  
13 carefully reviewed respondent's medical chart and verified he had authorized Infergen,  
14 Paxil, Wellbutrin and prescriptions for Intron-A through September of 1997. He also  
15 stated that respondent "John Grasela obtained Ribavirin, which was not yet FDA  
16 approved in the United States, and compounded the chemical himself as he was a  
17 compound pharmacist. No prescription for Ribavirin was ever written for Mr. Grasela."  
18 Further, "[M]y records indicate that Mr. Grasela had informed us of his Ribavirin use and  
19 that he obtained it on his own."

20 W. Dr. P.P. did not authorize twelve prescriptions for 1200 Ribavirin  
21 tablets between August 21, 1997 and January 17, 2000.

22 **FIRST CAUSE OF ACTION AGAINST JOHN GASELA,**  
23 **JOSEPH GASELA, JOHN DONLON AND**  
24 **MEDICAL CENTER PHARMACY, CHULA VISTA**  
25 **(Fraud, Dishonesty, Deceit or Corruption)**

26 12. Respondents John Grasela, Joseph Grasela, John Donlon and Medical Center  
27 Pharmacy, Chula Vista are subject to disciplinary action under section 4301(f) of the Code, in  
28 that they committed unprofessional conduct by committing acts involving moral turpitude,  
dishonesty, fraud, deceit, or corruption, as follows:

1 A. Paragraphs 11A, through and including 11W, above, are hereby  
2 realleged and incorporated by reference as if fully set forth herein;

3 B. Respondents dispensed twelve prescriptions for Ribavirin  
4 not authorized by a prescriber; and

5 C. Respondents submitted fraudulent claims to Blue Shield for  
6 payment of unauthorized prescriptions of Ribavirin.

7 **SECOND CAUSE OF ACTION AGAINST JOHN GASELA,**  
8 **JOSEPH GASELA, JOHN DONLON**  
9 **AND MEDICAL CENTER PHARMACY, CHULA VISTA**  
10 **(Dispensing of Dangerous Drug)**

11 13. Respondents are further subject to disciplinary action under section 4059(a)  
12 of the Code, in that they dispensed a dangerous drug without a prescription, as follows:

13 A. Paragraphs 11A, through and including 11W, above, are hereby  
14 realleged and incorporated by reference as if fully set forth herein; and

15 B. Respondents dispensed twelve prescriptions for Ribavirin not  
16 authorized by a prescriber.

17 **THIRD CAUSE OF ACTION AGAINST JOHN GASELA,**  
18 **JOSEPH GASELA, JOHN DONLON, AND**  
19 **MEDICAL CENTER PHARMACY, CHULA VISTA**  
20 **(Compounding and Distributing Ribavirin without a Prescription)**

21 14. Respondents are further subject to disciplinary action under section 4306.5 of  
22 the Code, in that they compounded and distributed a dangerous drug without a prescription, as  
23 follows:

24 A. Paragraphs 11A, through and including 11W, above, are hereby  
25 realleged and incorporated by reference as if fully set forth herein; and

26 B. Respondents committed unprofessional conduct by exercising their  
27 education, training, or experience as pharmacists to acquire, compound and dispense  
28 Ribavirin without an authorized prescription.

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1                                   **FOURTH CAUSE OF ACTION AGAINST JOHN GRASELA,**  
2                                   **JOHN DONLON, JOSEPH GRASELA**  
3                                   **AND MEDICAL CENTER PHARMACY, CHULA VISTA**  
4                                   **(Failed to Maintain Disposition Records Open to Inspection)**

4                   15. Respondents are further subject to disciplinary action under sections 4081 and  
5 4105 of the Code, in that they failed to maintain all records of manufacturer, sale, acquisition, or  
6 disposition of dangerous drugs or dangerous devices at all times during business hours open to  
7 inspection by authorized officers of the law, as follows:

8                                   A. Paragraphs 11A, through and including 11W, above, are hereby  
9 realleged and incorporated by reference as if fully set forth herein;

10                                  B. Respondents failed to have disposition records of dangerous drugs  
11 open for inspection by authorized officers of the law; and

12                                  C. Respondents failed to have all records of disposition of dangerous  
13 drugs maintained on the licensed premises.

14                                   **FIFTH CAUSE OF ACTION AGAINST JOHN GRASELA,**  
15                                   **JOSEPH GRASELA, JOHN DONLON**  
16                                   **AND MEDICAL CENTER PHARMACY, CHULA VISTA**  
17                                   **(Failed to Produce Records)**

17                   16. Respondents are further subject to disciplinary action under section 4332 of  
18 the Code, in that they failed to produce the records required by Section 4081 when requested to  
19 do so by an authorized officer or a member of the board, as follows:

20                                  A. Paragraphs 11A, through and including 11W, above, are hereby  
21 realleged and incorporated by reference as if fully set forth herein; and

22                                  B. Respondents failed to produce the records required by Section 4081  
23 when required to do so by an authorized officer or a member of the Board, or they  
24 produced records which were false.

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1                                    **SIXTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
2                                    **JOHN DONLON, JOSEPH GASELA AND**  
3                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**

4                                    17. Respondents are further subject to disciplinary action under Title 16, section  
5 patient profile, as follows:

6                                    A. Paragraphs 11A, through and including 11W, above, are hereby  
7 realleged and incorporated by reference as if fully set forth herein; and

8                                    B. Respondents failed to maintain an appropriate medication profile on  
9 respondent John Gasela.

10                                   **SEVENTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
11                                   **JOHN DONLON, JOSEPH GASELA AND**  
12                                   **MEDICAL CENTER PHARMACY, CHULA VISTA**  
13                                   **(Use of Two Different Names on Pharmacy Labels)**

14                                   18. Respondents are subject to disciplinary action under section 4076 of the  
15 Code, in that they used two different names for the pharmacy on pharmacy labels, as follows:

16                                   A. Paragraphs 11A, through and including 11W, above, are hereby  
17 realleged and incorporated by reference as if fully set forth herein; and

18                                   B. Respondents used two different names for the pharmacy on  
19 prescription labels.

20                                   **EIGHTH CAUSE OF ACTION AGAINST JOHN GASELA,**  
21                                   **JOHN DONLON, JOSEPH GASELA AND**  
22                                   **MEDICAL CENTER PHARMACY, CHULA VISTA**  
23                                   **(Use of Two Pharmacy Names at One Location)**

24                                   19. Respondents are subject to disciplinary action under section 4110(a) of the  
25 Code, in that two pharmacy names were used at one location, as follows:

26                                   A. Paragraphs 11A, through and including 11W, above, are hereby  
27 realleged and incorporated by reference as if fully set forth herein; and

28                                   B. Respondents used two different names for the pharmacy on signs at the  
pharmacy location.

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1                                    **NINTH CAUSE OF ACTION AGAINST JOHN GRASELA,**  
2                                    **JOHN DONLON, JOSEPH GRASELA AND**  
3                                    **MEDICAL CENTER PHARMACY, CHULA VISTA**  
4                                    **(Use of Education-To Use Two Pharmacy Names at One Location)**

5                                    20. Respondents are subject to disciplinary action under section 4306.5 of the  
6 Code, in that they used their education, training and experience to use two pharmacy names at  
7 one location, as follows:

8                                    A. Paragraphs 11A, through and including 11W, above, are hereby  
9 realleged and incorporated by reference as if fully set forth herein; and

10                                    B. Respondents used their education, training and experience to use two  
11 different names for the pharmacy on prescription labels, and on signs at the pharmacy  
12 location.

13                                    **FACTS CONCERNING MEDICAL CENTER PHARMACY, SAN DIEGO**

14                                    21. Respondents Park Medical Center Pharmacy, Inc. a.k.a. Medical Center  
15 Pharmacy, ("respondent Medical Center Pharmacy, San Diego"), Philip Cherlin ("respondent  
16 Cherlin"), John Grasela ("respondent John Grasela"), and Joseph Grasela ("respondent Joseph  
17 Grasela") are subject to disciplinary action based upon the following facts:

18                                    A. Respondent Cherlin is and was at all relevant times the Pharmacist-in-  
19 Charge of respondent Medical Center Pharmacy, San Diego. Respondents John and  
20 Joseph Grasela are and were at all relevant times corporate officers and owners of  
21 respondent Medical Center Pharmacy, San Diego.

22                                    B. On June 16, 2001, at approximately 10:15 a.m. Inspectors Nurse and  
23 Orlandella conducted an inspection of respondent Medical Center Pharmacy, San Diego.  
24 When they arrived the front door to the pharmacy was unlocked but there was a sign on  
25 the door saying the pharmacy was temporarily closed. Four persons were present behind  
26 the counter in the pharmacy. Two of these persons were clerks and two persons were  
27 pharmacy technicians. One of the technicians, L.L. said there had not been a pharmacist  
28 present since the pharmacy opened that day. She also stated she had a key to the

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1 pharmacy and that she had opened the pharmacy that day and that she had been the  
2 person-who opened up the pharmacy in the past.

3 C. The store personnel were instructed to secure, vacate and lock the  
4 pharmacy pending the arrival of a responsible pharmacist. The key possessed by L.L.  
5 was confiscated.

6 D. At approximately 12:30 p.m. on June 16, 2001, the inspectors received  
7 a call from the pharmacy indicating a pharmacist was present, the pharmacy had been re-  
8 opened and the doors had been re-keyed. At 2:00 p.m., the inspectors arrived at the  
9 pharmacy. Pharmacist RPS stated that he was a relief pharmacist and did not normally  
10 work at that location.

11 **FIRST CAUSE OF ACTION AGAINST JOHN GRASELA,**  
12 **JOSEPH GRASELA, PHILLIP CHERLIN**  
13 **AND MEDICAL CENTER PHARMACY-SAN DIEGO**  
14 **(Unsupervised Pharmacy Technicians and Staff)**

15 22. Respondents are further subject to disciplinary action under sections 4115 and  
16 4116 of the Code, and under Title 16 of the California Code of Regulations Section 1793.7, in  
17 that they allowed pharmacy technicians to be in the pharmacy without a pharmacist either  
18 present, or directly supervising their activities, as follows:

19 A. Paragraphs 21A, through and including 21D , above, are hereby  
20 realleged and incorporated by reference as if fully set forth herein; and

21 B. Pharmacy technicians and clerks were in the pharmacy alone without  
22 the presence of a licensed pharmacist; and

23 C. Pharmacy technicians and or clerks were present in the pharmacy  
24 outside the direct view and supervision of a licensed pharmacist.

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1                                   **SECOND CAUSE OF ACTION AGAINST JOHN GASELA,**  
2                                   **PHILLIP CHERLIN, JOSEPH GASELA AND**  
3                                   **MEDICAL CENTER PHARMACY-SAN DIEGO**  
  **(Possession of Key to Pharmacy)**

4                                   23. Respondents are further subject to disciplinary action under Title 16 of the  
5 California Code of Regulations Sections 1714(d) and 1714(e), in that they allowed a non-  
6 pharmacist or other unauthorized person to maintain keys to the pharmacy, as follows:

7                                   A. Paragraphs 21A, through and including 21D, above, are hereby  
8 realleged and incorporated by reference as if fully set forth herein; and

9                                   B. Respondents allowed a pharmacy technician to maintain keys to the  
10 pharmacy and open up the pharmacy for other employees in the absence of a licensed  
11 pharmacist.

12                                   **CAUSE OF ACTION AGAINST JOHN GASELA,**  
13                                   **JOHN DONLON, JOSEPH GASELA, PHILIP CHERLIN,**  
14                                   **MEDICAL CENTER PHARMACY-CHULA VISTA AND**  
  **MEDICAL CENTER PHARMACY- SAN DIEGO**  
  **(Unprofessional Conduct for Violation of Statute or Regulation)**

15                                   24. Respondents are subject to disciplinary action under section 4301(j) and  
16 4301(o) of the Code, in that they committed unprofessional conduct by violating laws and  
17 regulations regulating the practice of pharmacy, as follows:

18                                   Paragraphs 11A, through and including 11W, and 21A through and including 21D  
19 above, are hereby realleged and incorporated by reference as if fully set forth herein.

20                                   PRAYER

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

23                                   1.       Revoking or suspending Pharmacist License No. RPH 32430, issued to  
24 John Carl Grasela, Vice president.

25                                   2.       Revoking or suspending Pharmacist License No. RPH 45064, issued to  
26 John E. Donlon, Pharmacist-in-Charge.

27                                   3.       Revoking or suspending Pharmacist License No. RPH 40868, issued to  
28 Joseph Grasela, President.

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4. Revoking or suspending Original Pharmacy Permit No. PHY 35051, issued to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista;


5. Revoking or suspending Original Pharmacy Permit No. PHY 44103, issued to Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, San Diego;

6. Revoking or suspending Pharmacist License No. RPH 24623, issued to Philip B. Cherlin, Pharmacist-in-Charge;

7. Ordering John Carl Grasela, John E. Donlon, Joseph Grasela, Philip Cherlin, Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, Chula Vista, and Park Medical Center Pharmacy, Inc. a.k.a. Medical Center Pharmacy, San Diego to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 5/7/02

  
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PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant