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

11 In the Matter of the First Amended Accusation
Against:

Case No. 3497

13 **MARIO ANTHONY GOMES**
561 GABRIEL AVENUE
14 YUBA CITY, CA 95993

12 **FIRST AMENDED**
13 **A C C U S A T I O N**

15 PHARMACIST REGISTRATION
NUMBER RPH 44363

16
17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about August 6, 1991, the Board of Pharmacy issued Pharmacist Registration
26 Number RPH 44363 (license) to Mario Anthony Gomes (Respondent) pursuant to California
27 Code of Regulations, title 16, section 1709.1. The license was in full force and effect at all times
28 relevant to the charges brought herein and will expire on October 31, 2012, unless renewed. At

1 all times relevant herein, Respondent was the approved Pharmacy in Charge (PIC) for The
2 Medicine Tray, 3101 Sunset Blvd., No. 2A, Rocklin, California, 95677.

3 **JURISDICTION**

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

7 4. Section 4300, subdivision (a), of the Code states that every license issued by the
8 Board may be suspended or revoked.

9 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
10 surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of
11 jurisdiction to proceed with a disciplinary action during the period within which the license may
12 be renewed, restored, reissued or reinstated.

13 **STATUTORY PROVISIONS**

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

15 The board shall take action against any holder of a license who is guilty of
16 unprofessional conduct . . . Unprofessional conduct shall include, but is not limited
to, any of the following:

17 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
18 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.

19 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
20 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
21 pharmacy, including regulations established by the board or by any other state or
federal regulatory agency.

22 (p) Actions or conduct that would have warranted denial of a license.

23 7. Section 4022 of the Code states, in pertinent part:

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

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

27 (b) Any device that bears the statement: "Caution: federal law restricts this
28 device to sale by or on the order of a _____," "Rx only," or words of similar

1 import, the blank to be filled in with the designation of the practitioner licensed to
2 use or order use of the device.

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

5 8. Section 4024 of the Code states, in pertinent part:

6 (a) Except as provided in subdivision (b), "dispense" means the furnishing of
7 drugs or devices upon a prescription from a physician, dentist, optometrist,
8 podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon
9 an order to furnish drugs or transmit a prescription from a certified nurse-midwife,
10 nurse practitioner, physician assistant, naturopathic doctor pursuant to Section
11 3640.5, or pharmacist acting within the scope of his or her practice.

12 9. Section 4100 of the Code states, in pertinent part:

13 (a) Within 30 days after changing his or her address of record with the board .
14 . . . a pharmacist, . . . shall notify the executive officer of the board of the change of
15 address

16 10. Section 4101¹ of the Code states, in pertinent part:

17 (a) A pharmacist who takes charge of, or acts as pharmacist-in-charge of a
18 pharmacy or other entity licensed by the board, who terminates his or her
19 employment at the pharmacy or other entity, shall notify the board within 30 days
20 of the termination of employment.

21 11. Section 4113² of the Code states, in pertinent part:

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

25 12. Section 4305³ of the Code states, in pertinent part:

26 (c) Any pharmacist who takes charge of, or acts as manager of a pharmacy,
27 who terminates his or her employment at the pharmacy, shall notify the board
28 within 30 days of termination of employment. Failure to notify the board within the
30-day period shall constitute grounds for disciplinary action.

13. Section 4307 of the Code states, in pertinent part:

23 ¹ Code section 4101 was amended effective January 1, 2010. The prior language in
24 section 4101 is cited and quoted herein since the acts complained of occurred prior to January 1,
2010.

25 ² Code section 4113 was amended effective January 1, 2010. The prior language in
26 section 4113 is cited and quoted herein since the acts complained of occurred prior to January 1,
2010.

27 ³ Code section 4305 was amended effective January 1, 2010. The prior language in
28 section 4305 is cited and quoted herein since the acts complained of occurred prior to January 1,
2010.

1 (a) Any person . . . whose license has been revoked or is under suspension, or
2 who has failed to renew his or her license while it was under suspension, or who
3 has been a manager, administrator, owner, member, officer, director, associate, or
4 partner of any partnership, corporation, firm, or association whose application for a
5 license has been denied or revoked, is under suspension or has been placed on

6 probation, and while acting as the manager, administrator, owner, member, officer,
7 director, while acting as the manager, administrator, owner, member, officer,
8 director, associate, or partner had knowledge of or knowingly participated in any
9 conduct for which the license was denied, revoked, suspended, or placed on
10 probation, shall be prohibited from serving as a manager, administrator, owner,
11 member, officer, director, associate, or partner of a licensee as follows:

12 (1) Where . . . an existing license is placed on probation, this prohibition shall
13 remain in effect for a period not to exceed five years.

14 (2) Where the license is . . . revoked, the prohibition shall continue until the
15 license is issued or reinstated.

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

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

28 14. Code section 480 states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the
applicant has one of the following:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another

(3)(B) The board may deny a license pursuant to this subdivision only if the .
. . act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

REGULATORY PROVISIONS

15. California Code of Regulations (CCR), title 16, section 1705 states, in pertinent part:

Any pharmacy, . . . who makes any assignment for the benefit of creditors or
enters into any creditor compromise arrangement, or who files a petition in
bankruptcy, or who has a receiver appointed, or who enters into any liquidation or
other arrangement which may result in the sale or transfer of drugs, devices or
appliances which are required to be sold by a registered pharmacist or other
licensee, shall notify the Board immediately in writing of such fact, and shall set
forth the following information, if known:

1 (c) Inventory of dangerous drugs and devices showing their disposition;

2 (d) Location of records of manufacture, sale, purchase, and disposition of
3 dangerous drugs and devices.

4 16. CCR, title 16, section 1708.2 states:

5 Any permit holder shall contact the board prior to transferring or selling any
6 dangerous drugs, devices or hypodermics inventory as a result of termination of
7 business or bankruptcy proceedings and shall follow official instructions given by
8 the board applicable to the transaction.

9 17. CCR, title 16, section 1709 states, in pertinent part:

10 (a) Each permit to operate a pharmacy shall show the name and address of
11 the pharmacist-in-charge. Each pharmacy shall, in its initial application and on the
12 annual renewal form, report the name of the pharmacist-in-charge, the names of all
13 owners and the names of the corporate officers (if a corporation). Any changes in
14 the pharmacist-in-charge, or the owners, or corporate officers shall be reported to
15 the Board within 30 days.

16 (b) Any transfer, in a single transaction or in a series of transactions, of 10
17 percent or more of the beneficial interest in a business entity licensed by the board
18 to a person or entity who did not hold a beneficial interest at the time the original
19 permit was issued, shall require written notification to the board within 30 days.

20 (c) The following shall constitute a transfer of permit and require application
21 for a change of ownership: any transfer of a beneficial interest in a business entity
22 licensed by the board, in a single transaction or in a series of transactions, to any
23 person or entity, which transfer results in the transferee's holding 50% or more of the
24 beneficial interest in that license.

25 18. CCR, title 16, section 1709.1 states, in pertinent part:.

26 (a) The pharmacist-in-charge of a pharmacy shall be employed at that
27 location and shall have responsibility for the daily operation of the pharmacy.

28 (b) The pharmacy owner shall vest the pharmacist-in-charge with adequate
authority to assure compliance with the laws governing the operation of a
pharmacy.

19. CCR, title 16, section 1716 states, in pertinent part:

Pharmacists shall not deviate from the requirements of a prescription except
upon the prior consent of the prescriber or to select the drug product in accordance
with Section 4073 of the [Code].

Nothing in this regulation is intended to prohibit a pharmacist from
exercising commonly-accepted pharmaceutical practice in the compounding or
dispensing of a prescription.

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2 **COST RECOVERY**

3 20. Section 125.3 of the Code provides, in pertinent part, that the Board, Registrar, or
4 Director may request the administrative law judge to direct a licentiate found to have committed a
5 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
6 investigation and enforcement of the case.

7 **FACTUAL BACKGROUND**

8 21. On or about May 23, 2000, the Board of Pharmacy issued Retail Pharmacy Permit
9 License No. PHY 44817 to The Medicine Tray (TMT), 3101 Sunset Blvd., No. 2A, Rocklin,
10 California, 95677, as a sole ownership. The Board approved Respondent as the PIC for TMT.

11 22. On or about August 8, 2002, Gomes Enterprises Inc. was incorporated as a California
12 corporation, organized and existing under the laws of the State of California. Chantell Gomes
13 was listed as the only director. GEI filed U.S. income tax returns including returns for 2004,
14 2005, and 2006, listing 3101 Sunset Blvd., #2A, Rocklin, California, 95677, that is, the address
15 for TMT, as its business address. GEI held shareholder meetings, including the 2006
16 shareholder's meeting, at TMT.

17 23. On or about August 29, 2002, Gomes Enterprises Inc. issued 750 shares of stock to
18 Chantell and Mario Gomes, as joint tenants, and 250 shares of stock to Daniel Gomes. Chantell
19 Gomes is Respondent's former wife and subsequent to August 29, 2002, became known as
20 Chantell Petralia. Daniel Gomes is Respondent's father. On or about October 27, 2006, GEI held
21 a shareholders meeting wherein Respondent, Chantell Gomes, and Daniel J. Gomes were present.
22 Respondent and Chantell Gomes acted as the Secretary and Chairperson, respectively, and signed
23 the minutes of the meeting. Daniel J. Gomes also signed the minutes. At the shareholders
24 meeting, GEI unanimously adopted resolutions as follows: for Respondent to provide Daniel J.
25 Gomes payment in the amount of \$3,411.00 weekly for 52 weeks for a personal loan made by
26 Gomes to Respondent; and, for Respondent to repay GEI commencing in January 2008, the net
27 sum plus appropriate interest for a low interest loan, to wit, the amount of \$177,356.27, per S-
28 Corporation Guidelines for 2008, payments to begin January 1, 2008, for 36 months, for a loan

1 for personal use. Chantell Gomes signed as president of GEI on the low-interest loan document.
2 In February 2007, Respondent, Chantell Gomes, and Daniel J. Gomes wrote and signed checks on
3 TMT's checking account at Bank of America, Sacramento, California, to each other and others.

4 24. On an unknown date after August 29, 2002, Chantell Gomes began referring to TMT
5 as "Chantell Gomes dba The Medicine Tray." On or about July 7, 2003 and September 11, 2006,
6 Chantell Gomes completed Medi-Cal applications in which she stated that she was the sole owner
7 of TMT and that the pharmacy operated as a sole proprietorship. The Medi-Cal Provider
8 Applications were submitted to the California Department of Health Care Services (DHCS) for its
9 consideration to approve TMT as a Medi-Cal Provider. Chantell Gomes is listed as the 100%
10 sole owner of TMT. On TMT's Medi-Cal Disclosure Statements filed with DHCS, TMT is listed
11 as a sole proprietorship.

12 25. From on or about September 1, 2004, through September 3, 2007, TMT submitted
13 claims to the DHCS for Medi-Cal payments for 33 drugs and 15 supplements for Medi-Cal
14 beneficiaries, that is, HIV and AIDS patients, whose prescriptions were filled by TMT. DHCS
15 audited TMT for the aforementioned period and found the Medi-Cal claims submitted by TMT
16 resulted in the pharmacy receiving Medi-Cal claims overpayments totaling \$3,198,290.87 in
17 overbilling Medi-Cal for the medications and liquid supplements to Medi-Cal beneficiaries.
18 TMT's overbilling included: submitting Medi-Cal claims for HIV and AIDS medications for 30
19 or 60 day quantities (pursuant to physician prescriptions for those quantities) when the medication
20 supplier's records for TMT showed the pharmacy had only supplied 28 day or 56 day quantities
21 to its customers per month; initiating prescriptions for excessive amounts of liquid supplements
22 for Medi-Cal beneficiaries; and, after the fact, sending the prescriptions for liquid supplements to
23 physicians for approval.

24 a. The prescription drugs are: Reyataz (150 mg and 200 mg); Viread (300 mg);
25 Norvir (100 mg); Truvada tab; Combivir tab; Trizivir tab; Viramune (200 mg); Kaletra (33.3-
26 133.3 mg and 50-200 mg); Sustiva (600 mg); Epzicom tab; Marinol (5 mg and 10 mg); Eпивir
27 (150 mg and 300 mg); Ziagen (300 mg); Lexiva (700 mg); Zerit (30 mg and 40 mg); Valcyte (450
28 mg); Viracept (250 mg and 625 mg); Zyprexa (10 mg); Oxandrin (2.5 mg); Emtriva (200 mg);

1 and Atripla tab. Each of the afore-mentioned medications is a dangerous drug within the meaning
2 of Code section 4022.

3 b. The liquid supplements are: Boost Diabetic Liquid; Boost Energy Drink; Boost
4 High Protein Liquid; Boost Plus Energy Drink; Ensure w/Fiber Liquid; Ensure High Protein
5 Liquid; Ensure Plus Liquid; Ensure Liquid 700740 (two product numbers); Glucerna Liquid;
6 Glucerna Shake; Jevity 1 Cal Liquid; Osmolite Liquid; Pediasure Liquid; and Prosure Liquid.

7 26. On or about August 12, 2008, the DHCS completed its audit of TMT for its Medi-Cal
8 submittals for the period of September 1, 2004, through September 3, 2007, and notified Chantell
9 Gomes of the findings resulting from the audit. The findings in the case titled *Chantell L. Gomes*
10 *dba The Medicine Tray, Provider No. PHA448170, Case No. P-PHA-448170-110-04*, included
11 the inventory analysis found, among other things, the pharmacy's Medi-Cal claims exceeded its
12 purchases of 33 drugs and 15 liquid supplements reviewed resulting in an overpayment to
13 Chantell Gomes dba The Medicine Tray in the amount of \$3,198,290.87. Initially, Chantell
14 Gomes filed an appeal of the DHCS administrative case titled *In the Matter of: The Medicine*
15 *Tray, Provider No. PHA448170, Appeal No. SR9-080-259-MJN*.

16 27. On or about December 12, 2008, Chantell Gomes filed a Chapter 7 bankruptcy
17 petition in the U.S. District Court, Eastern District of California, titled *In Re Chantell Lee*
18 *Petralia aka Chantell Gomes aka Chantell Wimberly Gomes, Debtor, Case No. 08-38356-A-7*,
19 seeking, among other things, to discharge the debt to the Medi-Cal Program administered by
20 DHCS.

21 28. On or about May 6, 2009, TMT filed a request to withdraw its appeal in the DHCS
22 administrative case titled *In the Matter of: The Medicine Tray, Provider No. PHA448170, Appeal*
23 *No. SR9-080-259-MJN*. The DHCS issued its Notice of Acceptance of Withdrawal of Appeal on
24 or about May 11, 2009.

25 29. On or about March 23, 2009, the DHCS filed an adversary action titled Complaint to
26 Determine Debt to be Nondischargeable Pursuant to 11 U.S.C. section 523 and Federal Rules of
27 Bankruptcy P. Rule 4004, (Complaint) in U.S. Bankruptcy Court, Case No. 08-38356-A-7, in the
28 matter of *DHCS v. Chantell Lee Petralia aka Chantell Gomes aka Chantell Wimberly Gomes*,

1 Adversary No. 2009-2190-A (Adversary Action). On or about April 28, 2009, the Reissued
2 Summons and Complaint and related documents for Adversary Case No. 2009-2190-A were
3 served on the attorney for Chantell Petralia

4 30. Among other things, the Adversary Action alleges: TMT was licensed as a pharmacy
5 by the DHCS as a Medi-Cal provider; [Chantell Gomes] Petralia and TMT agreed under penalty
6 of perjury that all claims for goods and services were personally provided to Medi-Cal
7 beneficiaries; certified that all information submitted to the DHCS for payment was accurate and
8 complete; DHCS auditors performed an on-site audit at TMT on or about May 15, 2008, and
9 determined for the audit period of September 1, 2004 to September 3, 2007, that 33 audited drugs
10 had inventory resulting in an overpayment of \$2,638,596.28 and that 15 audited liquid
11 supplements had an inventory shortage resulting in an overpayment of \$559,694.59 for a total of
12 \$3,198,290.87 in overpayments by DHCS to TMT; and, the pharmacy billed DHCS for certain
13 amounts of drugs and liquid supplements allegedly dispensed to Medi-Cal beneficiaries when
14 TMT purchased and dispensed lesser amounts of those drugs and liquid supplements.

15 31. The Adversary Action sought the amount of the overbilling, that is, \$3,198,290.87,
16 for prescription medicines and liquid supplements in amounts that The Medicine Tray did not
17 actually dispense to Medi-Cal beneficiaries. Declarations under penalty of perjury submitted in
18 support of the Adversary Action stated the demand of repayment to the DHCS of \$3,198,290.87,
19 and that \$500,605.71 had been recouped from TMT, with the unpaid total of \$2,697,685.16 due
20 and owing.

21 32. TMT defaulted in U.S. Bankruptcy Court and a Default Judgment and Order was
22 issued against Chantell Petralia and TMT in favor of DHCS for relief in the amount of
23 \$3,198,290.87 pursuant to 11 U.S.C. 523(a)(2)(A). On or about July 27, 2009, Notice of Entry of
24 Order/Judgment in an Adversary Proceeding was entered against Chantell Lee Petralia aka
25 Chantell Gomes aka Chantal Wimberley Gomes in Bankruptcy Case No. 08-38356-A-7 and
26 Adversary No. 2009-02190-A.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Committed Acts of Moral Turpitude, Dishonesty, Fraud, or Deceit)

3 33. Respondent's license is subject to disciplinary action under Code sections 4300 and
4 4301(f) on the grounds of unprofessional conduct in that Respondent committed acts of moral
5 turpitude, dishonesty, fraud or deceit. The circumstances are described in paragraphs 21 through
6 26, above, incorporated by this reference.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Failure to Notify Board of Bankruptcy Filing)

9 34. Respondent is subject to disciplinary action under Code sections 4300 and 4301(o) on
10 the grounds of unprofessional conduct, in violation of CCR, title 16, section 1705, as follows:

11 a. Violation of CCR, title 16, section 1705: Respondent failed to immediately notify the
12 Board in writing that TMT had filed a bankruptcy petition.

13 b. Violation of CCR, title 16, section 1705(c): Respondent failed to immediately notify
14 the Board in writing of the disposition of the inventory of dangerous drugs and devices upon
15 TMT's filing of a bankruptcy petition.

16 c. Violation of CCR, title 16, section 1705(d): Respondent failed to immediately notify
17 the Board in writing of the location of records of manufacture, sale, purchase, and disposition of
18 dangerous drugs and devices upon TMT's filing of a bankruptcy petition.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Failure to Contact Board Prior to Transferring or Selling Dangerous Drugs)

21 35. Respondent's license is subject to disciplinary action under Code sections 4300 and
22 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board
23 prior to TMT transferring or selling any dangerous drugs, devices or hypodermics inventory as a
24 result of TMT terminating the business or filing bankruptcy proceedings, in violation of CCR,
25 title 16, section 1708.2.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure To Notify Board Of Pharmacy Ownership Change)

3 36. Respondent's license is subject to disciplinary action under Code sections 4300 and
4 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board in
5 violation of CCR, title 16, section 1709 as follows:

6 a. Violation of section 1709(a): Respondent failed to report to the Board the names of
7 all owners and names of corporate officers, or changes thereto, within 30 days from TMT's
8 August 8, 2002, incorporation.

9 b. Violation of section 1709(a): Respondent failed to report to the Board the names of
10 all owners and the names of corporate officers on TMT's annual renewal form

11 c. Violation of section 1709(b): Respondent failed to submit written notification to the
12 Board within 30 days of the transfer of 10 percent or more of the beneficial interest in TMT to a
13 person or entity not holding that interest at the time of the issuance of the original permit.

14 d. Violation of section 1709(c): Respondent transferred a permit and failed to apply for
15 a change of ownership of TMT due to the change in beneficial interest in the TMT license or
16 permit.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Deviated from Requirements of Prescription)

19 37. Respondent's license is subject to disciplinary action under Code sections 4300 and
20 4301(o) on the grounds of unprofessional conduct in that Respondent deviated from the
21 requirements of a prescription when he filled or re-filled prescriptions and dispensed the
22 dangerous drugs listed in paragraph 25.a, above, incorporated herein by reference, in amounts less
23 than that prescribed by the physician for the AIDS or HIV positive patients, without the prior
24 consent of the prescriber, in violation of CCR, title 16, section 1716, and Code section 4024(a).

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Failure to Timely Notify Board of Change in Address)

27 38. Respondent's license is subject to disciplinary action under Code sections 4300 and
28 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board

1 executive officer within 30 days after changing his address of record with the Board, in violation
2 of Code section 4100(a).

3 **SEVENTH CAUSE FOR DISCIPLINE**

4 (Failure to Timely Notify Board of Termination of Employment – Section 4101)

5 39. Respondent's license is subject to disciplinary action under Code sections 4300 and
6 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board
7 within 30 days of his termination of employment from TMT, in violation of Code section 4101.

8 **EIGHTH CAUSE FOR DISCIPLINE**

9 (Failure to Timely Notify Board of Termination of Employment – Section 4305)

10 40. Respondent's license is subject to disciplinary action under Code sections 4300 and
11 4301(a) on the grounds of unprofessional conduct in that Respondent failed to timely notify the
12 Board within 30 days of his termination of employment from TMT, in violation of Code section
13 4305.

14 **NINTH CAUSE FOR DISCIPLINE**

15 (Acts or Conduct Warranting License Denial)

16 41. Respondent's registration is subject to discipline under Code sections 4300 and
17 4301(p) on the grounds of unprofessional conduct in that Respondent committed acts or engaged
18 in conduct involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or
19 another or substantially injure another that would warrant denial of a pharmacist registration
20 within the meaning of Code sections 480(a)(2) and 480(3(B)). The circumstances are set forth in
21 paragraphs 21 through 26, above, incorporated by reference. Said acts or conduct are
22 substantially related to the qualifications, functions, or duties of the licensed profession of
23 pharmacist.

24 **TENTH CAUSE FOR DISCIPLINE**

25 (Prohibition for Respondent Serving as Pharmacy Manager, Administrator,
26 Owner, Member, Officer, Director, Associate or Partner)

27 42. Under Code section 4307, if discipline is imposed on Pharmacist Registration
28 Number RPH 44363 issued by the Board to Respondent, then Respondent should be prohibited

1 from serving as a manager, administrator, owner, member, officer, director, associate, or partner
2 of any partnership, corporation, firm, or association if it is found that Respondent had knowledge
3 or knowingly participated in any conduct for which his license was revoked, suspended, or placed
4 on probation.

5 **DISCIPLINARY CONSIDERATIONS**

6 43. To determine the degree of discipline, if any, to be imposed on Respondent,
7 Complainant alleges:

8 a. On May 1, 2008, the Board issued Citation No. CI-2007-36138 to Respondent for
9 violations of the Business and Professions Code (Code) and California Code of Regulations
10 (CCR), title 16, as follows: CCR, section 1716 and 1761(a), fined \$1,000.00; CCR section
11 1711(f), fined \$750.00; Code section 4076(a)(11)(A), fined \$1,000.00; Code section 4116(b)(2)
12 and CCR section 1714.1, fined \$750.00; and CCR section 1714.1(f), fined \$250.00. Respondent
13 did not appeal Citation No. CI-2007-36138. Although Respondent was notified payment of the
14 complete fine was due May 31, 2008, he failed to pay it by the deadline. Respondent paid the
15 complete fine of \$3,750.00 on October 10, 2010, after the Accusation had been served.

16 b. On November 9, 2009, the Board issued Citation No. CI-2009-41877 to Respondent
17 for violations of the Code as follows: Code section 4312(a) and (e), fined \$500.00; and Code
18 section 4081(a), and \$4105(a) and (c), fined \$500.00. Respondent did not appeal Citation No. CI-
19 2009-41887. Although Respondent was notified payment of the complete fine was due
20 December 9, 2009, he failed to pay it by the deadline. A Modified Citation and Fine for Citation
21 No. CI-2009-41887 was issued on July 16, 2010, with a modified fine of \$500.00, due and
22 payable by August 15, 2010. Respondent paid \$500.00 on October 10, 2010, after the Accusation
23 had been served.

24 **PRAYER**

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

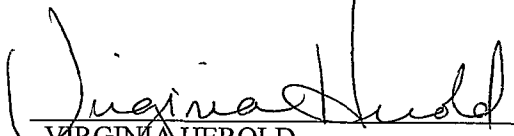
27 1. Revoking or suspending Pharmacist Registration Number RPH 44363 issued to
28 Respondent Mario Anthony Gomes;

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2. Ordering Respondent Mario Anthony Gomes 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;

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

DATED: 12/2/10



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

SA2009102693/10640107