

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

In the Matter of the Second Amended Accusation  
Against:

**MARIO ANTHONY GOMES  
561 Gabriel Avenue  
Yuba City, CA 95993**

**Pharmacist Registration No. RPH 44363**

Respondent.

Case No. 3497

OAH No. 2010100507

**DECISION AND ORDER**

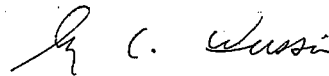
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 LESLIE A. BURGERMYER  
Deputy Attorney General  
4 State Bar No. 117576  
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5 P.O. Box 944255  
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6 Telephone: (916) 324-5337  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

**ORIGINAL**

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

11 In the Matter of the Second Amended Accusation  
12 Against:

Case No. 3497

OAH No. 2010100507

13 **MARIO ANTHONY GOMES**  
14 561 Gabriel Avenue  
Yuba City, CA 95993

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 Pharmacist Registration  
16 Number RPH 44363

17 Respondent.

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

20 **PARTIES**

21 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy  
22 ("Board"), Department of Consumer Affairs. She brought this action solely in her official  
23 capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of  
24 California, by Leslie A. Burgermyer, Deputy Attorney General.

25 2. Mario Anthony Gomes ("Respondent") is represented in this proceeding by attorney  
26 Geoffrey Evers, Esq., whose address is Evers Law Group, a Professional Corporation, 641 Fulton  
27 Avenue, Suite 200, Sacramento, CA 95825.  
28



1 court review of an adverse decision; and all other rights accorded by the California  
2 Administrative Procedure Act and other applicable laws.

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

### 5 CULPABILITY

6 8. Respondent understands and agrees that the charges and allegations in SAA No. 3497  
7 if proven at a hearing constitutes cause for imposing discipline upon his Pharmacist Registration  
8 No. RPH 44363. For the purposes of resolving SAA No. 3497 without the expense and  
9 uncertainty of further proceedings, Respondent agrees that at a hearing, the Complainant could  
10 establish a factual basis for the charges in SAA No. 3497. Respondent hereby gives up his rights  
11 to contest those charges and surrenders his Pharmacist Registration No. RPH 44363 for the  
12 Board's formal acceptance.

13 9. Respondent understands that by signing this stipulation he enables the Board to issue  
14 an order accepting the surrender of his Pharmacist License without further process.

### 15 RESERVATION

16 10. The admissions made by Respondent herein are only for the purposes of this  
17 proceeding, or any other proceedings in which the Board or other professional licensing agency is  
18 involved, and shall not be admissible in any other criminal or civil proceeding.

### 19 CONTINGENCY

20 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
21 understands and agrees that counsel for Complainant and the staff of the Board may communicate  
22 directly with the Board regarding this stipulation and surrender, without notice to or participation  
23 by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees  
24 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the  
25 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
26 Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for  
27 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
28 not be disqualified from further action by having considered this matter.



1 Second Amended Accusation ("SAA") No. 3497 shall be deemed to be true, correct and admitted  
2 by Respondent when the Board determines whether to grant or deny the petition.

3 5. Respondent may not apply or re-apply for, or petition for reinstatement of, any  
4 license, permit, or registration from the Board for three (3) years from the effective date of this  
5 Decision and Order.

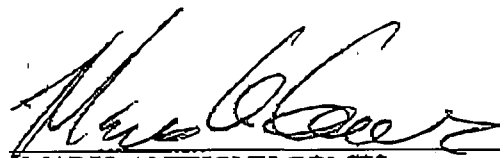
6 6. Respondent shall pay the agency its costs of investigation and enforcement in the  
7 amount of \$27,000.00 prior to issuance of a new license. The Board may use its discretion to  
8 offer a payment plan, if available, for payment of the costs if a future license is issued.

9 7. If Respondent should ever apply or re-apply for a new license or certification, or  
10 petition for reinstatement of a license, by any other health care licensing agency in the State of  
11 California, all of the charges and allegations contained in SAA No. 3497 shall be deemed to be  
12 true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other  
13 proceeding seeking to deny or restrict licensure.

14 ACCEPTANCE

15 I have carefully read the above Stipulated Surrender of License and Order and have fully  
16 discussed it with my attorney, Geoffrey Evers, Esq. I understand the stipulation and the effect it  
17 will have on my Pharmacist License. I enter into this Stipulated Surrender of License and Order  
18 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
19 Board of Pharmacy.

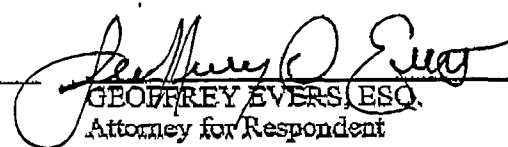
20  
21 DATED: 10/24/11



MARIO ANTHONY GOMES  
Respondent

23 I have read and fully discussed with Respondent Mario Anthony Gomes the terms and  
24 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
25 approve its form and content.

26 DATED: 10/24/11



GEOFFREY EVERS, ESQ.  
Attorney for Respondent

28 ///

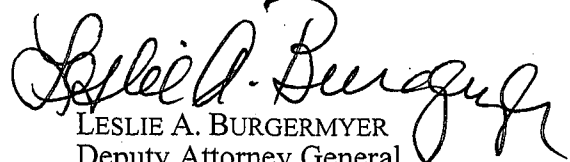
**ENDORSEMENT**

1 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
2 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.  
3

4 DATED: 10-24-2011  
5

Respectfully submitted,

6 KAMALA D. HARRIS  
Attorney General of California  
7 ARTHUR D. TAGGART  
Supervising Deputy Attorney General

8   
9  
10 LESLIE A. BURGERMYER  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Second Amended Accusation No. 3497**



1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 LESLIE A. BURGERMYER  
Deputy Attorney General  
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6 Telephone: (916) 324-5337  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

10  
11 In the Matter of the First Amended Accusation  
Against:

Case No. 3497

12 **SECOND AMENDED**

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

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

15 PHARMACIST REGISTRATION  
NUMBER RPH 44363

16  
17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold ("Complainant") brings this Second Amended Accusation solely in  
23 her 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 Pharmacist in Charge ("PIC"), within the  
2 meaning of Business and Professions Code section 4036.5, for The Medicine Tray ("TMT"),  
3 3101 Sunset Blvd., No. 2A, Rocklin, California, 95677.

#### 4 JURISDICTION

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

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

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

#### 14 STATUTORY PROVISIONS

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

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

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

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

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

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

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

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

1 (b) Any device that bears the statement: "Caution: federal law restricts this  
2 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
3 import, the blank to be filled in with the designation of the practitioner licensed to  
4 use or order use of the device.

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

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

9 (a) Except as provided in subdivision (b), "dispense" means the furnishing of  
10 drugs or devices upon a prescription from a physician, dentist, optometrist,  
11 podiatrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or upon  
12 an order to furnish drugs or transmit a prescription from a certified nurse-midwife,  
13 nurse practitioner, physician assistant, naturopathic doctor pursuant to Section  
14 3640.5, or pharmacist acting within the scope of his or her practice.

15 9. Section 4036.5 of the Code states:

16 "Pharmacist-in-charge" means a pharmacist proposed by a pharmacy and  
17 approved by the board as the supervisor or manager responsible for ensuring the  
18 pharmacy's compliance with all state and federal laws and regulations pertaining to  
19 the practice of pharmacy.

20 10. Section 4100 of the Code states, in pertinent part:

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

24 11. Section 4101<sup>1</sup> of the Code states, in pertinent part:

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

12. Section 4113<sup>2</sup> of the Code states, in pertinent part:

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

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

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

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13. Section 4305<sup>3</sup> of the Code states, in pertinent part:

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

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

(a) Any person . . . whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

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

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

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

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

15. 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:

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

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

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

### 6 REGULATORY PROVISIONS

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

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

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

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

19 17. CCR, title 16, section 1708.2 states:

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

24 18. CCR, title 16, section 1709 states, in pertinent part:

25 (a) Each permit to operate a pharmacy shall show the name and address of  
26 the pharmacy, the form of ownership (individual, partnership or corporation) and  
27 the pharmacist-in-charge. Each pharmacy shall, in its initial application and on the  
28 annual renewal form, report the name of the pharmacist-in-charge, the names of all  
owners and the names of the corporate officers (if a corporation). Any changes in  
the pharmacist-in-charge, or the owners, or corporate officers shall be reported to  
the Board within 30 days.

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

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

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

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

(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.

20. 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.

**COST RECOVERY**

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

**FACTUAL BACKGROUND**

**Dishonest Statements**

22. On or about March 14, 2000, Chantell Gomes Petralia ("C. Gomes"), a non-pharmacist who was married to Respondent at the time, falsely declared under penalty of perjury in an application for a Retail Pharmacy Permit License that she was the sole owner of a pharmacy to be operated under the name The Medicine Tray ("TMT"). The declaration was false in that Respondent was also an owner of TMT.

23. On or about July 7, 2003, and September 11, 2006, C. Gomes falsely declared in applications submitted to the Department of Health Care Services ("DHCS") for the purpose of becoming a provider under the Medi-Cal program, that she was the 100% sole owner of TMT,

1 and that she operated the pharmacy as a sole proprietor. The declaration was false in that  
2 Respondent was also an owner of TMT.

3 ///

#### 4 **Change in Ownership of TMT**

5 24. On or about August 8, 2002, Gomes Enterprises Inc. ("GEI") was incorporated as a  
6 California corporation. As of on or about August 29, 2002, Respondent owned 750 shares in joint  
7 tenancy with C. Gomes in GEI's stock and his father, Daniel Gomes, owned 250 shares in the  
8 stock. All of the shareholders of GEI are owners of TMT and had specific duties and  
9 responsibilities in managing and operating TMT. Respondent failed to notify the Board of his  
10 beneficial interest in the ownership of TMT

11 25. As of on or about October 27, 2006, Respondent was the Secretary and C. Gomes was  
12 the President and Chairperson of GEI. Respondent failed to notify the Board of the names of the  
13 corporate officers and owners of TMT on TMT's annual renewal forms.

#### 14 **Dishonest or Fraudulent Overbillings; Deviation from Prescriptions**

15 26. From on or about September 1, 2004, through September 7, 2007, while acting in the  
16 capacity as a pharmacist-in-charge for TMT, Respondent falsely billed the Medi-Cal program for  
17 quantities of drugs that were purportedly dispensed to HIV and AIDS patients consistent with  
18 amounts prescribed by the prescribing physicians. The billings submitted by Respondent were  
19 false in the following respects:

20 a. Where the prescription was issued for a 30 day supply, Respondent provided  
21 only a 28 day supply to the patient.

22 b. Where the prescription was issued for a 60 day supply, Respondent provided  
23 only a 56 day supply to the patient.

24 c. 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); Epivir  
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           27. From on or about September 1, 2004, through September 7, 2007 while acting in the  
2 capacity of pharmacist-in-charge for TMT, Respondent billed the Medi-Cal program for 15 liquid  
3 supplements that were dispensed in amounts exceeding the actual amount prescribed by the  
4 prescribing physicians.

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

9           28. An audit of Respondent's claims for reimbursement from the DHCS Medi-Cal  
10 program for the period of September 1, 2004 through September 7, 2007, found that TMT had  
11 been overpaid by the Medi-Cal program in the amount of \$3,198,290.87 based on the false and  
12 dishonest billing practices described in paragraphs 26 and 27, above.

13           **Filing of Bankruptcy Petition for TMT**

14           29. On or about December 10, 2008, C. Gomes dba TMT filed a Chapter 7 Bankruptcy  
15 Petition seeking to discharge the \$3,198,290.87 overpayment by the Medi-Cal program to  
16 Respondent, C. Gomes, and TMT, resulting in a default judgment of \$3,198,290.87 in favor of  
17 DHCS. Respondent failed to notify the Board of the bankruptcy filing.

18           **Termination of TMT's Business and Employment; Address Change**

19           30. On an unknown date prior to July 14, 2009, Respondent terminated the business of  
20 TMT. The Board has no record of receiving notice of Respondent terminating TMT's business  
21 prior to July 14, 2009. Respondent failed to timely notify the Board that he had terminated  
22 TMT's business.

23           31. On or about July 14, 2009, the Board received a letter from Respondent dated  
24 October 29, 2008, stating he was no longer the PIC for TMT or working for TMT. The Board has  
25 no record of receiving the letter prior to July 14, 2009. Respondent failed to timely notify the  
26 Board he was no longer the PIC at TMT and that he had terminated his employment with TMT.

27           32. On or about July 14, 2009, the Board received a letter from Respondent dated  
28 October 29, 2008, stating his address will be changing and providing a new address. The Board



1           32. On or about July 14, 2009, the Board received a letter from Respondent dated  
2 October 29, 2008, stating his address will be changing and providing a new address. The Board  
3 has no record of receiving the letter prior to July 14, 2009. Respondent failed to timely notify the  
4 Board he was no longer the PIC and he failed to change of address with the Board.

5           **TMT's Inventory of Dangerous Drugs and Devices; Records of Manufacture, Sale,  
6 Purchase and Disposition**

7           33. As of on or about December 10, 2008, TMT had inventories of dangerous drugs and  
8 devices as of the December 10, 2008, filing of the bankruptcy petition. Respondent failed to  
9 notify the Board of the inventory of TMT's dangerous drugs and devices and their disposition as  
10 a result of the bankruptcy filing for TMT.

11           34. As of on or about December 10, 2008, TMT had records of manufacture, sale,  
12 purchase, and disposition of dangerous drugs and devices. Respondent failed to notify the Board  
13 of the location of TMT's records of manufacture, sale, purchase, and disposition of dangerous  
14 drugs and devices as a result of the bankruptcy filing for TMT.

15           35. On or after December 10, 2008, TMT had dangerous drugs, devices, or hypodermics  
16 inventory. Respondent failed to provide prior notice to the Board that TMT had transferred  
17 dangerous drugs, devices, or hypodermics inventory as a result of filing for bankruptcy for or  
18 terminating the business of TMT.

19           **FIRST CAUSE FOR DISCIPLINE**

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

21           36. Respondent's license is subject to disciplinary action under Code sections 4300 and  
22 4301(f) on the grounds of unprofessional conduct in that Respondent committed acts of moral  
23 turpitude, dishonesty, fraud or deceit. The circumstances are described in paragraphs 22, 23, 26,  
24 and 27, above, incorporated by this reference.

25           **SECOND CAUSE FOR DISCIPLINE**

26           (Failure to Notify Board of Bankruptcy Filing)

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

1 a. Violation of CCR, title 16, section 1705: Respondent failed to immediately  
2 notify the Board in writing that a bankruptcy petition had been filed for TMT, as alleged in  
3 paragraph 29, above.

4 b. Violation of CCR, title 16, section 1705(c): Respondent failed to immediately  
5 notify the Board in writing of the disposition of the inventory of dangerous drugs and devices  
6 upon the filing of a bankruptcy petition for TMT, as alleged in paragraphs 29 and 33, above.

7 c. Violation of CCR, title 16, section 1705(d): Respondent failed to immediately  
8 notify the Board in writing of the location of records of manufacture, sale, purchase, and  
9 disposition of dangerous drugs and devices upon the filing of a bankruptcy petition for TMT, as  
10 alleged in paragraphs 29 and 34, above.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 38. Respondent's license is subject to disciplinary action under Code sections 4300 and  
14 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board  
15 prior to transferring or selling TMT's dangerous drugs, devices or hypodermics inventory as a  
16 result of terminating TMT's business or filing bankruptcy proceedings, as alleged in paragraphs  
17 29, 30, and 35 above, in violation of CCR, title 16, section 1708.2.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 (Failure To Notify Board Of Pharmacy Ownership Change)

20 39. Respondent's license is subject to disciplinary action under Code sections 4300 and  
21 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board in  
22 violation of CCR, title 16, section 1709 as follows:

23 a. Violation of section 1709(a): Respondent failed to report to the Board the  
24 names of all owners and names of corporate officers, or changes thereto, within 30 days from  
25 TMT's August 8, 2002, incorporation, as alleged in paragraphs 24 and 25, above.

26 b. Violation of section 1709(a): Respondent failed to report to the Board the  
27 names of all owners and the names of corporate officers on TMT's annual renewal forms, as  
28 alleged in paragraph 24 and 25, above.

1 c. Violation of section 1709(b): Respondent failed to submit written notification  
2 to the Board within 30 days of the transfer of 10 percent or more of the beneficial interest in TMT  
3 to a person or entity not holding that interest at the time of the issuance of the original permit, as  
4 alleged in paragraphs 24 and 25, above.

5 d. Violation of section 1709(c): Respondent transferred a permit and failed to  
6 apply for a change of ownership of TMT due to the change in beneficial interest in TMT's license  
7 or permit, as alleged in paragraphs 24 and 25, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Deviated from Requirements of Prescription)

10 40. Respondent's license is subject to disciplinary action under Code sections 4300 and  
11 4301(o) on the grounds of unprofessional conduct in that Respondent deviated from the  
12 requirements of a prescription when he filled or re-filled prescriptions and dispensed dangerous  
13 drugs in amounts less than that prescribed by the physicians for the AIDS or HIV positive  
14 patients, without the prior consent of the prescriber, as alleged in paragraphs 26 and 27, above, in  
15 violation of CCR, title 16, section 1716, and Code section 4024(a).

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 41. Respondent's license is subject to disciplinary action under Code sections 4300 and  
19 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board  
20 executive officer within 30 days after changing his address of record with the Board, in violation  
21 of Code section 4100(a), as alleged in paragraph 32, above.

22 **SEVENTH CAUSE FOR DISCIPLINE**

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

24 42. Respondent's license is subject to disciplinary action under Code sections 4300 and  
25 4301(o) on the grounds of unprofessional conduct in that Respondent failed to notify the Board  
26 within 30 days of his termination of employment from TMT, in violation of Code section 4101,  
27 as alleged in paragraphs 30 and 31, above.

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1 a. On May 1, 2008, the Board issued Citation No. CI-2007-36138 to Respondent  
2 for violations of the Business and Professions Code (Code) and California Code of Regulations  
3 (CCR), title 16, as follows: CCR, section 1716 and 1761(a), fined \$1,000.00; CCR section  
4 1711(f), fined \$750.00; Code section 4076(a)(11)(A), fined \$1,000.00; Code section 4116(b)(2)  
5 and CCR section 1714.1, fined \$750.00; and CCR section 1714.1(f), fined \$250.00. Respondent  
6 did not appeal Citation No. CI-2007-36138. Although Respondent was notified payment of the  
7 complete fine was due May 31, 2008, he failed to pay it by the deadline. Respondent paid the  
8 complete fine of \$3,750.00 on October 10, 2010, after the Accusation had been served.

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

17 **PRAYER**

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

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

22 2. Ordering Respondent Mario Anthony Gomes to pay the Board of Pharmacy the  
23 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
24 Professions Code section 125.3;

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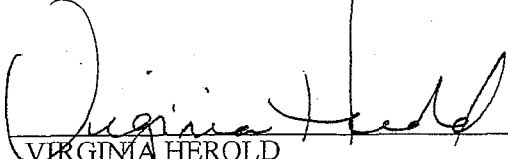
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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/11



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

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