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

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

Case No. 4141

OAH No. 2011100183

GARY VICTOR MANTESE 3895 Holly Hills St. Louis, MO 63116

Pharmacist License No. RPH 47841

Respondent.

DECISION AND ORDER

The attached Default Decision 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 May 18, 2012.

It is so ORDERED on April 18, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

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6	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
7	STATE OF 0		
8	In the Matter of the Accusation and Petition to	Case No. 4141	
9	Revoke Probation Against:	OAH No. 2011100183	
10 11	GARY VICTOR MANTESE 3895 Holly Hills	DEFAULT DECISION AND ORDER	
11	St. Louis, Missouri 63116	[Gov. Code, § 11520]	
12	Pharmacist License No. RPH 47841		
13	Respondent.		
15	FINDING	S OF FACT	
16		ginia Herold (Complainant), in her official	
17	capacity as the Executive Officer of the Board o		
18	filed Accusation No. 4141 against Gary Victor N		
19			
20	Pharmacy. On or about January 18, 2012, Complainant filed a superseding First Amended Accusation and Petition to Revoke Probation against Respondent. (A copy of the First Amended		
21	Accusation and Petition to Revoke Probation is attached as exhibit A.)		
22		of Pharmacy (Board) issued Pharmacist License	
23	No. RPH 47841 to Respondent. The Pharmacis	License was in full force and effect at all times	
24	relevant to the charges brought in First Amended Accusation and Petition to Revoke Probation		
25	No. 4141 and will expire on August 31, 2012, unless renewed.		
26	3. On or about September 9, 2011, Acc	susation No. 4141, along with the accompanying	
27	statutory documents, was served to Respondent's address of record, which was and is 3895 Holly		
28	Hills, St. Louis, Missouri 63116. Respondent acknowledged receipt of same.		
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DEFAULT DECISION AND ORDER (Case No. 4141; OAH No. 2011100183)

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c), and Business & Professions Code section 124.

5. On or about September 20, 2011, Respondent completed, signed and returned a Notice of Defense, requesting a hearing in this matter. A hearing date was set for February 13, 2012. A Notice of Hearing was served by Certified and First Class Mail at Respondent's address listed above informing him of this date. Prior to that hearing date, Respondent requested a brief continuance of the matter. A new hearing date was set for March 8, 2012. Again, a Notice of Continued Hearing was served to Respondent by Certified and First Class Mail.

6. On or about March 7, 2012, an attorney representing Respondent (Richard Sommer)
communicated by letter that neither he nor Respondent would attend the March 8, 2012. In this
letter, Respondent's attorney acknowledged appropriate notice of the hearing, and requested that
the matter not be further delayed. Along with the letter, Respondent returned an Answer to the
First Amended Accusation and Petition to Revoke that admitted many of its allegations.

7. Neither Respondent nor his attorney attended the March 8, 2012 hearing. The record 14 was opened to mark and receive into evidence the jurisdictional documents (State's Exhibit 1), 15 and the letter and attached pleadings filed by Respondent (State's Exhibit 2). Exhibit 1 consists 16 17 of First Amended Accusation and Petition to Revoke Probation No. 4141; the service documents showing its service on January 18, 2012; the original Accusation No. 4141; the Notice of Defense 18 returned by Respondent in response to the original Accusation; and the Notice of Continued 19 20 Hearing served on Respondent and his attorney on February 13, 2012. State's Exhibit 2 consists of a letter by Richard Sommer dated March 7, 2012; the Answer; Certificates of Service; a Notice 21 22 of Appearance as Defense Counsel and Application for Leave to Appear Pro Hac Vice; and the authorization by Respondent for Mr. Sommer to act as his attorney in this matter. The record was 23 then closed and the case returned to the Attorney General's Office to prepare an in-office default. 24

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California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds 1 Respondent is in default. The Board will take action without further hearing and, based on the 2 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as 3 taking official notice of all the investigatory reports, exhibits and statements contained therein on 4 5 file at the Board's offices regarding the allegations contained in First Amended Accusation and Petition to Revoke Probation No. 4141, finds that the charges and allegations in First Amended 6 Accusation and Petition to Revoke Probation No. 4141 are, separately and severally, found to be 7 8 true and correct by clear and convincing evidence.

9 10. Taking official notice of its internal records, pursuant to Business and Professions
10 Code section 125.3, it is hereby determined that the reasonable costs for Investigation and
11 Enforcement of the Accusation matter are \$2,037.50 as of March 6, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Gary Victor Mantese has subjected his Pharmacist License No. RPH 47841 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

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The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
 based upon the following violations alleged in the First Amended Accusation and Petition to
 Revoke Probation which are supported by the evidence contained in the Default Decision
 Evidence Packet in this case:

20 a. In violation of Business and Professions Code section 4301(f), Respondent did acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, including the following. In or 21 about June 2011, Respondent, already facing a stipulated disciplinary order of license revocation, 22 stayed, three (3) years probation with specified terms and conditions, based on an Accusation 23 served in or about April 2011 that arose from Respondent's history of license discipline in other 24 states due to incidents involving, inter alia, his use and abuse of crack cocaine, submitted a hair 25 sample for drug testing, which resulted in a confirmed positive for **cocaine** metabolites. At first, 26 27 Respondent adamantly denied any drug use, only to subsequently admit that he had relapsed on cocaine. Respondent departed California to take up residence in the State of Missouri. 28

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b. In violation of Business and Professions Code section(s) 4301(h), (j), and/or (o), and/or Health and Safety Code section 11170, Respondent, as described above, administered a controlled substance to himself.

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c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059,
 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
 himself or another without a valid prescription, and/or conspired to furnish, or assisted or abetted
 furnishing of, a controlled substance, without a valid prescription.

8 d. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,
9 and/or Health and Safety Code section 11350, Respondent, as described above, possessed,
10 conspired to possess, and/or assisted or abetted possession of, a controlled substance, without a
11 valid prescription.

e. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
Health and Safety Code section 11173(a), Respondent, as described above, obtained, conspired to
obtain and/or assisted or abetted obtaining of, a controlled substance by fraud, deceit, subterfuge,
or concealment of a material fact.

f. In violation of Business and Professions Code section(s) 4301(j) and/or (o), and/or
Health and Safety Code section 11550, Respondent, as described above, used or was under the
influence of, conspired to use/be under the influence of, and/or assisted or abetted use/being
under the influence of, certain identified controlled substances, not administered by or under the
direction of an authorized licensee.

g. In violation of Business and Professions Code section 4301, Respondent, as described
 above, engaged in unprofessional conduct

h. In violation of Term and Condition 2 of the Decision and Order imposing probation
on Respondent's License pursuant to Accusation No. 3890, which requires that Respondent
submit quarterly reports on a schedule as directed by the Board or its designee, Respondent failed
to submit quarterly reports as directed, including on or prior to January 10, 2012.

i. In violation of Term and Condition 3 of that Decision and Order, Respondent failed
to appear in person for interviews with the Board or its designee, as directed.

1	j. In violation of Term and Condition 14 of that Decision and Order, Respondent failed	
2	to complete evaluation, enrollment, and participation in the Pharmacists Recovery Program (PRP)	
3	as directed within thirty (30) days, and has never re-entered the PRP since departing to Missouri.	
4	k. In violation of Term and Condition 4 of that Decision and Order, Respondent failed	
5	to timely cooperate with the Board's inspection program and with the Board's monitoring and	
6	investigation of Respondent's compliance with the terms and conditions of his probation.	
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9	ORDER	
10	IT IS SO ORDERED that Pharmacist License No. RPH 47841, heretofore issued to	
11	Respondent Gary Victor Mantese, is revoked.	
12	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a.	
13	written motion requesting that the Decision be vacated and stating the grounds relied on within	
14	seven (7) days after service of the Decision on Respondent. The agency in its discretion may	
15	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.	
16	This decision shall become effective on May 18, 2012.	
17	It is so ORDERED on April 18, 2012.	
18	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
19	STATE OF CALIFORNIA	
20	la C. Cussi	
21	By (. WEISSER	
22	Board President	
23	10860470.DOC DOJ Matter IDs: SF2011202064 and SF2011400634	
24	Attachment:	
.25	Exhibit A: First Amended Accusation and Petition to Revoke Probation No. 4141	
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	DEFAULT DECISION AND ORDER (Case No. 4141; OAH No. 2011100183)	

Exhibit A

First Amended Accusation and Petition to Revoke Probation No. 4141

1	KAMALA D. HARRIS		
2	Attorney General of California FRANK H. PACOE		
3	Supervising Deputy Attorney General JOSHUA A. ROOM		
4	Deputy Attorney General State Bar No. 214663		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
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 Accusation and Petition to Case No. 4141 Revoke Probation Against:		
12	GARY VICTOR MANTESE		
13	3895 Holly HillsFIRST AMENDED ACCUSATION ANDSt. Louis, Missouri 63116PETITION TO REVOKE PROBATION		
14	Pharmacist License No. RPH 47841		
15			
16	Respondent.		
17	Complainant alleges:		
17	<u>PARTIES</u>		
	1. Virginia Herold (Complainant) brings this Accusation and Petition to Revoke		
19	Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,		
20	Department of Consumer Affairs.		
21	2. On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License Number		
22	RPH 47841 to Gary Victor Mantese (Respondent). The License was in full force and effect at all		
23	times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.		
24	3. In a disciplinary action titled "In the Matter of the Accusation against Gary Victor		
25	Mantese," Case No. 3890, the Board of Pharmacy issued a Decision and Order, effective		
26	September 5, 2011, in which Respondent's Pharmacist License was revoked, with the revocation		
27	stayed and Respondent placed on probation for a period of three (3) years with certain terms and		
28	conditions. A copy of that decision is attached as exhibit A and is incorporated by reference.		
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	FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)		

JURISDICTION

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

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

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

7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, 10 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a 11 disciplinary action during the period within which the license may be renewed, restored, reissued 12 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not 13 renewed within three years following its expiration may not be renewed, restored, or reinstated 14 15 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not 16 renewed within 60 days after its expiration, and will require a new application. 17

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STATUTORY AND REGULATORY PROVISIONS

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

(h) The administering to oneself, of any controlled substance, or the use of any dangerous
drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
oneself, [another licensee, person, or the public], or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

(j) The violation of any of the statutes of this state, of any other 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 or by any other state or federal regulatory agency.

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

8 "For the purpose of denial, suspension, or revocation of a personal or facility license 9 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a 10 crime or act shall be considered substantially related to the qualifications, functions or duties of a 11 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a 12 licensee or registrant to perform the functions authorized by her license or registration in a 13 manner consistent with the public health, safety, or welfare."

14 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
15 drug or dangerous device except upon the prescription of an authorized prescriber.

16 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
17 controlled substance, except that furnished upon a valid prescription/drug order.

18 12. Health and Safety Code section 11170 provides that no person shall prescribe,
19 administer, or furnish a controlled substance for himself or herself.

13. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
any controlled substance listed in Schedule II (Health and Safety Code section 11055),
subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
person to use or be under the influence of any controlled substance in Schedule II (Health and
Safety Code section 11055), subdivision (c), or any narcotic drug in Schedules III-V, except when
administered by or under the direction of an authorized licensee.

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FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)

COST RECOVERY

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2	15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the	
3	administrative law judge to direct a licentiate found to have committed a violation of the licensing	
4	act to pay a sum not to exceed its reasonable costs of investigation and enforcement.	
5	CONTROLLED SUBSTANCES / DANGEROUS DRUGS	
6	16. Section 4021 of the Code states:	
7	"Controlled substance' means any substance listed in Chapter 2 (commencing with Section	
8	11053) of Division 10 of the Health and Safety Code."	
9	17. Section 4022 of the Code states, in pertinent part:	
10	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,	
11	except veterinary drugs that are labeled as such, and includes the following:	
12	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without	
13	prescription,' 'Rx only,' or words of similar import	
14	(c) Any other drug or device that by federal or state law can be lawfully dispensed only on	
15	prescription or furnished pursuant to Section 4006."	
16	18. Cocaine is a Schedule I (in base/rock/crack form) or Schedule II controlled substance	
17	as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous	
18	drug as designated by Business and Professions Code section 4022. It is a narcotic drug.	
19	FACTUAL BACKGROUND	
20	19. Between on or about June 29, 2009 and on or about July 1, 2011, Respondent worked	
21	as a contract pharmacist (through Intuitive Health Services in Atascadero, CA) at Coalinga State	
22	Hospital (HPE 47182) in Coalinga, CA. During that time, Respondent lived in Coalinga, CA.	
23	20. On or about April 11, 2011, Respondent was served with an Accusation in the case	
24	titled "In the Matter of the Accusation Against Gary Victor Mantese," Case No. 3890 before the	
25	Board of Pharmacy. The Accusation alleged four causes for discipline based on discipline against	
26	Respondent's pharmacist licenses held in four (4) other states (Missouri, Louisiana, Texas, and	
27	Illinois). The underlying cases were based on, <i>inter alia</i> , Respondent's use of crack cocaine .	
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21. On or about June 8, 2011, a settlement offer was extended to Respondent regarding Case No. 3890. Respondent signed and returned the Stipulated Settlement and Disciplinary Order on or about June 13, 2011, stipulating to the allegations in the Accusation, and agreeing to terms including required enrollment in and completion of the Pharmacists Recovery Program (PRP).

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22. In anticipation of adoption by the Board of Pharmacy of the Stipulated Settlement and Disciplinary Order, Respondent contacted the PRP and began enrollment processes. On or about June 29, 2011, Respondent submitted a hair sample for drug testing. That test came back with a confirmed positive for **cocaine** metabolites, showing Respondent's preceding use thereof. On or about July 5, 2011, that positive test result was communicated to Respondent by the PRP.

On or about July 5, 2011, in communications with PRP representatives, Respondent 23. 10 adamantly denied any use of cocaine, and challenged the result(s) of the test. Respondent 11 informed the PRP that he would be leaving the program and the state immediately, as he was 12 13 moving back to Missouri to live with family. A Texas-based attorney acting on his behalf sent a letter to PRP representatives on or about July 6, 2011 stating that Respondent was en route to 14 Missouri, and also stating that Respondent's "employment contract was recently terminated." 15

16 24. On or about July 7, 2011, Respondent was terminated from the PRP and classified as a potential public risk. As of on or about that date, his PRP casefile was closed. 17

18 25. In the meantime, sometime before on or about July 8, 2011, Respondent contacted his supervisor(s) at Coalinga State Hospital and admitted that he had used cocaine earlier in the year, 19 and that his use had been detected. He said that he was moving back to Missouri, and would no 20 longer be accepting any shifts for employment at Coalinga State Hospital. 21

On or about July 21, 2011, Respondent contacted Board staff, saying that his sudden 26. 22 decision to move back to Missouri was made in a "panic," that he now realized he had made "a 23 terrible mistake" and was "truly sorry," and that he wished to return to California and return to 24 work as a pharmacist at Coalinga State Hospital. 25

27. Respondent ultimately decided to remain resident in Missouri, and has not moved 26 back to California. This has led to non-compliance with terms and conditions of his probation. 27 ///

1	FIRST CAUSE FOR DISCIPLINE	
2	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)	
3	28. Respondent is subject to discipline under section 4301(f) of the Code, in that	
4	Respondent, as described in paragraphs 19 to 27 above, committed acts involving moral	
5	turpitude, dishonesty, fraud, deceit, or corruption.	
6	SECOND CAUSE FOR DISCIPLINE	
7	(Self-Administration of Controlled Substance(s))	
8	29. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)	
9	and/or (o) of the Code and/or Health and Safety Code section 11170, in that Respondent, as	
10	described in paragraphs 19 to 27 above, administered controlled substance(s) to himself.	
11	THIRD CAUSE FOR DISCIPLINE	
12	(Furnishing of Controlled Substance(s))	
13	30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
14	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described	
15	in paragraphs 19 to 27 above, furnished to himself or another without a valid prescription, and/or	
16	conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.	
17	FOURTH CAUSE FOR DISCIPLINE	
18	(Possession of Controlled Substance(s))	
19	31. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section	
20	4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described	
21	in paragraphs 19 to 27 above, possessed, conspired to possess, and/or assisted in or abetted	
22	possession of, a controlled substance, without a prescription.	
23	FIFTH CAUSE FOR DISCIPLINE	
24	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)	
25	32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,	
26	and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs	
27	19 to 27 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a	
28	controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.	
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	FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)	

1	SIXTH CAUSE FOR DISCIPLINE	
2	(Unlawful Use of Narcotic Controlled Substances)	
3	33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,	
4	and/or Health and Safety Code section 11550, in that, as described in paragraphs 19 to 27 above,	
5	Respondent used or was under the influence of, conspired to use/be under the influence of, and/or	
6	assisted in or abetted use/being under the influence of, certain identified controlled substances,	
7	not administered by or under the direction of an authorized licensee.	
8	SEVENTH CAUSE FOR DISCIPLINE	
9	(Unprofessional Conduct)	
10	34. Respondent is subject to discipline under section 4301 of the Code in that	
11	Respondent, as described in paragraphs 19 to 33 above, engaged in unprofessional conduct.	
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13	FIRST CAUSE TO REVOKE PROBATION	
14	(Failure to Timely Submit Quarterly Report(s))	
15	35. At all times after the effective date (September 5, 2011) of the Decision and Order	
16	imposing probation on Respondent's License, Term and Condition 2 of that Order required that	
17	Respondent report to the Board quarterly, on a schedule as directed by the Board or its designee,	
18	either in person or in writing, as directed. Respondent was directed to report quarterly, in writing,	
. 19	with the first report due on or before January 10, 2012. No quarterly reports have been received	
20	from Respondent during probation, including the quarterly report due on January 10, 2012. This	
21	failure to timely submit quarterly report(s) subjects Respondent's License to revocation.	
22	SECOND CAUSE TO REVOKE PROBATION	
23	(Failure to Appear In Person for Board Interview(s))	
24	36. At all times after the effective date (September 5, 2011) of the Decision and Order	
25	imposing probation on Respondent's License, Term and Condition 3 of that Order required that	
26	Respondent appear in person for interviews with the Board or its designee, as directed, and stated	
27	that failure to appear for any scheduled interview without prior notice, or failure to appear for two	
28	(2) or more scheduled interviews, would be considered a violation of probation.	
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	FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)	

1	37. On or about August 12, 2011, Respondent was directed to appear at the offices of the
2	Board on August 25, 2011 for a probation office conference/interview. On or about August 16,
3	18, and/or 19, 2011, Respondent stated that he was living in Missouri, and would be unable to
4	attend the scheduled conference/interview. On or about September 15, 2011, Respondent was
5	directed to appear at the Board offices on September 29, 2011 for an office conference/interview.
6	On or about September 23 and/or September 26, 2011, Respondent stated that he would not be
• 7	attending the scheduled conference/interview. On or about September 29, 2011, Respondent was
8	directed to appear at the Board offices on October 26, 2011 for an office conference/interview. A
9	second written notification was sent to Respondent on or about October 14, 2011. Respondent
10	did not attend the August 25, September 29, or October 26, 2011 conference(s)/interview(s). This
11	failure to attend scheduled, noticed interview(s) subjects Respondent's License to revocation.
12	THIRD CAUSE TO REVOKE PROBATION
13	(Failure to Timely Enroll in Pharmacists Recovery Program (PRP))
14	38. At all times after the effective date (September 5, 2011) of the Decision and Order
15	imposing probation on Respondent's License, Term and Condition 14 of that Order required that
16	within thirty (30) days (i.e., by October 5, 2011) Respondent contact the Pharmacists Recovery
17	Program (PRP) for evaluation, and immediately thereafter enroll, participate in, and complete the
18	treatment contract and any subsequent addenda recommended by the PRP. Per paragraphs 22 to
19	24 above, Respondent failed to complete evaluation, enrollment, and/or participation in the PRP
20	program within thirty days after September 5, 2011, and has never re-entered the PRP since his
21	departure to Missouri. This failure to timely submit to evaluation, to complete enrollment, and/or
22	to participate in the PRP, subjects Respondent's License to revocation.
23.	FOURTH CAUSE TO REVOKE PROBATION
24	(Failure to Cooperate with Board Staff)
25	39. At all times after the effective date (September 5, 2011) of the Decision and Order
26	imposing probation on Respondent's License, Term and Condition 4 of that Order required that
27	Respondent cooperate with the Board's inspection program and with the Board's monitoring and
28	investigation of Respondent's compliance with terms and conditions of his probation.
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	FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)

1	40. Per paragraphs 35-38 above, Respondent failed to timely cooperate on one or more		
2	occasions. His failure(s) to cooperate as required subject Respondent's License to revocation.		
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4	OTHER MATTERS – EXTENSION OF PROBATION		
5.	41. At all times after the effective date (September 5, 2011) of the Decision and Order		
. 6	imposing probation on Respondent's License, Term and Condition 19 of that Order required:		
7	19. Violation of Probation.		
8	If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be		
9	extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to		
10	terminate probation, and to impose the penalty that was stayed.		
11	If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary		
12	order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the		
13			
14	period of probation shall be automatically extended until the petition to revoke probation or		
15	accusation is heard and decided.		
16	42. Pursuant to the operation of Term and Condition 19 of the probation order applicable		
17	to Respondent's License, probation is automatically extended by the filing hereof, and/or by		
18	Respondent's failure to comply with the terms and conditions of probation, until such time as this		
19	Accusation and Petition to Revoke Probation is heard and decided, or until the Board has taken		
20	other action as deemed appropriate to treat the failure to comply as a violation of probation.		
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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 License Number RPH 47841, issued to Gary		
28	Victor Mantese (Respondent);		
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	FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)		

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Revoking the probation that was granted by the Board of Pharmacy in Case No. 3890 2. and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No. RPH 47841, issued to Gary Victor Mantese (Respondent); 3. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as is deemed necessary and proper. 4. DATED: A HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2011202064 40510728.doc FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION (Case No. 3890)

Exhibit A

Decision and Order Board of Pharmacy Case No. 3890

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

In the Matter of the Accusation Against:

Case No. 3890

GARY VICTOR MANTESE 300 Juniper Ridge #266 Coalinga, CA 93210

Pharmacist License No. RPH 47841

Respondent.

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 September 5, 2011.

It is so ORDERED on August 5, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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STANLEY C. WEISSER Board President

1	KAMALA D. HARRIS Attorney General of California		
2	Frank H. Pacoe		
3	Supervising Deputy Attorney General Joshua A. Room		
4	Deputy Attorney General State Bar No. 214663		
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004		
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480		
7	Attorneys for Complainant		
	BEFORE THE		
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
9	STATE OF CALIFORNIA		
10 -	In the Matter of the Accusation Against: Case No. 3890		
11			
12	GARY VICTOR MANTESESTIPULATED SETTLEMENT AND300 Juniper Ridge # 266DISCIPLINARY ORDERCoalinga, CA 93210DISCIPLINARY ORDER		
13	Pharmacist License No. RPH 47841		
14	Respondent.		
.15			
16			
17	In the interest of a prompt and speedy settlement of this matter, consistent with the public		
18	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,		
19	the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will		
-20	be submitted to the Board for approval and adoption as the final disposition of the Accusation.		
21		•	
22	PARTIES		
23	1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought		
24	this action solely in her official capacity and is represented in this matter by Kamala D. Harris,		
25	Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.		
26	2. Respondent Gary Victor Mantese (Respondent) is representing himself in this		
27	proceeding and has chosen not to exercise his right to be represented by counsel.		
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.	STIPULATED SETTLEMENT (Case No. 3890)		

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STIPULATED SETTLEMENT (Case No. 3890)

On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License No. 3. 1 RPH 47841 to Gary Victor Mantese (Respondent). The Pharmacist License was in full force and 2 effect at all times relevant to the charges brought in Accusation No. 3890 and will expire on 3 August 31, 2012, unless renewed. 4 5 JURISDICTION 6 Accusation No. 3890 was filed before the Board of Pharmacy (Board), Department of 7 4 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other 8 9 statutorily required documents were properly served on Respondent on April 11, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation 10

No. 3890 is attached as exhibit A and incorporated herein by reference.

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ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands, the charges and allegations in Accusation No. 3890. Respondent has also carefully read, and understands, the effects of this Stipulated Settlement and Disciplinary Order. 16

Respondent is fully aware of his legal rights in this matter, including the right to a 6. 17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at 18 his own expense; the right to confront and cross-examine the witnesses against him; the right to 19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel 2.0 the attendance of witnesses and the production of documents; the right to reconsideration and 21 court review of an adverse decision; and all other rights accorded by the California 22 Administrative Procedure Act and other applicable laws. 23

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and 24 every right set forth above. 25

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<u>CULPABILITY</u>

Respondent admits the truth of each and every charge and allegation in Accusation
 No. 3890. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to
 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

<u>CONTINGENCY</u>

9. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 7 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 8 communicate directly with the Board regarding this stipulation and settlement, without notice to 9 or participation by Respondent. By signing the stipulation, Respondent understands and agrees 10 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the 11 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and 12 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for 13 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall 14 not be disqualified from further action by having considered this matter. 15

1610. The parties understand and agree that facsimile copies of this stipulation, including17facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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STIPULATED SETTLEMENT (Case No. 3890)

1	DISCIPLINARY ORDER	
2	IT IS HEREBY ORDERED that Pharmacist License No. RPH 47841, issued to Gary Victor	
3	Mantese (Respondent), is revoked. However, the revocation is stayed and Respondent is placed	
4	on probation for three (3) years on the following terms and conditions.	
5	1. Obey All Laws	
Ġ	Respondent shall obey all state and federal laws and regulations.	
. 7	Respondent shall report any of the following occurrences to the board, in writing, within	
8	seventy-two (72) hours of such occurrence:	
9	• an arrest or issuance of a criminal complaint for violation of any provision of the	
10	Pharmacy Law, state and federal food and drug laws, or state and federal controlled	
11	substances laws	
12	• a plea of guilty or nolo contendre in any state or federal criminal proceeding to any	
13	criminal complaint, information or indictment	
14	• a conviction of any crime	
15	• discipline, citation, or other administrative action filed by any state or federal agency	
16	which involves respondent's pharmacist license or which is related to the practice of	
-17	pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging	
18	for any drug, device or controlled substance.	
19	Failure to timely report such occurrence shall be considered a violation of probation.	
20	2. Report to the Board	
21	Respondent shall report to the board quarterly, on a schedule as directed by the board or its	
22	designee. The report shall be made either in person or in writing, as directed. Among other	
23	requirements, respondent shall state in each report under penalty of perjury whether there has	
- 24	been compliance with all the terms and conditions of probation. Failure to submit timely reports	
25	in a form as directed shall be considered a violation of probation. Any period(s) of delinquency	
26	in submission of reports as directed may be added to the total period of probation. Moreover, if	
27	the final probation report is not made as directed, probation shall be automatically extended until	
28	such time as the final report is made and accepted by the board.	

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STIPULATED SETTLEMENT (Case No. 3890)

3. Interview with the Board

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

4. Cooperate with Board Staff

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

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Continuing Education

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

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6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3890 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of 18 19 respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's 20 21 tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3890, and terms and conditions imposed 22 23 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board. If respondent works for or is employed by or 24 25 through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions 26 of the decision in case number 3890 in advance of the respondent commencing work at each 27 28 licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3890 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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Prohibitions on Supervision and Consultancy

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

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Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,365.00.

Absent prior written approval by the Board or its designee, respondent may not successfully

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completed no later than thirty (30) months after the effective date of this decision. There shall be
no deviation from this schedule absent prior written approval by the Board or its designee.

complete probation until this amount is paid in full. Respondent shall be permitted to pay these

26 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

costs in a payment plan approved by the Board or its designee, so long as full payment is

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

9. Probation Monitoring Costs

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

10. Status of License

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

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

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11. No Ownership of Licensed Premises

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

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12. Notification of a Change in Employment, Name, Address(es), or Phone(s)

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known.

Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

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

13. Supervised Practice

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

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Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

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Partial - At least 25% of a work week

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

Within thirty (30) days of the effective date of this decision, Respondent shall have his supervisor submit notification to the board in writing stating that the supervisor has read the decision in case number 3890 and is familiar with the required level of supervision as determined by the board or its designee. It shall be the Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If Respondent changes employment, it shall be the Respondent's responsibility to ensure 20 21 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have his new supervisor, within fifteen (15) 22 23 days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 3890 and is/are 24 25 familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and his license shall be automatically suspended until the board or its designee 26 27 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation. 28

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

During any such suspension, respondent 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 licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Failure to comply with any such suspension shall be considered a violation of probation.

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14. Pharmacists Recovery Program (PRP)

Within thirty (30) days of the effective date of this decision, respondent shall contact the 16 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll, 17 successfully participate in, and complete the treatment contract and any subsequent addendums as 18 recommended and provided by the PRP and as approved by the board or its designee. The costs 19 for PRP participation shall be borne by the respondent. If respondent is currently enrolled in the 20 PRP, said participation is now mandatory and as of the effective date of this decision is no longer 21 considered a self-referral under Business and Professions Code section 4362(c)(2). Respondent 22 shall participate in and complete his contract and any subsequent addendums with the PRP. 23

Failure to timely contact or enroll in the PRP, or successfully participate in and complete the treatment contract and/or any addendums, shall be considered a violation of probation.

Probation shall be automatically extended until respondent successfully completes the PRP.
Any person terminated from the PRP program shall be automatically suspended by the board.
Respondent may not resume the practice of pharmacy until notified by the board in writing.

Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall result in the automatic suspension of practice by respondent and shall be considered a violation of probation. Respondent may not resume the practice of pharmacy until notified by the board in writing.

During any such suspension, respondent shall not enter any pharmacy area or any portion of 5 6 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or 7 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act 8 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient 9 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the 10 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs 11 and controlled substances. Respondent shall not resume practice until notified by the board. 12

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Failure to comply with any such suspension shall be considered a violation of probation.
Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

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15. Abstain from Drug and Alcohol Possession or Use

Respondent shall fully abstain from possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that a drug was legitimately prescribed and is a necessary part of respondent's treatment. Failure to timely provide such documentation shall be considered a violation of probation.

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STIPULATED SETTLEMENT (Case No. 3890)

Respondent shall ensure he is not in the same physical location as individuals who are using illicit substances even if Respondent is not personally ingesting a drug. Any possession or use of alcohol, controlled substances, or paraphernalia not supported by timely documentation, and/or any proximity to persons using illicit substances, shall be considered a violation of probation.

16. Random Drug Screening

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Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or controlled substances as the board or its designee may direct. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples.

Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, Respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in automatic suspension of practice by Respondent. Respondent may not resume practice until notified by the board in writing.

During any such suspension, respondent shall not enter any pharmacy area or any portion of 21 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor 22 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or 23 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act 24 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient 25 consultation: nor shall respondent manage, administer, or be a consultant to any licensee of the 26 board. or have access to or control the ordering, manufacturing or dispensing of dangerous drugs 27 and controlled substances. Respondent shall not resume practice until notified by the board. 28

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Failure to comply with any such suspension shall be considered a violation of probation.

Tolling of Probation 17.

Except during periods of suspension, respondent shall, at all times while on probation, be 7 8 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the 9 10 period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation. 12

Should respondent, regardless of residency, for any reason (including vacation) cease 13 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California, 14 respondent must notify the board in writing within ten (10) days of the cessation of practice, and 15 must further notify the board in writing within ten (10) days of the resumption of practice. Any 16 failure to provide such notification(s) shall be considered a violation of probation. 17

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

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

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18. License Surrender While on Probation/Suspension

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

9 Upon acceptance of surrender, respondent shall relinquish his pocket and wall license to the 10 board within ten (10) days of notification by the board that the surrender is accepted. Respondent 11 may not reapply for any license from the board for three (3) years from the effective date of the 12 surrender. Respondent shall meet all requirements applicable to the license sought as of the date 13 the application for that license is submitted to the board, including any outstanding costs.

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19. Violation of Probation

15 If a respondent has not complied with any term or condition of probation, the board shall 16 have continuing jurisdiction over respondent, and probation shall automatically be extended, until 17 all terms and conditions have been satisfied or the board has taken other action as deemed 18 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and 19 to impose the penalty that was stayed.

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

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20. Completion of Probation	20.	Completion	of Probation
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1	20. Completion of Probation	
2	Upon written notice by the board or its designee indicating successful completion of	
3	probation, respondent's license will be fully restored.	
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5	ACCEPTANCE	
6	I have carefully read the foregoing Stipulated Settlement and Disciplinary Order. I	
7	understand the stipulation and the effect it will have on my Pharmacist License. I enter into this	
.8	Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agre	
9	to be bound by the Decision and Order of the Board of Pharmacy.	
10	1	
11	DATED: 6/13/11	
12	GARY VICTOR MANTESE Respondent	
13		
14	ENDORSEMENT	
15	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully	
16	submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.	
17		
18	Dated: 6/25/2011 Respectfully submitted,	
19	KAMALA D. HARRIS Attorney General of California	
20	FRANK H. PACOE Supervising Deputy Attorney General	
21	$(\lambda A - C)$	
22	Jøshua A. Room	
23	Deputy Attorney General Attorneys for Complainant	
24		
25		
26	SE2010202052	
27	SF2010202952 20466830.doc	
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STIPULATED SETTLEMENT (Case No. 3890)

Exhibit A

Accusation No. 3890

1	KAMALA D. HARRIS Attorney General of California
2	FRANK H. PACOE Supervising Deputy Attorney General
3	Joshua A. Room
4	Deputy Attorney General State Bar No. 214663
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480
7	Attorneys for Complainant
8	BEFORE THE BOARD OF PHARMACY
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
	In the Matter of the Accusation Against: Case No. 3890
11	GARY VICTOR MANTESE
12	300 Juniper Ridge # 266Coalinga, CA 93210A C C U S A T I O N
13	Pharmacist License No. RPH 47841
14	Respondent.
. 15	
16	Complainant alleges:
17	PARTIES
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20	2. On or about May 5, 1995, the Board of Pharmacy issued Pharmacist License Number
21	RPH 47841 to Gary Victor Mantese (Respondent). The License was in full force and effect at all
22	times relevant to the charges brought herein and will expire on August 31, 2012, unless renewed.
23	
24	JURISDICTION
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26	Consumer Affairs, under the authority of the following laws. All section references are to the
27	Business and Professions Code (Code) unless otherwise indicated.
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4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

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

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and will require a new application.

STATUTORY PROVISIONS

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

(n) The revocation, suspension, or other discipline by another state of a license to practice
pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

COST RECOVERY

8. 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 of the licensing
 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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FIRST CAUSE FOR DISCIPLINE

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(License Discipline by Another State)

9. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that Respondent's license to practice pharmacy was subjected to discipline by another state, namely, Missouri. Respondent's disciplinary history in that state is as follows:

The stipulated facts underlying a disciplinary order against a license to practice a. 6 pharmacy (# 29599) issued to Respondent by the Missouri Board of Pharmacy included that: 7

> on or about June 26, 2003, Respondent was arrested by St. Louis Police in a known crack cocaine house while in possession of drug paraphernalia (a crack pipe); on or about October 17, 2003, a urine sample provided by Respondent tested positive for cocaine metabolites;

on or about August 27, 2002, Respondent was convicted of driving under the influence of alcohol in California.

On or about April 1, 2005, and effective on or about May 17, 2005, Respondent b. 14 signed and agreed to a stipulated settlement agreement with the Missouri Board of Pharmacy that 15 imposed discipline on his license to practice pharmacy. The terms of the discipline included the 16 suspension of Respondent's license to practice pharmacy for three (3) years, followed by a term 17 of probation of five (5) years, both on specified terms and conditions including drug testing. 18

SECOND CAUSE FOR DISCIPLINE

(License Discipline by Another State) 21

Respondent is subject to disciplinary action under section 4301(n) of the Code, in that 22 10. Respondent's license to practice pharmacy was subjected to discipline by another state, namely, 23 Louisiana. Respondent's disciplinary history in that state is as follows: 24

On or about February 17, 2005, the Louisiana Board of Pharmacy accepted the 25 a. voluntary surrender of Respondent's license to practice pharmacy (# 11065) submitted December 26 13, 2004, and thereby ordered indefinite suspension of the license effective December 13, 2004. 27 ///

b. On or about November 13, 2008, Respondent's request for reinstatement was granted by Consent Order and/or Consent Agreement of the Louisiana Board of Pharmacy, and his license to practice pharmacy (# 11065) was reinstated, subject to an Order suspending the license for a period of five (5) years, with that suspension order suspended in favor of probation for the same period (5 years), on terms and conditions including abstinence and drug testing.

THIRD CAUSE FOR DISCIPLINE

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(License Discipline by Another State)

9 11. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that
10 Respondent's license to practice pharmacy was subjected to discipline by another state, namely,
11 Texas. Respondent's disciplinary history in that state is as follows:

a. On or about May 10, 2005, an Agreed Board Order issued by the Texas State
Board of Pharmacy placed Respondent's license to practice pharmacy in that state (# 23904) on a
five (5) year probated suspension with conditions, based on information that Respondent had
been convicted of Driving While Intoxicated, had violated the terms of his Professional Recovery
Network contract, and had received treatment in November 2004 for a crack cocaine relapse.

b. On or about May 10, 2006, an Agreed Board Order issued by the Texas State
Board of Pharmacy suspended Respondent's license with conditions, based on information that
Respondent was treated in January 2006 for a crack cocaine relapse and was incapacitated.

c. On or about August 2, 2006, an Agreed Board Order issued by the Texas State
 Board of Pharmacy revoked Respondent's license, based on Respondent's admission that he had
 relapsed on crack cocaine and his request for license revocation.

d. On or about August 11, 2010, an Agreed Board Order issued by the Texas State
Board of Pharmacy ordered Respondent's license to be reinstated following his completion of a
licensing examination, continuing education, and supervised internship hours, further ordered the
license suspended pending an evaluation demonstrating Respondent's lack of dependence and/or
incapacity, and thereafter placed the license on probation for ten (10) years, terms and conditions
to include participation in the Professional Recovery Network, abstinence, and drug testing.

FOURTH CAUSE FOR DISCIPLINE

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(License Discipline by Another State)

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3	12. Respondent is subject to disciplinary action under section 4301(n) of the Code, in that	
4	Respondent's license to practice pharmacy was subjected to discipline by another state, namely,	
5	Illinois. Respondent's disciplinary history in that state includes that on or about May 25, 2006, a	
6	Consent Order approved by the Illinois Department of Financial and Professional Regulation,	
7	Division of Professional Regulation, with regard to Respondent's license to practice pharmacy in	
8	that state (# 51031441), suspended that license indefinitely, until such time as Respondent might	
9	petition for restoration. To petition for restoration, Respondent would have to show, inter alia,	
10	that his Texas and Louisiana licenses are no longer in suspended status.	
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13	PRAYER	
14	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
15	and that following the hearing, the Board of Pharmacy issue a decision:	
16	1. Revoking or suspending Pharmacist License Number RPH 47841, issued to Gary	·
17	Victor Mantese (Respondent);	
18	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and	
19	enforcement of this case, pursuant to Business and Professions Code section 125.3;	
20	3. Taking such other and further action as is deemed necessary and proper.	
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23	ALSIN LINE XI LINE	
24	DATED: <u>4/5/1/</u> VIRGINIA HEROLD	
25	Executive Officer Board of Pharmacy	
26	Department of Consumer Affairs State of California	
27	Complainant SF2010202952 20420345.doc	
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