

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

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

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

Pharmacist License No. RPH 47841

Respondent.

Case No. 4141

OAH No. 2011100183

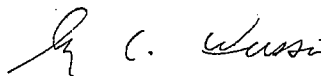
DECISION AND ORDER

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



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation and Petition to Revoke Probation Against:
GARY VICTOR MANTESE
3895 Holly Hills
St. Louis, Missouri 63116
Pharmacist License No. RPH 47841

Respondent.

Case No. 4141
OAH No. 2011100183
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about September 1, 2011, Virginia Herold (Complainant), in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4141 against Gary Victor Mantese (Respondent) before the Board of 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 Accusation and Petition to Revoke Probation is attached as exhibit A.)
2. On or about May 5, 1995, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 47841 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in First Amended Accusation and Petition to Revoke Probation No. 4141 and will expire on August 31, 2012, unless renewed.
3. On or about September 9, 2011, Accusation No. 4141, along with the accompanying statutory documents, was served to Respondent's address of record, which was and is 3895 Holly Hills, St. Louis, Missouri 63116. Respondent acknowledged receipt of same.

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

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

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

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

25 8. California Government Code section 11520 states, in pertinent part:

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

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

4 c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4059,
5 and/or Health and Safety Code section 11170, Respondent, as described above, furnished to
6 himself or another without a valid prescription, and/or conspired to furnish, or assisted or abetted
7 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.

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

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

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

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

27 i. In violation of Term and Condition 3 of that Decision and Order, Respondent failed
28 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
19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA

21 By 

22 STANLEY C. WEISSER

23 Board President

24 10860470.DOC
25 DOJ Matter IDs: SF2011202064 and SF2011400634

26 Attachment:
27 Exhibit A: First Amended Accusation and Petition to Revoke Probation No. 4141
28

Exhibit A

First Amended Accusation and Petition to Revoke Probation No. 4141

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

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

Case No. 4141

12 **GARY VICTOR MANTESE**
13 **3895 Holly Hills**
St. Louis, Missouri 63116

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

14 **Pharmacist License No. RPH 47841.**

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 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.

JURISDICTION

1
2 4. This Accusation and Petition to Revoke Probation is brought before the Board of
3 Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.
4 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.

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

STATUTORY AND REGULATORY PROVISIONS

18
19 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
20 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
21 not be limited to, any of the following:

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

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

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

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

7 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.

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

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

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1 21. On or about June 8, 2011, a settlement offer was extended to Respondent regarding
2 Case No. 3890. Respondent signed and returned the Stipulated Settlement and Disciplinary Order
3 on or about June 13, 2011, stipulating to the allegations in the Accusation, and agreeing to terms
4 including required enrollment in and completion of the Pharmacists Recovery Program (PRP).

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

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

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

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

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

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

28 ///

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.

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.

3
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
9 shall have continuing jurisdiction over respondent, and probation shall automatically be
10 extended, until all terms and conditions have been satisfied or the board has taken other
11 action as deemed appropriate to treat the failure to comply as a violation of probation, to
12 terminate probation, and to impose the penalty that was stayed.

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

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

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters 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);

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.

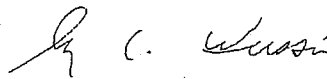
DECISION AND ORDER

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



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3890

11 **GARY VICTOR MANTESE**
12 **300 Juniper Ridge # 266**
13 **Coalinga, CA 93210**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Pharmacist License No. RPH 47841**

15 Respondent.

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.

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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.
28

1 CULPABILITY

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

5
6 CONTINGENCY

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

16 10. The parties understand and agree that facsimile copies of this stipulation, including
17 facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

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1 **3. Interview with the Board**

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

7 **4. Cooperate with Board Staff**

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

11 **5. Continuing Education**

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

14 **6. Notice to Employers**

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

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

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

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

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

13 **7. Prohibitions on Supervision and Consultancy**

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

18 **8. Reimbursement of Board Costs**

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

21 Absent prior written approval by the Board or its designee, respondent may not successfully
22 complete probation until this amount is paid in full. Respondent shall be permitted to pay these
23 costs in a payment plan approved by the Board or its designee, so long as full payment is
24 completed no later than thirty (30) months after the effective date of this decision. There shall be
25 no deviation from this schedule absent prior written approval by the Board or its designee.
26 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

1 **9. Probation Monitoring Costs**

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

6 **10. Status of License**

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

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

14 **11. No Ownership of Licensed Premises**

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

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

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

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

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

3 **13. Supervised Practice**

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

9 Continuous – At least 75% of a work week

10 Substantial - At least 50% of a work week

11 Partial - At least 25% of a work week

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

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

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

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

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

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

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

15 **14. Pharmacists Recovery Program (PRP)**

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

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

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

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation.

4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

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

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

18 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
19 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
20 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

21 **15. Abstain from Drug and Alcohol Possession or Use**

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

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

5 **16. Random Drug Screening**

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

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

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

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

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

6 **17. Tolling of Probation**

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

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

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

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

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1 18. **License Surrender While on Probation/Suspension**

2 Following the effective date of this decision, should respondent cease practice due to
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
4 respondent may tender his license to the board for surrender. The board or its designee shall have
5 the discretion whether to grant the request for surrender or take any other action it deems
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
8 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.

14 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.

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

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Exhibit A

Accusation No. 3890

1 KAMALA D. HARRIS
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7
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 # 266**
13 **Coalinga, CA 93210**

A C C U S A T I O N

14 **Pharmacist License No. RPH 47841**

15 Respondent.

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.

