

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26 September 5, 2011, in which Respondent's Pharmacist License was revoked, with the revocation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.

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 COST RECOVERY

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, *inter alia*, Respondent’s use of **crack cocaine**.

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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.

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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.

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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
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.

29 PRAYER

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

32 1. Revoking or suspending Pharmacist License Number RPH 47841, issued to Gary
33 Victor Mantese (Respondent);

Exhibit A

Decision and Order

Board of Pharmacy Case No. 3890