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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 Against:

Case No. 5539

11 **ANDY HOVANNY RUVALCABA**
12 1280 Research Drive, Unit B
Redlands, CA 92374

A C C U S A T I O N

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14 Designated Representative Certificate No.
EXC 22353

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16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about September 19, 2013, the Board of Pharmacy issued Designated
23 Representative Certificate Number EXC 22353 to Andy Hovanny Ruvalcaba (Respondent). The
24 Designated Representative Certificate, which is currently under disciplinary suspension, expired
25 on September 1, 2015, and has not been renewed.

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JURISDICTION

3. This Accusation 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 unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Section 4059 states, in pertinent part:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

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1 6. Section 4060 states:

2 "No person shall possess any controlled substance, except that furnished to a person upon
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
12 labeled with the name and address of the supplier or producer.

13 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
14 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
15 and devices."

16 7. Section 4300 provides in pertinent part, that every license issued by the Boards is
17 subject to discipline, including suspension or revocation.

18 8. Section 4300.1 states:

19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
20 operation of law or by order or decision of the board or a court of law, the placement of a license
21 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
22 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
23 proceeding against, the licensee or to render a decision suspending or revoking the license."

24 9. Section 4301 states, in pertinent part:

25 "The board shall take action against any holder of a license who is guilty of unprofessional
26 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but
27 is not limited to, any of the following:

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

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

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8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment.

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

3 10. Health and Safety Code section 11379 states, in pertinent part:

4 "(a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with
5 Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who
6 transports, imports into this state, sells, furnishes, administers, or gives away, or offers to
7 transport, import into this state, sell, furnish, administer, or give away, or attempts to import into
8 this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V
9 and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in
10 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of
11 subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified
12 in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or
13 (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of
14 subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist,
15 or veterinarian, licensed to practice in this state, shall be punished by imprisonment pursuant to
16 subdivision (h) of Section 1170 of the Penal Code for a period of two, three, or four years.

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18 "(c) For purposes of this section, "transports" means to transport for sale."

19 **REGULATORY PROVISIONS**

20 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

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CONTROLLED SUBSTANCE/DANGEROUS DRUG

12. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

COST RECOVERY

13. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

14. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a designated representative, as follows:

a. On or about September 30, 2016, after pleading no contest, Respondent was convicted of one felony count of violating Health and Safety Code section 11379(a) [transport controlled substance for sale], in the criminal proceeding entitled *The People of the State of California v. Andy Hovanny Ruvalcaba* (Super. Ct. San Bernardino County, 2016, No. FWV1501985). The Court sentenced Respondent to serve 180 days in county jail via the work release program, with credit for six days served, and placed Respondent on formal (supervised) felony probation for three (3) years, with terms and conditions.

b. The circumstances surrounding the conviction are that on or about May 28, 2015, Respondent was stopped by law enforcement while driving a motor vehicle and found to be in possession of several pounds of methamphetamine.

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