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

In the Matter of the Accusation Against:	.] (	Ca
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ise No. 3175

**DENNIS HUGHES** 

606-25 ½ Road, #24 Grand Junction, CO 81505

Original Pharmacist No. RPH 26090

Respondent.

# **DECISION AND ORDER**

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

This decision shall become effective on October 9, 2009 It is so ORDERED on <u>September 9, 2009</u>

> **BOARD OF PHARMACY** DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

Board President

EDMUND G. BROWN JR., Attorney General of the State of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General BRIAN G. WALSH, State Bar No. 207621
Deputy Attorney General 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2535 Facsimile: (213) 897-2804
Attorneys for Complainant
BEFORE THE
BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
In the Matter of the Accusation Against: Case No. 3175
DENNIS HUGHES
606-25 ½ Road, #24 STIPULATED SURRENDER OF
Grand Junction, CO 81505 Pharmacist License No. RPH 26090  LICENSE AND ORDER
Respondent.
IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
proceeding that the following matters are true:
PARTIES
1. Virginia Herold (Complainant) is the Executive Officer of the Board of
Pharmacy. She brought this action solely in her official capacity and is represented in this matter
by Edmund G. Brown Jr., Attorney General of the State of California, by Brian G. Walsh,
Deputy Attorney General.
2. Dennis Hughes (Respondent) is representing himself in this proceeding
and has chosen not to exercise his right to be represented by counsel.
3. On or about July 15, 1969, the Board of Pharmacy (Board) issued
Pharmacist License No. RPH 26090 to Dennis Hughes (Respondent). The license was in full
force and effect at all times relevant to the charges brought in Accusation No. 3175. It expired
on December 31, 2008, and has not been renewed

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### **JURISDICTION**

4. Accusation No. 3175 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 29, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3175 is attached as exhibit A and incorporated herein by reference.

# **ADVISEMENT AND WAIVERS**

- 5. Respondent has carefully read and understands the charges and allegations in Accusation No. 3175. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

### **CULPABILITY**

- 8. Respondent understands that the charges and allegations in Accusation No. 3175, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License.
- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

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

#### CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

#### **ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 26090, issued to Respondent, is surrendered and accepted by the Board.

- 14. The surrender of Respondent's Pharmacist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.
- 15. Respondent shall lose all rights and privileges as a Registered Pharmacist in California as of the effective date of the Board's Decision and Order.

-1	16. Respondent shall cause to be delivered to the Board both his wall license
2	certificate and, if one was issued, pocket license on or before the effective date of the Decision
3	and Order.
4	17. Respondent fully understands and agrees that if he ever files an application
5	for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a
. 6	new application for licensure. Respondent must comply with all the laws, regulations and
7	procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all
8	of the charges and allegations contained in Accusation No. 3175 shall be deemed to be true,
. 9	correct, and admitted by Respondent when the Board determines whether to grant or deny the
10	petition.
11	18. Should Respondent ever apply or reapply for a new license or certification,
12	or petition for reinstatement of a license, by any other health care licensing agency in the State of
13	California, all of the charges and allegations contained in Accusation, No. 3175 shall be deemed
14	to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
15	other proceeding seeking to deny or restrict licensure.
16	19. Respondent shall pay the Board its costs of investigation and enforcement,
17	in the amount of \$3,093.25, prior to issuance of a new or reinstated license.
18	ACCEPTANCE
19	I have carefully read the Supulated Surrender of License and Order. I understand
20	the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
21	Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
22	by the Decision and Order of the Board.
23	DATED: <u>03/01/2009</u>
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25	Jesso Vayler
26	DENNIS HUGHES  Respondent

ENDORSEMENT

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

DATED:

DATED:

EDMUND G. BROWN JR., Attorney General of the State of California

KAREN B. CHAPPELLE Supervising Deputy Attorney General

BRIAN G. WALSH
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2008600823 50391498.wpd

Exhibit A
Accusation No. 3175

1	EDMUND G. BROWN JR., Attorney General of the State of California
2	GREGORY J. SALUTE
3	Supervising Deputy Attorney General BRIAN G. WALSH, State Bar No. 207621
4	Deputy Attorney General
**	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013
5	Telephone: (213) 897-2535
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7	Attanton Control of the Control of t
1	Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Accusation Against: Case No. 3175
12	DENNIS HUGHES 606-25 1/2 Road, #24 ACCUSATION
13	Grand Junction, CØ 81505
14	Pharmacist License No. RPH 26090
15	Respondent:
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1.7	Complainant alleges:
18	<u>PARTIES</u>
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about July 15, 1969, the Board of Pharmacy (Board) issued
22	Pharmacist License Number RPH 26090 to Dennis Hughes (Respondent). The Pharmacist
23	License was in full force and effect at all times relevant to the charges brought herein and will
24	expire on December 31, 2008, unless renewed.
25	JURISDICTION
26	3. This Accusation is brought before the Board under the authority of the
27	following laws. All section references are to the Business and Professions Code (Code) unless
28	otherwise indicated.

#### STATUTORY PROVISIONS

4. Code section 480, subdivision (a) states, in pertinent part:

A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime. 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 which 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.
- (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

#### Section 490 of the Code states:

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. 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 which 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.

# 6. Code Section 4059, subdivision (a), states, in pertinent part:

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.

7. Code section 4300, subdivision (a) states: "Every license issued may be suspended or revoked."

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# 8. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not 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.
- (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- (j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
- (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.
- (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.
  - (p) Actions or conduct that would have warranted denial of a license.

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1	9. Health and Safety Code section 11171, subdivision (a),
2	states: "No person shall prescribe, administer, or furnish a controlled substance except under the
3	conditions and in the manner provided by [the Uniform Controlled Substances Act]."
4	10. Health and Safety Code section 11173, subdivision (a) states:
5	No person shall obtain or attempt to obtain controlled substances, or
6	procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.
7	
8	REGULATORY PROVISIONS
9	11. California Code of Regulations, title 16, section 1770, states:
10	For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the
11	Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a
12	substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a
13	manner consistent with the public health, safety, or welfare.
14	CONTROLLED SUBSTANCES / DANGEROUS DRUGS
15	12. Oxycodone is an opiate used to treat severe pain. It is classified as a
16	Schedule II controlled substance in Health and Safety Code section 11055, subdivision (b)(1)(N),
17	and is a dangerous drug, as defined in Code section 4022. The brand name for Oxycodone is
18	Oxycontin. The brand name for Oxycodone with APAP is Percocet.
19	13. Sildenafil is a drug used to treat erectile dysfunction. It is a dangerous
20	drug, as defined in Code section 4022.
21	COST RECOVERY
22	14. Section 125.3 of the Code states, in pertinent part, that the Board may
23	request the administrative law judge to direct a licentiate found to have committed a violation or
24	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25	and enforcement of the case.
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.27	<i>!!!</i>
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## FIRST CAUSE FOR DISCIPLINE

# (Conviction of Substantially-Related Crimes)

15. Respondent is subject to disciplinary action under Code sections 490, and 4301, subdivision (I), as a result of his conviction of crimes that are substantially related to the qualifications, functions, and duties of a pharmacist. On or about November 12, 2002, Respondent pled guilty and was convicted of one misdemeanor count of possession of a controlled substance, and one misdemeanor count of retail theft in the criminal proceeding entitled State of Utah v. Dennis Hughes (Third District Court, Salt Lake County, No. 021909882). As part of Respondent's criminal plea bargain, he agreed to surrender his Utah license to practice as a Pharmacist and Dispense Controlled Substances. Respondent was sentenced to 365 days in jail, and placed on probation for three years. The underlying factual circumstances involved Respondent's arrest on or about July 25, 2002, following a period of surveillance by the Loss Prevention Department at K-Mart Store #4273 in Salt Lake City, Utah. At the time of his arrest, Respondent was found with five unaccounted-for Percodan pills and twelve unaccounted-for Viagra pills in his possession.

#### SECOND CAUSE FOR DISCIPLINE

#### (Furnishing Controlled Substances Without Authorization)

1.6. Respondent is subject to disciplinary action under Code section 4301, subdivision (a), for furnishing controlled substances without authorization. On the following six dates, while working as a pharmacist at a Von's Pharmacy in Yucca Valley, California (Von's), Respondent furnished Oxycodone, a controlled substance and a dangerous drug, to patient Beau H., without authorization from a prescriber: (1) July 22, 2006; (2) July 30, 2006; (3) August 3, 2006; (4) August 12, 2006; (5) September 3, 2006; and (6) September 17, 2006. Respondent accomplished the unauthorized furnishing of Oxycodone by adding a fraudulent Oxycodone prescription to a valid, existing prescription for another controlled substance/another patient. He would then leave Von's with the unauthorized Oxycodone, but without paying for it. Investigative evidence substantiated that Respondent furnished a total 460 unauthorized tablets

of Oxycodone to patient Beau H., representing a total retail loss to Von's of \$4,446.45.

Respondent admitted illegally furnishing Oxycodone to Beau H., and agreed to pay Von's \$4,000.00 in restitution.

#### THIRD CAUSE FOR DISCIPLINE

# (Fraudulently Obtaining Controlled Substances)

17. Respondent is subject to disciplinary action under Code section 4301, subdivisions (f) and (g); and subdivisions (j) and (o), in conjunction with Health and Safety Code section 11173, subdivision (a), for fraudulently obtaining controlled substances. Complainant now refers to and incorporates the allegations in paragraph 16, as though set forth fully.

## FOURTH CAUSE FOR DISCIPLINE

## (Discipline by Another State)

18. Respondent is subject to disciplinary action under section 4301, subdivision (n), in that on November 21, 2002, in Case No. DOPL 2002-269, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the Utah Division) issued an order adopting a discipline-related stipulation that was entered into between the Utah Division and Respondent. The stipulation resolved pending allegations of unprofessional conduct involving the theft of controlled substances. The terms of the Stipulation included an express admission by Respondent that there was cause to discipline his Utah Pharmacist License, and acknowledgment that adoption of the stipulation by the Utah Division would constitute official disciplinary action. Based on these acknowledgments, Respondent agreed to surrender his license.

#### FIFTH CAUSE FOR DISCIPLINE

#### (Conduct that Would Have Warranted the Denial of a License)

19. Respondent is subject to disciplinary action under Code section 4301, subdivision (p), in conjunction with section 480, in that Respondent's conviction of substantially-related crimes, and the fraudulent underlying behavior, amounted to conduct that would have warranted the denial of a license. Complainant now refers to and incorporates the allegations set forth in paragraphs 15-17, as if set forth fully.

#### DISCIPLINARY CONSIDERATIONS

Respondent (Complainant alleges that on or about July 1, 1981, the Board filed an accusation against Respondent in Case No. 1971, alleging numerous wislations of the Code; and relevant State and Rederal Taw. In Accusation No. 1971, the Board alleged that Respondent had subjected this Prense to discipline by engaging in many forms of unprofessional conduct, including having funaccounted for shortages of controlled substances, filling prescriptions without the required weithful and being convicted of possession of a controlled substance. On or about May 10, 1983 Respondent and the Board entered into a stipulation in which Respondent admitted the underlying allegations and was placed on probation for a periodic three years, with specific terms and conditions. On July 8, 1988, the Board adopted the stipulation as its decision. That decision is now final, and is incomporated as it fully set for the

#### PRAYER

WHERER ORE, Complainant requests that a hearing be held on the matters herein alleged and that following the hearing, the Board issue a decision

- 1. Revoking or suspending Pharmaoist License Number RPH 26090, assued to Respondent.
- 2. Ordening Dennis Hughes to pay the Board the reasonable costs of the time of the investigation and enforcement of this case, pursuant to Code section 125.3; and
  - 3. Taking such other and further action as deem ed necessary and proper.

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DATED: 10/16/08

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VIRGINIA HIROTA

Executive Utmoci

Board of Pharmacy Department of Consumer Affairs

State of California Complainant