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

In the Matter of the Accusation Against:

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

Designated Representative Certificate No. EXC 22353

Respondent.

Case No. 5539

STIPULATED SURRENDER OF LICENSE AND ORDER

### **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 at 5:00 p.m. on October 19, 2017.

It is so ORDERED on September 19, 2017.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

1	XAVIER BECERRA		
2	Attorney General of California LINDA L. SUN		
3	Supervising Deputy Attorney General KEVIN J. RIGLEY		
4	Deputy Attorney General State Bar No. 131800		
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6	Facsimile: (213) 897-2804 Attorneys for Complainant		
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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against: Case No. 5539		
12	ANDY HOVANNY RUVALCABA		
13	1280 Research Drive, Unit B Redlands, CA 92374 STIPULATED SURRENDER OF		
14	LICENSE AND ORDER		
15	Designated Representative Certificate No. EXC 22353		
16	Respondent.		
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18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
19	entitled proceedings that the following matters are true:		
20	<u>PARTIES</u>		
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy		
22	(Board). She brought this action solely in her official capacity and is represented in this matter by		
23	Xavier Becerra, Attorney General of the State of California, by Kevin J. Rigley, Deputy Attorney		
24	General.		
25	2. Andy Hovanny Ruvalcaba (Respondent) is representing himself in this proceeding		
26	and has chosen not to exercise his right to be represented by counsel.		
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3. On or about September 19, 2013, the Board issued Designated Representative Certificate No. EXC 22353 to Andy Hovanny Ruvalcaba (Respondent). The Designated Representative Certificate expired on September 1, 2015, has not been renewed, and is currently delinquent.

### **JURISDICTION**

4. Accusation No. 5539 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 June 8, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5539 is attached as Exhibit A and incorporated by reference.

# ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 5539. 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 admits the truth of each and every charge and allegation in Accusation No. 5539, agrees that cause exists for discipline and hereby surrenders his Designated Representative Certificate No. EXC 22353 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Designated Representative Certificate without further process.

### CONTINGENCY

- 10. 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.
- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 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 Designated Representative Certificate No. EXC 22353, issued to Respondent Andy Hovanny Ruvalcaba, is surrendered and accepted by the Board of Pharmacy.

- 1. The surrender of Respondent's Designated Representative Certificate 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 of Pharmacy.
- 2. Respondent shall lose all rights and privileges as a Designated Representative in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. Respondent understands and agrees that if he or she ever files an application for licensure or a petition for reinstatement in the State of California, the board shall treat it as a new application for licensure. Respondent may not apply for any license, permit or registration from the board for three (3) years from the effective date of this decision. Respondent stipulates that should he or she apply for any license from the board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct and admitted by respondent when the board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the board prior to issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$1,402.50 prior to issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 5539 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

### ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Designated Representative Certificate. I enter into

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ī	this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and		
2	agree to be bound by the Decision and Order of the Board of Pharmacy.		
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5	The state of the s	ANDY HOVANNY RUVALCABA Respondent	
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7.	En	: Dorsement	
8	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted		
9	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.		
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11	Dated: 7 19 11	Respectfully submitted,	
12		XAVIER BECERRA	
13		Attorney General of California LINDA L. SUN	
14		Supervising Deputy Attorney General	
15		Co Ja	
16		KHYIN/(RYCLEY) Deputy Attorney General	
17		Attornays for Complainant	
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Exhibit A

Accusation No. 5539

1 XAVIER BECERRA Attorney General of California LINDA L. SUN 2 Supervising Deputy Attorney General 3 KEVIN J. RIGLEY Deputy Attorney General 4 State Bar No. 131800 300 So. Spring Street, Suite 1702 5 Los Angeles, CA 90013 Telephone: (213) 620-2558 б Facsimile: (213) 897-2804 Attorneys for Complainant BEFORE THE 8 BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS 9 STATE OF CALIFORNIA 10 In the Matter of the Accusation Against: Case No. 5539 11 ANDY HOVANNY RUVALCABA 12 1280 Research Drive, Unit B Redlands, CA 92374 ACCUSATION 13 14 Designated Representative Certificate No. EXC 22353 15 Respondent. 16 17 18 Complainant alleges: 19 **PARTIES** Virginia Herold (Complainant) brings this Accusation solely in her official capacity 20 1. as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs. 21 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 Designated Representative Certificate, which is currently under disciplinary suspension, expired 24 25 on September 1, 2015, and has not been renewed. 26 27. /// 28 III

( ANDY HOVANNY RUVALCABA) ACCUSATION

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

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

- 7. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.
  - 8. Section 4300.1 states:

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

9. Section 4301 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 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.

"(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.

"(1) 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.

"(0) 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

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federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

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

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

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

# REGULATORY PROVISIONS

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

"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 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 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 manner 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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#### SECOND CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty, Fraud, Deceit, or Corruption)

15. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that was Respondent committed acts involving dishonesty, fraud, deceit, or corruption with the intent to substantially benefit himself, or substantially injure another. Complainant hereby refers to and incorporates the allegations set forth above in paragraph 14 as though set forth fully,

### THIRD CAUSE FOR DISCIPLINE

(Violating State Laws Regulating Controlled Substances/Dangerous Drugs)

16. Respondent is subject to disciplinary action under section 4301, subdivision (j), in that was Respondent violated a state law regulating controlled substances and dangerous drugs. Complainant hereby refers to and incorporates the allegations set forth above in paragraph 14 as though set forth fully.

#### PRAYER

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

- Revoking or suspending Designated Representative Certificate Number EXC 22353, issued to Andy Hovanny Ruvalcaba
- 2. Ordering Andy Hovanny Ruvalcaba to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/17

VIRGINIA HEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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