

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

In the Matter of the Accusation Against:

**JOSE G. MASCARENO
2330 Victoria Court
Imperial, CA 92251**

**Designated Representative License
No. EXC 21040**

Respondent.

Case No. 6616

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 January 23, 2020.

It is so ORDERED on December 24, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 6616

14 **JOSE G. MASCARENO**
2330 Victoria Court
15 Imperial, CA 92251

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 **Designated Representative License**
17 **No. EXC 21040**

Respondent.

19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs
21 (Board), the parties hereby agree to the following Stipulated Surrender and Disciplinary Order
22 which will be submitted to the Board for approval and adoption as the final disposition of the
23 Accusation.

24 **PARTIES**

25 1. Anne Sodergren (Complainant) is the Interim Executive Officer of the Board. She
26 brought this action solely in her official capacity and is represented in this matter by Xavier
27 Becerra, Attorney General of the State of California, by Karen L. Gordon, Deputy Attorney
28 General.

2. Jose G. Mascareno (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about February 16, 2011, the Board issued Designated Representative License No. EXC 21040 to Respondent. The Designated Representative License expired on February 1, 2019, and has not been renewed.

JURISDICTION

4. Accusation No. 6616 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 9, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 6616 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. 6616. 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. 6616, agrees that cause exists for discipline and hereby surrenders his Designated Representative License No. EXC 21040 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Designated Representative License 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 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:

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ORDER

IT IS HEREBY ORDERED that Designated Representative License No. EXC 21040, issued to Respondent Jose G. Mascareno, is surrendered and accepted by the Board.

1. The surrender of Respondent's Designated Representative 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.

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. If Respondent ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 6616 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$1,972.50 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. 6616 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.

7. Respondent shall not apply for licensure or petition for reinstatement for three (3) years from the effective date of the Board's Decision and Order.

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Exhibit A

Accusation No. 6616

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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 6616

14 **JOSE G. MASCARENO**
2506 Market Street
15 San Diego, CA 92102

ACCUSATION

16 **Designated Representative Certificate No.**
EXC 21040

17 Respondent.
18

19 **PARTIES**

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

23 2. On or about February 16, 2011, the Board issued Designated Representative
24 Certificate Number EXC 21040 to Jose G. Mascareno (Respondent). The designated
25 representative certificate was in full force and effect at all times relevant to the charges brought
26 herein and expired on February 1, 2019, and has not been renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 4300, subdivision (a), of the Code states, "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 (a) Each board under the provisions of this code shall develop criteria to evaluate
15 the rehabilitation of a person when:

16 (1) Considering the denial of a license by the board under Section 480; or

17 (2) Considering suspension or revocation of a license under Section 490.

18 (b) Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

19 ...

20 7. Section 490 of the Code provides, in part, that a board may suspend or revoke a
21 license on the ground that the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, or duties of the business or profession for which the license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive evidence
of the fact that the conviction occurred, but only of that fact, and the board may inquire
into the circumstances surrounding the commission of the crime in order to fix the

1 degree of discipline or to determine if the conviction is substantially related to the
2 qualifications,
3 functions, and duties of the licensee in question.

4 As used in this section, "license" includes "certificate," "permit," "authority,"
5 and "registration."

6 9. Section 4301 of the Code states:

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

10 ...

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

14 ...

15 (l) The conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensee under this chapter. The record of conviction of a violation of
17 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
18 regulating controlled substances or of a violation of the statutes of this state regulating
19 controlled substances or dangerous drugs shall be conclusive evidence of
20 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
21 evidence only of the fact that the conviction occurred. The board may inquire into the
22 circumstances surrounding the commission of the crime, in order to fix the degree of
23 discipline or, in the case of a conviction not involving controlled substances or
24 dangerous drugs, to determine if the conviction is of an offense substantially related to
25 the qualifications, functions, and duties of a licensee under this chapter. A plea or
26 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
27 conviction within the meaning of this provision. The board may take action when the
28 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.

...

(p) Actions or conduct that would have warranted denial of a license.

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (c), states:

(c) When considering the suspension or revocation of a facility or a personal
license on the ground that the licensee or the registrant has been convicted of a crime,
the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

1 (1) Nature and severity of the act(s) or offense(s).

2 (2) Total criminal record.

3 (3) The time that has elapsed since commission of the act(s) or offense(s).

4 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

6
7 11. California Code of Regulations, title 16, section 1770, states:

8 For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
10 Professions Code, a crime or act shall be considered substantially related to the
11 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.

12 **COSTS**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(May 17, 2019 Criminal Conviction)**

21 13. Respondent has subjected his license to disciplinary action under sections 490 and
22 4301, subdivision (l), of the Code, in that he was convicted of a crime that is substantially related
23 to the qualifications, functions, and duties. The circumstances are as follows:

24 14. On or about May 17, 2019, in a criminal proceeding entitled *People of the State of*
25 *California v. Joe Mascareno*, Imperial County Superior Court, case number JCF001732,
26 Respondent plead no contest to violating Penal Code section 288.4, subdivision (A)(1), arrange a
27 meeting with a minor for lewd purposes, a misdemeanor. As a result of the conviction,
28 Respondent was granted formal probation for three years, and was ordered to participate and

1 complete a sex offender management program for one-year. Additionally, Respondent was
2 ordered to register as a sex offender, submit to a 4th amendment waiver condition and pay fees
3 and fines. The facts that led to the conviction are that on or about September 19, 2017, the
4 Imperial County Sheriff's Office was working a possible child exploitation assignment. During
5 the assignment, investigator E.G., acting in an undercover capacity, posted an advertisement on
6 Craigslist.com¹ offering a casual encounter. This particular website has been known to post ads
7 pertaining to adult encounters of a sexual nature, child exploitation and sex for sale of minor
8 children. Investigator E.G. subsequently began chatting with Respondent via text messaging in
9 response to the ad. While texting E.G., Respondent asked for nude photographs, and agreed to
10 meet and perform sexual acts on E.G. During the exchange, E.G. stated that she was 13 years-
11 old. Respondent continued communicating with E.G. The next day, on September 20, 2017,
12 Respondent drove from Yuma, Arizona to Imperial, California, and arrived at the apartment
13 complex as directed. Respondent was subsequently arrested. During the investigation,
14 Respondent admitted that he agreed to meet a child under the age of 14 years-old for sex acts, and
15 that he arrived at the location in order to complete the sex acts.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct- Acts Involving Moral Turpitude,** 18 **Dishonesty, Fraud, Deceit or Corruption)**

19 15. Respondent has subjected his license to disciplinary action under section 4301,
20 subdivision (p), of the Code, in that on September 19, 2017, he engaged in unprofessional
21 conduct, when he replied to an advertisement on Craigslist.com and began communicating with
22 an investigator posing as a thirteen-year-old girl, with the intent to engage in a sexual encounter,
23 as described in paragraphs 13 and 14, above.

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27 ¹ Craigslist.com is an [american classified advertising](#) website. The site's offering of the
28 adult services section has been highly controversial due to allegations that knowingly allowed
users to post ads related to prostitution, particularly involving minors.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct- Warranted Denial of License)

16. Respondent has subjected his license to disciplinary action under section 4301, subdivision (p), of the Code, in that on September 19, 2017, he engaged in unprofessional conduct when Respondent began communicating with a person who he believed was a 13 year-old girl, and sent messages that involved explicit sexual content, requested as described in paragraphs 13-14, above.

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:

1. Revoking or suspending Designated Representative License Number EXC 21040, issued to Jose G. Mascareno;
2. Ordering Jose G. Mascareno 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 proper.

DATED: October 8, 2019



ANNE SODERGREN
Interim Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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