

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4005

12 **BARBARA SOLIZ**
13 **467 Village Drive**
14 **Chula Vista, CA 91911**

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 26383**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 15, 1998, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 26383 to Barbara Soliz (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on June 30, 2012, unless 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.

4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or revoked.”

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AND REGULATORY PROVISIONS

6. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

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

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

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

1 This section shall not be construed to apply to any drug diversion program
2 operated by any agency established under Division 2 (commencing with Section 500)
3 of this code, or any initiative act referred to in that division.

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9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted 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 degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

10. Section 4301 of the Code states:

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.

....

(l) 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

1 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information or indictment.

4 ...

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter
7 or of the applicable federal and state laws and regulations governing pharmacy,
8 including regulations established by the board or by any other state or federal
9 regulatory agency.

10 11. Section 4313 of the Code states:

11 In determining whether to grant an application for licensure or whether to
12 discipline or reinstate a license, the board shall give consideration to evidence of
13 rehabilitaton. However, public protection shall take priority over rehabilitation and,
14 where evidence of rehabilitation and public protection are in conflict, public
15 protection shall take precedence.

16 12. Title 16, California Code of Regulations, section 1769, states:

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

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

23 (2) Total criminal record.

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

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

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

28 13. Title 16, California Code of Regulations, section 1770, states:

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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1 **COST RECOVERY**

2 14. Section 125.3 of the Code states, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(August 12, 2010 Criminal Conviction for Petty Theft in July of 2009)**

8 15. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
9 Code in that she was convicted of a crime that is substantially related to the qualifications, duties
10 and functions of a pharmacy technician. The circumstances are as follows:

11 16. On or about August 12, 2010, in a criminal proceeding entitled *The People of the*
12 *State of California v. Barbara Ann Soliz*, in the Superior Court of California, County of San
13 Diego, Central Division, in Case No. M104919, Respondent was convicted on her plea of guilty
14 of violating Penal Code section 484 (Petty Theft), a misdemeanor.

15 17. The circumstances that led to Respondent's conviction are that on or about
16 September 29, 2009, San Diego Police Officers were dispatched to Albertson's Supermarket
17 Pharmacy located at 4421 University Avenue, San Diego, CA, reference a pharmacy technician
18 who was discovered to have been releasing prescription medications to customers without
19 charging them. The investigation by Albertson's Pharmacy revealed that since July 7, 2009,
20 Respondent had released a total of 4-5 prescriptions to her brother and mother with an
21 approximate value of \$376.50. When interviewed by officers, Respondent admitted to having
22 released prescription medications to family members without charging them.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Commission of an Act Involving Dishonesty)**

25 18. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
26 she was convicted of a crime involving dishonesty, as is more detailed at paragraphs 15-17,
27 above, and incorporated here by reference.


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1 19. As a result of the conviction, the Court ordered Respondent to serve one day in the
2 county jail, with one day credit for time served. The Court placed Respondent on summary
3 probation for three (3) years, and was ordered to pay \$775 in fees and fines, and ordered to pay
4 \$376.50 in restitution at \$50 per month to the Albertson's Pharmacy.

5 **PRAYER**

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

- 8 1. Revoking or suspending Pharmacy Technician Registration Number TCH 26383,
9 issued to Barbara A. Soliz;
- 10 2. Ordering Barbara A. Soliz to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 8/15/11 
15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SD2011800145

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