

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY SALUTE
Supervising Deputy Attorney General
3 HEATHER HUA
Deputy Attorney General
4 State Bar No. 223418
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2574
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **JONATHAN ALVAREZ**
2618 W. Ave 34
Los Angeles, CA 90065
14 Pharmacy Technician Registration
No. TCH 111189
15 Respondent.

Case No. 4556

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about February 28, 2011, the Board of Pharmacy issued Pharmacy Technician
21 Registration No. TCH 111189 to Jonathan Alvarez (Respondent). The Pharmacy Technician
22 Registration was in full force and effect at all times relevant to the charges brought herein and
23 will expire on March 31, 2014, unless renewed.

24 **JURISDICTION**

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

27 ///
28 ///

STATUTORY PROVISIONS

1
2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 492 states, in pertinent part:

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

26 6. Section 4060 provides in pertinent part, that no person shall possess any controlled
27 substance, except that furnished to a person upon the prescription of a physician, dentist,
28 podiatrist, optometrist, veterinarian, or other authorized prescriber.

1 7. Section 4300 provides in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 8. Section 4300.1 states:

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

9 9. Section 4301 states, in pertinent part:

10 "The board shall take action against any holder of a license who is guilty of unprofessional
11 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
12 Unprofessional conduct shall include, but is not limited to, any of the following:

13

14 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
15 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
16 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
17 to the extent that the use impairs the ability of the person to conduct with safety to the public the
18 practice authorized by the license.

19

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12 10. Health and Safety Code Section 11350, subdivision (a) makes it a crime in this
13 state to possess any controlled substance, unless upon the written prescription of a physician or
14 other authorized prescriber.

15 **REGULATORY PROVISIONS**

16 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:
17 "For the purpose of denial, suspension, or revocation of a personal or facility license
18 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
19 crime or act shall be considered substantially related to the qualifications, functions or duties of a
20 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
21 licensee or registrant to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare."

23 **COST RECOVERY**

24 12. Section 125.3 states, in pertinent part, that the Board may request the administrative
25 law judge to direct a licentiate found to have committed a violation or violations of the licensing
26 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
27 case.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONTROLLED SUBSTANCE

13. "Xanax," is the brand name for Alprozolam. It is a Schedule IV controlled substance as designated by the Health and Safety Code section 11057, subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. On or about March 13, 2012, pursuant to a plea agreement, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11375, subdivision (b)(2) [possession of a controlled substance for sale, specifically, Xanax] in the criminal case entitled *The People of the State of California v. Jonathan Alvarez* (Super. Ct. Los Angeles County, 2010, No. 1CA17510). The Court deferred pronouncement of sentence for 18 months pending Respondent's completion of a drug diversion program. The circumstances of the conviction are that on or about November 5, 2011, during a driving under the influence traffic collision investigation by the Los Angeles Police Department, Respondent was contacted. While speaking to the driver of the vehicle, J. Bello (Bello), Respondent was sitting on the curb yelling incoherently at the officer. Respondent walked over to the officer, continued to yell at the officer and stated, "I was the driver! Yeah I know." Respondent fell down and landed on his chest. Bello advised the officer that Respondent was drunk and not the driver. Respondent was subsequently arrested for violating Vehicle Code section 647, subdivision (f) [drunk in public]. During the booking procedure, a search of Respondent's left sock revealed a small plastic baggie filled with approximately 34 blue tiny pills. When asked what it was and why it was in his sock, Respondent stated "Its Xanax, I didn't want to say anything about them." When asked where he got them, Respondent indicated that he got them from a friend. When asked what he was doing with that many pills and whether he was

1 selling them or using them himself, Respondent stated, "No I would over dose if I took them all.
2 I pass them out, I distribute them to friends. I don't sell them. Look I know I got busted, sorry."

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Alcohol)**

5 15. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
6 that on or about November 5, 2011, Respondent used alcoholic beverages to an extent or in a
7 manner as to be dangerous or injurious to himself, another person or to the public. Complainant
8 refers to, and by this reference incorporates, the allegations set forth above in paragraph 14, as
9 though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Illegal Possession of Controlled Substances)**

12 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
13 violating section 4060 and Health and Safety Code section 11350, subdivision (a), in that on or
14 about November 5, 2011, Respondent was found to be in illegal possession of a controlled
15 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
16 above in paragraph 14, as though set forth fully.

17 **PRAYER**

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

- 20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 111189, issued
21 to Jonathan Alvarez;
- 22 2. Ordering Jonathan Alvarez to pay the Board the reasonable costs of the investigation
23 and enforcement of this case, pursuant to section 125.3; and

24 ///

25 ///

26 ///

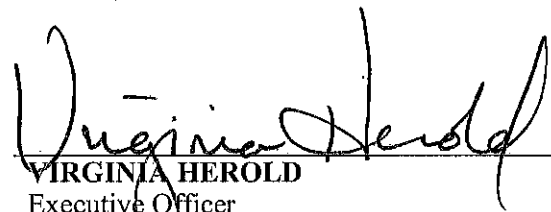
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/4/14



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2013508868
51411179.doc