

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KAREN R. DENVER  
Deputy Attorney General  
4 State Bar No. 197268  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5333  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5220

12 **CYNTHIA SALDANA**  
13 **9536 S. Leonard St.**  
**Selma, CA 93662**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No.**  
15 **139844**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 22, 2014, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number 139844 to Cynthia Saldana (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on September 30, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.

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

4. Section 4300 of the Code states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

5. Section 4300.1 of the Code 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.

6. 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.

....

(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.

....

(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.

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

....

7. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

8. Section 4060 of the Code states:

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.

9. California Code of Regulations, title 16, 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.

///  
///  
///

1 **COST RECOVERY**

2 10. 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 **DRUGS**

7 11. Alprazolam is a Schedule IV controlled substance as designated by Health and Safety  
8 Code section 11057(d)(1), and a dangerous drug pursuant to Business and Professions Code  
9 section 4022.

10 12. Hydrocodone bitartrate, the generic name, is also known as dihydrocodeinone, and is  
11 a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),  
12 and a dangerous drug pursuant to Business and Professions Code section 4022.

13 **BACKGROUND FACTS**

14 13. On or about April 25, 2014, Fresno police officers were dispatched to the Target store  
15 in Fresno located at 6655 North Riverside Drive in response to a call that an employee was  
16 observed to have committed petty theft. Respondent was observed placing various DVD's and a  
17 toy into Target store bags, and then exiting the store through an employee exit without paying for  
18 the merchandise. Respondent admitted to store personnel, and later to Fresno police officers, that  
19 she had stolen the items. Respondent also admitted to having stolen work supplies from the  
20 Target pharmacy department where she was employed. A search of Respondent's work area  
21 revealed a small purse filled with hundreds of loose pills. A Target pharmacist inventoried the  
22 276 pills found in the purse and determined that the drugs recovered from Respondent's work  
23 area required a prescription. They included large quantities of pills that were Schedule II, III, and  
24 IV controlled substances, and included least 32 tablets of alprazolam and 3 tablets of hydrocodone  
25 bitartrate. Respondent admitted that the purse and pills were hers and that she did not have a  
26 prescription for the pills. Respondent claimed that she was given the pills by her mother and a  
27 friend. Respondent acknowledged that she knew it was illegal to possess the pills without a  
28 prescription, but that she "needs the pills." On or about April 25, 2014, Respondent was arrested

1 by the Fresno Police Department on charges of illegally possessing controlled substances in  
2 violation of Health and Safety Code section 11350, subdivision (a). On that same date,  
3 Respondent was cited for embezzlement in violation of Penal Code section 503.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Dishonest Acts)**

6 14. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
7 that she committed dishonest acts by stealing merchandise from the Target store where she was  
8 employed, as set forth in paragraph 13, above, and incorporated herein by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Violation of Laws Regulating Controlled Substances and Dangerous Drugs)**

11 15. Respondent is subject to disciplinary action under section 4301, subdivision (j), in  
12 that she illegally possessed controlled substances and dangerous drugs in violation of the statutes  
13 regulating controlled substances and dangerous drugs, including Business and Professions Code  
14 section 4060 and as set forth in paragraph 13, above, and incorporated herein by reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violation of Pharmacy Laws)**

17 16. Respondent is subject to disciplinary action under section 4301, subdivision (o), that  
18 she illegally possessed controlled substances and dangerous drugs in violation of the state statutes  
19 regulating pharmacy, as set forth in paragraphs 14 and 15, above, and incorporated herein by  
20 reference.

21 **PRAYER**

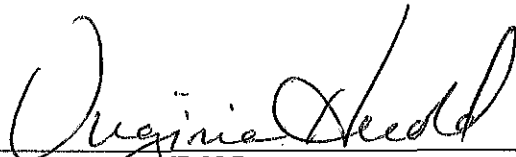
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Board of Pharmacy issue a decision:

- 24 1. Revoking or suspending Pharmacy Technician Registration Number 139844, issued  
25 to Cynthia Saldana.;
- 26 2. Ordering Cynthia Saldana to pay the Board of Pharmacy the reasonable costs of the  
27 investigation and enforcement of this case, pursuant to Business and Professions Code section  
28 125.3;

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: 7/7/14



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

SA2014116093  
11407615.doc

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

In the Matter of the Petition for Interim  
Suspension Order Against:

CYNTHIA SALDANA  
9536 S. Leonard Street  
Selma, California 93662

Pharmacy Technician  
Registration No. 139844

Respondent.

Case No. 5220

OAH No. 2014060026

**DECISION**

This petition was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, on June 25, 2014, in Sacramento, California.

Karen R. Denvir, Deputy Attorney General, represented Virginia K. Herold, Executive Director (petitioner), Board of Pharmacy.

There was no appearance by, or on behalf of, Cynthia Saldana.

The matter was submitted on June 25, 2014.

**FACTUAL FINDINGS**

1. On April 22, 2014, the Board of Pharmacy (Board) issued Pharmacy Technician Registration Number TCH 139844 to Cynthia Saldana (respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to this matter, and will expire on September 30, 2015, unless renewed.

2. Petitioner filed a Petition for Interim Suspension Order (Petition) on June 6, 2014, based upon allegations of theft and illegal possession of controlled substances. On that day, pursuant to Business and Professions Code section 494, subdivision (c), respondent was provided notice of the hearing on the Petition, including documents submitted to the Board in support of the Petition. On June 25, 2014, pursuant to Business and Professions Code

section 494, subdivision (d), a noticed hearing on the Petition was held, affidavits and other documents were received in evidence, and the matter was submitted for decision.

Compliance with the service and notice requirements under Business and Professions Code section 494 was established. Accordingly, this matter proceeded by way of default hearing and decision.

3. On April 25, 2014, respondent was arrested by the Fresno Police Department on charges of illegally possessing controlled substances in violation of Health and Safety Code section 11350, subdivision (a). On that same date she was also cited for embezzlement in violation of Penal Code section 503.

4. On April 25, 2014, at approximately 4:31 p.m., Fresno police officers were dispatched to the Target store in Fresno located at 6655 North Riverside Drive in response to a call that an employee was observed to have committed petty theft. Respondent was observed placing various DVDs and two toys into Target store bags, and then exiting the store through an employee exit without first paying for the merchandise. Respondent admitted to store personnel, and later to Fresno police officers, that she had stolen the items. She also admitted to having stolen work supplies from the Target pharmacy department where she was employed.

5. A search of respondent's work area revealed a small purse filled with hundreds of loose pills. A Target pharmacist inventoried the 276 pills found in the purse and determined that the drugs recovered from respondent's work area required a prescription. They included large quantities of pills that were controlled substances under Schedules II, III and IV. Respondent admitted that the purse and the pills were hers. She also admitted that she did not have a prescription for the pills.

6. The pills in respondent's possession included at least 32 tablets of alprazolam<sup>1</sup> and three tablets of hydrocodone bitartrate.<sup>2</sup> These recovered tablets are controlled substances. They are also dangerous drugs as defined in Business and Professions Code section 4022.

7. Respondent claimed that she was given the pills by her mother and a friend. She acknowledged that she knew that it was illegal to possess the pills without a prescription. She explained that she "needs the pills." She denied stealing the pills. She also denied selling the pills.

---

<sup>1</sup> Alprazolam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1).

<sup>2</sup> Hydrocodone Bitartrate, the generic name, is also known as dihydrocodeinone, and is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).



8. Respondent indicated that this was the first time that she had stolen merchandise and that she was sorry. She explained that she was having a difficult time with her husband and that she took the DVDs because they did not have cable service at home, and had nothing else to watch. The toys recovered from her included a pirate ship that her son wanted.

9. Per respondent's admissions, it was established that she stole merchandise from the Target store where she was employed as a pharmacy technician. She also illegally possessed controlled substances and dangerous drugs without a prescription.

As a pharmacy technician, respondent has access to drugs, as well as access to sensitive consumer information such as names, addresses and other personal information. Pharmacy technicians are entrusted with duties and obligations to maintain confidentiality. They are to be of proper and sound mind and judgment when packaging and labeling controlled substances and dangerous drugs, and when entering prescription information into the computer.

10. Respondent's actions are wholly inconsistent with continued work in the capacity of a pharmacy technician, or in a pharmacy setting. Her theft of items from her employer, her illegal possession of controlled substances and dangerous drugs, and her admitted "need" for controlled substances without a prescription demonstrate that her continued practice as a pharmacy technician poses a clear danger to the public. Allowing her to continue to act as a pharmacy technician constitutes a serious risk to the public health, safety and welfare.

## LEGAL CONCLUSIONS

1. Under Business and Professions Code section 494, an interim order of suspension may be issued if it is established, first, that the licensee has violated the Business and Professions Code, and second, that permitting the licensee to continue practicing under her license would endanger the public health, safety or welfare. The order may suspend a licensee from practicing, or may impose license restrictions including, but not limited to, mandatory biological fluid testing and supervision. The standard of proof for the issuance of an interim suspension order is preponderance of the evidence.

An interim suspension order is of limited duration, remaining in effect only as long as the licensing board follows strict requirements to expeditiously afford the licensee a full hearing on the charges. Following issuance of the order, the board must file an accusation within 15 days. If the licensee files a notice of defense, a hearing must be held within 30 days and a decision issued within 30 days of the submission of the matter.

//

2. The evidence demonstrates that respondent has violated the following provisions of the Business and Professions Code:

a. Section 4301, subdivision (f), which states that it is unprofessional conduct for a licensee to commit any act of dishonesty. (Findings 4, 8, 9 and 10.)

b. Section 4301, subdivision (j), which states that it is unprofessional conduct for a licensee to violate any of the statutes regulating controlled substances and dangerous drugs. (Findings 5, 6, 7, 9 and 10.)

c. Section 4301, subdivision (o), which states that it is unprofessional conduct for a licensee to violate state statutes regulating pharmacy. (Findings 5, 6, 7, 9 and 10.)

3. The matters set forth in Findings 9 and 10 have been considered. Respondent's actions reflect dishonesty and improper use of controlled substances. She should not be entrusted with the duties and obligations bestowed upon a pharmacy technician as she poses a serious danger of harm to the public. As petitioner's paramount duty is to protect the people of California, petitioner is not required to wait until the public is actually harmed, or further harm is incurred, before taking action. For these reasons respondent's pharmacy technician registration should be suspended immediately.

4. Cause exists for issuance of an interim order under Business and Professions Code section 494. The petition for an interim suspension order should be granted.

### ORDER

The petition for an interim suspension order pursuant to Business and Professions Code section 494 is GRANTED. Pharmacy Technician Registration Number TCH 139844 issued to respondent Cynthia Saldana is immediately suspended. Respondent Cynthia Saldana is restrained from directly or indirectly practicing as a pharmacy technician in California, and from having access to pharmacy settings pending the hearing and decision on the accusation against her. Failure of petitioner to comply with any of the requirements of Business and Professions Code section 494, subdivision (f), shall dissolve the interim suspension order by operation of law.

DATED: June 26, 2014

JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings