

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

In the Matter of the Accusation Against:

Case No. 3337

DONNA LEIGH AVALOS
755 Romelia Way
San Jacinto, CA

Pharmacy Technician License No. TCH 54402

Respondent.

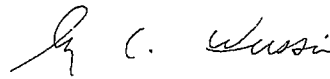
DECISION AND ORDER

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 on August 25, 2010.

It is so ORDERED on July 26, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **DONNA LEIGH AVALOS**
755 Romelia Way
14 San Jacinto, CA 92583
15 Pharmacy Technician Reg. No. TCH 54402
16 Respondent.

Case No. 3337

OAH No. 2010020993

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Edmund
23 G. Brown Jr., Attorney General of the State of California, by Carl W. Sonne, Deputy Attorney
24 General.

25 2. Donna Leigh Avalos (Respondent) is representing herself in this proceeding and has
26 chosen not to exercise her right to be represented by counsel.

27 3. On or about January 19, 2004, the Board of Pharmacy issued Pharmacy Technician
28 Registration No. TCH 54402 to Donna Leigh Avalos (Respondent). Said license was in full

1 force and effect at all times relevant to the charges brought in Accusation No. 3337 and expired
2 on October 31, 2009.

3 JURISDICTION

4 4. Accusation No. 3337 was filed before the Board of Pharmacy (Board), Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on November 3, 2009.
7 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3337 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3337. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 her own expense; the right to confront and cross-examine the witnesses against her; the right to
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
17 compel the attendance of witnesses and the production of documents; the right to reconsideration
18 and court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3337, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician
25 Registration No. TCH 54402 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation she enables the Board to issue
27 an order accepting the surrender of her Pharmacy Technician Registration without further
28 process.

1 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
2 of Respondent's license history with the Board.

3 15. Respondent shall lose all rights and privileges as a Pharmacy Technician in
4 California as of the effective date of the Board's Decision and Order.

5 16. Respondent shall cause to be delivered to the Board both her wall license
6 certificate and, if one was issued, pocket license on or before the effective date of the Decision
7 and Order.

8 17. If she ever applies for licensure or petitions for reinstatement in the State of
9 California, the Board shall treat it as a new application for licensure. Respondent may not
10 reapply or petition the board for reinstatement of her revoked license for three years from the
11 effective date of this Decision and Order. Respondent must comply with all the laws, regulations
12 and procedures for licensure in effect at the time the application or petition is filed, and all of the
13 charges and allegations contained in Accusation No. 3337 shall be deemed to be true, correct and
14 admitted by Respondent when the Board determines whether to grant or deny the application or
15 petition.

16 18. Should Respondent ever apply or reapply for a new license or certification, or
17 petition for reinstatement of a license, by any other health care licensing agency in the State of
18 California, all of the charges and allegations contained in Accusation No. 3337 shall be deemed to
19 be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
20 other proceeding seeking to deny or restrict licensure.

21 19. Respondent shall pay the Board its costs of investigation and enforcement in the
22 amount of \$5,320.00 prior to issuance of a new or reinstated license.

23 **ACCEPTANCE**

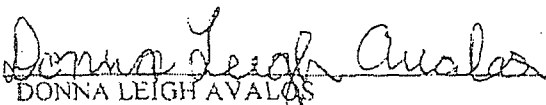
24 I have carefully read the Stipulated Surrender of License and Order. I understand the
25 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this

26 ///

27 ///

28 ///

1 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
 2 be bound by the Decision and Order of the Board of Pharmacy.

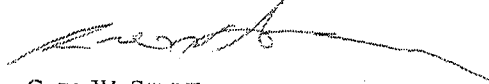
3
 4 DATED: 4-24-10 
 5 DONNA LEIGH AVALOS
 6 Respondent

7 ENDORSEMENT

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.

10 Dated: May 12, 2010

11 Respectfully submitted,
 12 EDMUND G. BROWN JR.
 13 Attorney General of California
 14 JAMES M. LEDAKIS
 15 Supervising Deputy Attorney General

16 
 17 CARL W. SONNE
 18 Deputy Attorney General
 19 Attorneys for Complainant

20 SD2009803924
 21 80445705.doc

22
 23
 24
 25
 26
 27
 28

Exhibit A

Accusation No. 3337

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3337

12 **DONNA LEIGH AVALOS**
13 778 Romelia Way
14 San Jacinto, CA 92583

A C C U S A T I O N

15 **Pharmacy Technician Reg. No. TCH 54402**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about January 19, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 54402 to Donna Leigh Avalos, also known as Donna Leigh Griffin,
24 also known as Donna Leigh Ingels (Respondent). The Pharmacy Technician Registration was in
25 full force and effect at all times relevant to the charges brought herein and will expire on October
26 31, 2009, unless renewed.

27 ///

28 ///

1
2
3
4
5
6
7
8
9

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 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 PROVISIONS

5. 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.

6. 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.

.....

(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.

.....

(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

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

13
14 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting
15 the violation of or conspiring to violate any provision or term of this chapter or of the
16 applicable federal and state laws and regulations governing pharmacy, including regulations
17 established by the board or by any other state or federal regulatory agency.

18
19 7. Section 4022 of the Code states

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

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

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

28 (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 4059 of the Code states, in pertinent part, that 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.

///

///

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

9. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally --

....

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769 states:

....

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

(2) Total criminal record.

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

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

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

11. 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.

COST RECOVERY

12. Section 125.3 of the Code 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

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **DRUGS**

4 13. Hydrocodone combined with acetaminophen is a Schedule III controlled substance as
5 designated by Health and Safety Code section 11056, subdivision (c)(4), and is a dangerous drug
6 pursuant to Business and Professions Code section 4022.

7 14. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and
9 Professions Code section 4022.

10 **FACTS**

11 15. On or about February 19, 2007, a Loss Prevention Manager (LPM) for Albertson's
12 grocery store received a report from the district manager advising him of missing controlled
13 substances from the inventory of a Murrieta Sav-On drug store (located inside an Albertson's
14 grocery store). Upon arrival at the Sav-On, the LPM was informed by the Pharmacy Manager
15 that oxycodone and hydrocodone of various strengths were missing. The LPM viewed closed
16 circuit surveillance videos which depicted Respondent, who was employed as a pharmacy
17 technician, selecting several bottles of oxycodone and hydrocodone on several different dates and
18 placing them in her pants pocket. Respondent would take the bottles to the pharmacy restroom
19 and later exit the restroom and return the bottle to the shelf from her pants pocket.

20 16. On or about February 22, 2007, the LPM interviewed Respondent at the Sav-On in
21 the Store Director's office. Respondent admitted that for the previous four months (from
22 November 2006 to February 2007), she had been stealing approximately 5-10 oxycodone and
23 hydrocodone pills daily. Respondent had been working in a float status at six different Sav-On
24 locations and admitted stealing drugs from each location. Respondent was placed under citizen's
25 arrest and was taken into custody by the Murrieta Police Department. In a subsequent interview
26 following her arrest, Respondent told the detective that she she began abusing pain medications as
27 a result of depression. Respondent said she would remove prescription bottles of hydrocodone
28 and oxycodone from the shelf and go into the restroom. She then would ingest a few pills and

1 conceal a few pills on her person. Respondent estimated she took 5-10 tablets per restroom visit
2 every day that she worked and only stole the medications to satisfy her addiction. Based on an
3 itemization of missing controlled substances from inventory, it was estimated that Respondent
4 stole approximately 1,023 pills at a retail value of \$8,287.77.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(September 28, 2007 Criminal Conviction for Grand Theft in 2006-2007)**

7 17. Respondent subjected her license to discipline under sections 490 and
8 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related
9 to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as
10 follows:

11 a. On or about September 28, 2007, in a criminal proceeding entitled *People*
12 *of the State of California v. Donna Leigh Avalos, aka Donna Leigh Griffin*, in Riverside County
13 Superior Court, case number SWF022305. Respondent was convicted on her plea of guilty for
14 violating Penal Code section 487, subdivision (a), grand theft, a felony.

15 b. As a result of the conviction, on or about February 21, 2008, Respondent
16 was sentenced to 120 days in the custody of the sheriff, with credit for two days, three years
17 formal probation, standard probation terms, and payment of fines, fees, and restitution in the
18 amount of \$700. Respondent was also ordered to submit to a Fourth Amendment waiver and pay
19 the costs associated with her probation.
20
21

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Commission of Acts Involving**
24 **Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)**

25 18. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
26 Code in that on or about November 2006 to February 2007, while working as a pharmacy
27 technician, Respondent stole controlled substances and dangerous drugs from her employer, Sav-
28

1 On, using fraud, deceit, and dishonesty, as detailed in paragraphs 15-16, above. Such conduct is
2 substantially related to the qualifications, duties, and functions of a pharmacy technician.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of California Statutes Regulating**
5 **Controlled Substances & Dangerous Drugs)**

6 19. Respondent is subject to disciplinary action under section 4301, subdivision (j) of
7 the Code in that on or about November 2006 to February 2007, while working as a pharmacy
8 technician, Respondent knowingly violated Business and Professions Code sections 4022 and
9 4059 regulating controlled substances and dangerous drugs, as detailed in paragraphs 15-16,
10 above. Such conduct is substantially related to the qualifications, duties, and functions of a
11 pharmacy technician.
12

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Violating Federal & State Laws**
15 **& Regulations Governing Pharmacy)**

16 20. Respondent is subject to disciplinary action under section 4301, subdivision (o) of
17 the Code in that on or about November 2006 to February 2007, while working as a pharmacy
18 technician, Respondent violated Title 21 United States Code section 843, subdivision (a)(3),
19 Board of Pharmacy Regulations (California Code of Regulations, Title 16, Section 1700, et seq.),
20 and the California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.),
21 as detailed in paragraphs 15-16, above.
22

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

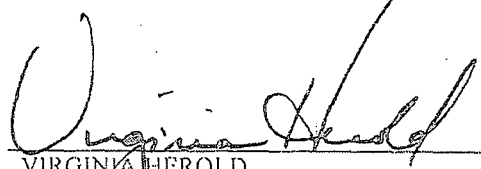
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Pharmacy Technician Registration Number TCH 54402, issued to Donna Leigh Avalos, also known as Donna Leigh Griffin, also known as Donna Leigh Ingels;
2. Ordering Donna Leigh Avalos 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/28/09



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

SD2009803924

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

In the Matter of the Accusation Against: DONNA LEIGH AVALOS Respondent. Case No. 3337 NOTICE OF DEFENSE [Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

Dated: 11/18/2009 Respondent's Name: Donna Leigh Avalos Respondent's Signature: Donna Leigh Avalos Respondent's Mailing Address: 755 Romelia Way City, State and Zip Code: San Jacinto, CA 92583 Respondent's Telephone: (951) 867-8023

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below: Counsel's Name, Counsel's Mailing Address, City, State and Zip Code, Counsel's Telephone Number

I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.