

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KAREN R. DENVIR
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**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5817

12 **DESIREE ALYSE SALDIVAR**
13 **2966 E. Austin Way**
Fresno, CA 93726

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **124898**

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 ("Board"), Department of Consumer Affairs.

21 2. On or about August 2, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 124898 to Desiree Alyse Saldivar ("Respondent"). The pharmacy technician
23 registration expired on March 31, 2016, and has not been renewed.

24 **JURISDICTION/STATUTORY PROVISIONS**

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 ("Code") unless otherwise
27 indicated.

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4. Code section 4300 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. Code section 4300.1 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. Code section 4301 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.

....

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

....

(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.

....

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2 (l) The conviction of a crime substantially related to the qualifications,
3 functions, and duties of a licensee under this chapter. The record of conviction of a
4 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
5 States Code regulating controlled substances or of a violation of the statutes of this
6 state regulating controlled substances or dangerous drugs shall be conclusive
7 evidence of unprofessional conduct. In all other cases, the record of conviction shall
8 be conclusive evidence only of the fact that the conviction occurred. The board may
9 inquire into the circumstances surrounding the commission of the crime, in order to
10 fix the degree of discipline or, in the case of a conviction not involving controlled
11 substances or dangerous drugs, to determine if the conviction is of an offense
12 substantially related to the qualifications, functions, and duties of a licensee under this
13 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
14 contendere is deemed to be a conviction within the meaning of this provision. The
15 board may take action when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
19 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
20 dismissing the accusation, information, or indictment.

....

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

16 7. Code section 4060 states, in pertinent part:

17 No person shall possess any controlled substance, except that furnished to
18 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
20 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
21 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
22 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
23 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

22 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
23 administer, or furnish a controlled substance for himself."

24 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
25 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
26 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
27 misrepresentation, or subterfuge . . ."

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1 **COST RECOVERY**

2 10. Code section 125.3 provides, in pertinent part, that a 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 **DRUG CLASSIFICATIONS**

7 11. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
8 section 11057, subdivision (d)(1), and is used to treat anxiety. It is also a dangerous drug per
9 Code section 4022. "Xanax" is a brand of alprazolam.

10 12. Lorazepam is a Schedule IV controlled substance pursuant to Health and Safety Code
11 section 11057, subdivision (d)(16), and is used to treat anxiety. It is also a dangerous drug per
12 Code section 4022. "Ativan" is a brand of lorazepam.

13 13. Carisoprodol is a Schedule IV Controlled Substance pursuant to Title 21, Code of
14 Federal Regulations, section 1308.14, subdivision (c)(6), and is used as a muscle relaxant. It is
15 also a dangerous drug per Code section 4022. "Soma" is a brand of carisoprodol.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 14. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
19 Code section 4301, subdivision (l), in that on or about May 18, 2016, in the criminal proceeding
20 entitled *People vs. Desiree Alyse Saldivar* (Fresno County Super. Ct., Case No. F15904219),
21 Respondent was convicted on her plea of nolo contendere of violating Welfare and Institutions
22 Code section 10980, subdivision (c)(2) (aid by misrepresentation – over \$950), a felony, a crime
23 substantially related to the qualifications, functions, and duties of a pharmacy technician. The
24 circumstances of the crime are as follows: On and between April 5, 2013 and March 31, 2014,
25 Respondent unlawfully and by means of false statements, representations, impersonation and
26 other fraudulent device, obtained and retained aid exceeding \$950, specifically, \$5,905 in cash aid
27 and \$4,454 in food stamps benefits to which she was not entitled.

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1 **RESPONDENT’S DIVERSION OF CONTROLLED SUBSTANCES**

2 15. At all times relevant to the charges brought herein, Respondent was employed as a
3 pharmacy technician at CVS/Pharmacy #3940 located on North Willow Avenue in Clovis,
4 California.

5 16. On or about March 19, 2015, the Board received a letter from S. R. of CVS
6 Caremark, reporting that a significant loss or theft of controlled substances had been discovered at
7 Pharmacy #3940. S. R. provided the Board with a copy of a DEA-106 form that had been filed
8 on March 19, 2015, indicating that 3,503 tablets of alprazolam 2 mg had been lost or stolen and
9 that the loss/theft had occurred on February 18, 2015.

10 17. On or about March 27, 2015, the Board sent a letter to the pharmacist-in-charge of
11 Pharmacy #3940, requesting copies of their investigative documents.

12 18. On or about April 17, 2015, the Board received various documents from the Senior
13 Consultant, Pharmacy Regulatory Affairs, for CVS Caremark, including a written statement by
14 A. S., Regional Diversion Manager for Pharmacy #3940, and an amended DEA-106 form. A. S.
15 indicated in her written statement that the shortage of alprazolam 2 mg had been identified in
16 February 2015, that daily counts were initiated on February 19, 2015, and that subsequent daily
17 counts and reconciliations showed no active drug loss. A final reconciliation had been performed
18 showing that a total of 3,499 tablets of alprazolam had been lost or stolen (the DEA-106 form had
19 been amended to reflect this loss).

20 19. On or about May 12, 2015, the Board received a copy of a report from the Clovis
21 Police Department (“CPD”), showing that on or about May 3, 2015, CPD Officer M. was
22 dispatched to Pharmacy #3940. A. S. informed Officer M. that she interviewed Respondent and
23 Respondent admitted stealing the alprazolam tablets for self-use. Later, Officer M. went to
24 Respondent’s residence and interviewed Respondent. Respondent admitted that she had stolen
25 alprazolam and lorazepam from CVS for self-administration and that she had stolen the pills
26 between September 2014 and January 2015. Officer M. placed Respondent under arrest for
27 embezzlement, in violation of Penal Code section 503.

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1 20. On or about May 13, 2015, the Board received an email from K. D. of CVS Health
2 along with an amended DEA-106 form and a handwritten statement signed by Respondent on
3 May 3, 2015. According to the DEA-106 form, Pharmacy #3940 reported a loss of 101
4 carisoprodol 350 mg tablets, 323 lorazepam 2 mg tablets, and 3,500 alprazolam 2 mg tablets.
5 Respondent indicated in her statement as follows:

6 a. Respondent took alprazolam 2 mg tablets and lorazepam 2 mg tablets from the
7 pharmacy for self-use. Respondent used the medications for her anxiety “and to be able to do
8 (her) job.”

9 b. Respondent stole a total of 3,600 alprazolam 2 mg tablets in and between September
10 2014 and January 2015, and a total of 300 lorazepam 2 mg tablets in December 2014.

11 c. Respondent concealed the bottles of medication in her scrub pants pockets or inside
12 of her shirt.

13 d. Respondent knew that taking the medication was against the law and company policy.

14 21. On or about November 5, 2015, Board Inspector D. P. met with Respondent.
15 Respondent admitted that she started stealing Xanax from the pharmacy because her work as a
16 pharmacy technician was very stressful, that she tried obtaining a prescription for Xanax from her
17 physician, but he would not give one to her, and that she would steal the Xanax because she felt
18 she could not function without the drug. Respondent stated that at first, she would take one dose
19 of Xanax a day, then increased to twice a day, and then up to four times a day.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

22 22. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
23 Code section 4301, subdivision (f), in that Respondent committed acts involving moral turpitude,
24 dishonesty, fraud, deceit, or corruption, as set forth in paragraph 14 above and as follows: In and
25 between September 2014 and January 2015, while employed and on duty as a pharmacy
26 technician at CVS/Pharmacy #3940, Respondent stole or diverted controlled substances from the
27 pharmacy, approximately 3,600 alprazolam 2 mg tablets and approximately 300 lorazepam 2 mg
28 tablets, for self-administration.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Self-Administration of Controlled Substances)**

3 23. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
4 Code section 4301, subdivision (h), in that in and between September 2014 and January 2015,
5 while employed and on duty as a pharmacy technician at CVS/Pharmacy #3940, Respondent self-
6 administered the controlled substances alprazolam and lorazepam without valid or lawful
7 prescriptions for the medication and/or used the drugs to an extent or in a manner dangerous or
8 injurious to herself or others.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Violations of State Laws Regulating Controlled Substances)**

11 24. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
12 Code section 4301, subdivision (j), in that in and between September 2014 and January 2015,
13 while employed and on duty as a pharmacy technician at CVS/Pharmacy #3940, Respondent
14 violated state laws regulating controlled substances, as follows:

15 a. Respondent obtained the controlled substances alprazolam and lorazepam by fraud,
16 deceit, misrepresentation, or subterfuge, as set forth in paragraph 22 above, in violation of Health
17 and Safety Code section 11173, subdivision (a),

18 b. Respondent possessed the controlled substances alprazolam and lorazepam without
19 valid or lawful prescriptions for the medication, as set forth in paragraph 23 above, in violation of
20 Code section 4060.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Violations of the Pharmacy Law)**

23 25. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
24 Code section 4301, subdivision (o), in that in and between September 2014 and January 2015,
25 while employed and on duty as a pharmacy technician at CVS/Pharmacy #3940, Respondent
26 violated or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law
27 (Bus. & Prof. Code § 4300, et seq.), specifically, Code section 4060, as set forth in paragraph 23
28 above.

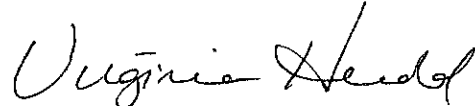
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PRAYER

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 124898, issued to Desiree Alyse Saldivar;
2. Ordering Desiree Alyse Saldivar 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 necessary and proper.

DATED: 10/7/16



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

SA2016101767