

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

11 JOSIE SOLANO
117 N. Laurel Street
Santa Ana, California 92703

12 Pharmacy Technician License No. TCH 25665

13 Respondent.

Case No. 2901

OAH No.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 In the interest of a prompt and speedy resolution of this matter, consistent with the
16 public interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs,
17 the parties hereby agree to the following Stipulated Surrender of License and Order which will be
18 submitted to the Board for its approval and adoption as the final disposition of the Accusation.

19 PARTIES

- 20 1. Patricia F. Harris (Complainant), Executive Officer, Board of Pharmacy,
21 brought this action solely in her official capacity and is represented herein by Bill Lockyer,
22 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.
- 23 2. Josie Solano (Respondent) is representing herself in this proceeding and
24 has chosen not to exercise her right to be represented by counsel.
- 25 3. On or about May 7, 1998, the Board of Pharmacy issued Pharmacy
26 Technician License No. TCH 25665 to Josie Solano (Respondent). The License was in full force
27 and effect at all times relevant to the charges brought in Accusation No. 2901 and will expire on
28 April 30, 2006, unless renewed.

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JURISDICTION

4. Accusation No. 2901 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 26, 2006. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2901 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 2901. Respondent also has carefully read and understands the effects of this Stipulated Surrender of License and Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2901, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician License No. TCH 25665 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her License without further process.

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 4/24/06

BILL LOCKYER, Attorney General
of the State of California



JOSHUA A. ROOM
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2005401437
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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOSIE SOLANO
117 N. Laurel Street
Santa Ana, California 92703

Pharmacy Technician License No. TCH 25665

Respondent.

Case No. 2901

OAH No.

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 June 21, 2006.

It is so ORDERED May 22, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

Exhibit A
Accusation No. 2901

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2901

12 JOSIE SOLANO
AKA JOSIE SALANO AKA JOSIE RUIZ
117 N. Laurel Street
Santa Ana, California 92703

OAH No.

A C C U S A T I O N

13 Pharmacy Technician License No. TCH 25665

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
19 official capacity as the Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about May 7, 1998, the Board of Pharmacy issued Pharmacy
21 Technician License No. TCH 25665 to Josie Solano aka Josie Salano aka Josie Ruiz
22 (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant
23 to the charges brought herein and will expire on April 30, 2006, unless renewed.

24
25 JURISDICTION

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

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...
“(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.

...
8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

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.”

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, a nurse practitioner, or a physician assistant.

11. Section 4324 of the Code states, in pertinent part:
“(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, published, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery . . .
“(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment . . .”

12. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

1 b. On or about April 6, 2004, Respondent was charged by criminal
2 complaint, in a proceeding titled *People of the State of California v. Josie Solano*, Case No.
3 04WM03407 in Orange County Superior Court, with violating Penal Code section 487(a) (grand
4 theft), a misdemeanor, and with violating Penal Code section(s) 666/484(a)/488 (theft with prior
5 theft conviction), also a misdemeanor. On or about April 8, 2004, Respondent pleaded guilty to
6 both counts, admitting as to count two the existence of two prior theft convictions. The sentence
7 imposed on Respondent included ten (10) days in county jail, three (3) years informal probation,
8 an order to stay away from Fry's Electronics, chemical testing, and a \$100.00 fine.

9 24. On or about December 30, 2004, Respondent was arrested by the Irvine
10 (California) Police Department for violating Health and Safety Code section 11175 (obtaining
11 controlled substance with invalid prescription), and Health and Safety Code section 11350
12 (possession of controlled substance). On or about March 24, 2005, in a criminal proceeding
13 titled *People of the State of California v. Josie Solano*, Case No. 05HF0115 in Orange County
14 Superior Court, Respondent was convicted of a total of six (6) counts of violating Business and
15 Professions Code section 4324(a) (forgery of prescription/possession of drugs obtained through
16 forged prescription), all felonies. The circumstances of this case were as follows:

17 a. Beginning on or about October 9, 2004, prescriptions and refills in
18 the name of Marissa Lopez for **Buprenex**, allegedly authorized by a Dr. Carlos Schmidt, were
19 called in by phone to the Costco Warehouse Pharmacy (PHY 41247) in or near Irvine, CA.

20 b. On or about December 15, 2004, one such prescription (refill) for
21 **Buprenex**, allegedly authorized by Dr. Schmidt for Marissa Lopez, was called into the Costco.

22 c. On or about December 16, 2004, Respondent picked up the filled
23 prescription for **Buprenex** allegedly authorized in the name of Marissa Lopez from the Costco.

24 d. Pharmacy staff noted that Respondent had an unhealthy appearance
25 and contacted Dr. Carlos Schmidt's office to verify the prescription. Dr. Schmidt denied writing
26 any prescriptions for **Buprenex**, or for Ms. Lopez, and stated the prescriptions were fraudulent.

27 e. On or about December 29, 2004, another prescription for Marissa
28 Lopez for **Buprenex** allegedly authorized by Dr. Schmidt was called into the same Costco.

1 f. On or about December 30, 2004, Respondent picked up the filled
2 prescription for **Buprenex** allegedly authorized in the name of Marissa Lopez from the Costco.

3 g. On or about December 30, 2004, during her arrest by Irvine Police
4 for violating Health and Safety Code section 11175 (obtaining controlled substance with invalid
5 prescription), and Health and Safety Code section 11350 (possession of narcotic controlled
6 substance), Respondent admitted to picking up several prior prescriptions for Marissa Lopez.

7 h. On or about January 19, 2005, in *People of the State of California*
8 *v. Josie Solano*, Case No. 05HF0115 in Orange County Superior Court, Respondent was charged
9 by Felony Complaint with twelve (12) felonies: six (6) counts of violating Penal Code sections
10 459-460(b) (second degree commercial burglary), for unlawfully entering the Irvine Costco on
11 October 9, October 29, November 17, November 30, December 16, and December 30, 2004 with
12 the intent to commit larceny; and six (6) counts of violating Health and Safety Code section
13 11173(a) (obtaining controlled substances by fraud, deceit, misrepresentation, etc.), for her
14 conduct in fraudulently obtaining or attempting to obtain **Buprenex** on those dates.

15 i. On or about March 24, 2005, pursuant to a plea, Respondent was
16 charged by a First Amended Felony Complaint in Case No. 05HF0115 with six (6) counts of
17 violating Business and Professions Code section 4324(a) (forgery of prescription/possession of
18 drugs obtained through forged prescription), all felonies. On that same date, Respondent pleaded
19 guilty to all six (6) felony counts. The sentence imposed on Respondent included sixty (60) days
20 in county jail, three (3) years formal probation, chemical testing, and a \$200.00 fine.

21 25. On or about August 29, 2005, Respondent was arrested by the Costa Mesa
22 (California) Police Department for violating Penal Code section 459 (commercial burglary) and
23 Health and Safety Code section 11173(a) (obtaining controlled substance by fraud, deceit). On
24 or about September 14, 2005, in a criminal proceeding titled *People of the State of California v.*
25 *Josie Solano*, Case No. 05HF1537 in Orange County Superior Court, Respondent was convicted
26 of one count of violating Penal Code section(s) 459-460(b) (commercial burglary) and one count
27 of violating Health and Safety Code section 11173(a) (obtaining controlled substance by fraud,
28 deceit, misrepresentation, etc.), both felonies. The circumstances of this case were as follows:

1 a. On or about August 29, 2005, a prescription for **Buprenex** in the
2 name Patricia Lopez was called into a Longs Drugs Pharmacy (PHY 30195) in Costa Mesa, CA.
3 The prescription was allegedly authorized for the patient by a Dr. Carlos Schmidt.

4 b. Pharmacy staff called Dr. Schmidt to verify the prescription. Dr.
5 Schmidt stated that he did not authorize the prescription, and had never prescribed **Buprenex**.

6 c. Pharmacy staff contacted the police when Respondent came in to
7 pick up the prescription. Respondent was apprehended by Costa Mesa Police.

8 d. On or about August 31, 2005, in *People of the State of California*
9 *v. Josie Solano*, Case No. 05HF1537 in Orange County Superior Court, Respondent was charged
10 with violation of Penal Code sections 459-460(b) (commercial burglary) and Health and Safety
11 Code section 11173(a) (obtaining controlled substance by fraud, deceit, etc.), both felonies.

12 e. On or about September 14, 2005, Respondent entered plea(s) of
13 guilty to both felony counts. The sentence imposed on Respondent included ninety (90) days in
14 county jail, consecutive to the sixty (60) days imposed in Case No. 05HF0115, with credit for
15 time served, three (3) years formal probation, registration pursuant to Health and Safety Code
16 section 11590 (controlled substance offender), DNA testing, search conditions, fines and fees.

17
18 FIRST CAUSE FOR DISCIPLINE

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

20 26. Respondent is subject to discipline under Code section 4301(f) in that, as
21 described in paragraphs 20-25 above, Respondent committed acts involving moral turpitude,
22 dishonesty, fraud, deceit, or corruption.

23
24 SECOND CAUSE FOR DISCIPLINE

25 (Making or Signing of False Document)

26 27. Respondent is subject to discipline under Code section 4301(g) in that, as
27 described in paragraphs 20-22 above, on or about May 15, 1997 Respondent completed a Board
28 application under penalty of perjury falsely certifying that she had not been previously convicted.

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime)

3 28. Respondent is subject to discipline under Code sections 4301(l) and/or 490
4 and/or California Code of Regulations, title 16, section 1770, in that as described in paragraph 20
5 above, on or about November 8, 1995, in a criminal case titled *People of the State of California*
6 *v. Josie Solano*, Case No. 95HM09076 in Orange County Superior Court, Respondent was
7 convicted of violating Penal Code section 488 (petty theft), a misdemeanor.

8
9 FOURTH CAUSE FOR DISCIPLINE

10 (Conviction of Substantially Related Crime)

11 29. Respondent is subject to discipline under Code sections 4301(l) and/or 490
12 and/or California Code of Regulations, title 16, section 1770, in that as described in paragraph 21
13 above, on or about February 21, 1997, in a criminal case titled *People of the State of California v.*
14 *Josie Solano*, Case No. 97CM01430 in Orange County Superior Court, Respondent was
15 convicted of violating Penal Code section 488 (petty theft), a misdemeanor.

16
17 FIFTH CAUSE FOR DISCIPLINE

18 (Conviction of Substantially Related Crime)

19 30. Respondent is subject to discipline under Code sections 4301(l) and/or 490
20 and/or California Code of Regulations, title 16, section 1770, in that as described in paragraph 23
21 above, on or about April 8, 2004, in a criminal case titled *People of the State of California v.*
22 *Josie Solano*, Case No. 04WM03407 in Orange County Superior Court, Respondent was
23 convicted of violating Penal Code 487(a) (grand theft), a misdemeanor, and of violating Penal
24 Code section(s) 666/484(a)/488 (theft with prior theft conviction), also a misdemeanor.

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1 NINTH CAUSE FOR DISCIPLINE

2 (Securing Drugs by Forged Prescription)

3 34. Respondent is subject to disciplinary action under Code sections 4301(j)
4 and/or 4301(o) in that Respondent, as described in paragraphs 24-25 above, secured, conspired to
5 secure, and/or assisted in or abetted the acquisition of **Buprenex**, a controlled substance, via a
6 forged/false prescription, in violation of Code section 4324.

7
8 TENTH CAUSE FOR DISCIPLINE

9 (Unlawful Self-Furnishing of Controlled Substance)

10 35. Respondent is subject to disciplinary action under Code sections 4301(j)
11 and/or 4301(o) in that Respondent, as described in paragraphs 24-25 above, self-furnished,
12 conspired to self-furnish, and/or assisted in or abetted the self-furnishing of **Buprenex**, a
13 controlled substance, in violation of Health and Safety Code section 11170.

14
15 ELEVENTH CAUSE FOR DISCIPLINE

16 (Obtaining Controlled Substance by Fraud or Deceit)

17 36. Respondent is subject to disciplinary action under Code sections 4301(j)
18 and/or 4301(o) in that Respondent, as described in paragraphs 24-25 above, obtained, conspired
19 to obtain, and/or assisted in or abetted acquisition by fraud or deceit of **Buprenex**, a controlled
20 substance, in violation of Health and Safety Code section 11173(a).

21
22 TWELFTH CAUSE FOR DISCIPLINE

23 (Obtaining or Possessing Controlled Substance by Non-Compliant Prescription)

24 37. Respondent is subject to disciplinary action under Code sections 4301(j)
25 and/or 4301(o) in that Respondent, as described in paragraphs 24-25 above, obtained, conspired
26 to obtain, and/or assisted in or abetted acquisition of **Buprenex**, a controlled substance, using a
27 non-compliant/fraudulent prescription, in violation of Health and Safety Code section 11175.

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THIRTEENTH CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substance)

38. Respondent is subject to disciplinary action under Code sections 4301(j) and/or 4301(o) in that Respondent, as described in paragraphs 24-25 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **Buprenex**, a narcotic controlled substance, without a valid prescription, in violation of Health and Safety Code section 11350.

FOURTEENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

39. Respondent is subject to disciplinary action under section 4301 of the Code in that Respondent, by way of the conduct described in paragraphs 20-25 above, engaged in "unprofessional conduct" not becoming the profession of a pharmacy technician.

PRAYER

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

- A. Revoking or suspending Pharmacy Technician License No. TCH 25665, issued to Josie Solano aka Josie Salano aka Josie Ruiz (Respondent);
- B. Ordering Respondent to pay the Board reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- C. Taking such other and further action as is deemed necessary and proper.

DATED: 1/23/06

P. F. Harris
 PATRICIA F. HARRIS
 Executive Officer
 Board of Pharmacy
 Department of Consumer Affairs
 State of California
 Complainant