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

In the Matter of the Accusation Against:
CYNTHIA SALDANA
9536 S. Leonard St.
Selma, CA 93662
Pharmacy Technician Registration No.
139844

Respondent.

Case No. 5220

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 7, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5220 against Cynthia Saldana (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 22, 2014, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 139844 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5220 and will expire on September 30, 2015, unless renewed.

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1 3. On or about June 6, 2014, the Board filed a Petition for Interim Suspension Order
2 against Respondent's Pharmacy Technician Registration. On June 26, 2014, an Administrative
3 Law Judge granted the Petition and immediately suspended Respondent's Pharmacy Technician
4 Registration.

5 4. On or about July 8, 2014, Respondent was served by Certified and First Class Mail
6 copies of the Accusation No. 5220, Statement to Respondent, Notice of Defense, Request for
7 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
8 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
9 is required to be reported and maintained with the Board. Respondent's address of record was
10 and is: 9536 S. Leonard St., Selma, CA 93662.

11 5. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 6. On or about August 7, 2014, the aforementioned documents were returned by the
15 U.S. Postal Service marked "Unclaimed."

16 7. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
20 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
21 may nevertheless grant a hearing.

22 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5220.

24 9. California Government Code section 11520 states, in pertinent part:

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, the agency may take action based upon the respondent's express admissions
27 or upon other evidence and affidavits may be used as evidence without any notice to
28 respondent.

 10. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 5220, finds that
3 the charges and allegations in Accusation No. 5220, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 11. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$382.50 as of December 29, 2014.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Cynthia Saldana has subjected
10 her Pharmacy Technician Registration No. 139844 to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
13 Registration based upon the following violations alleged in the Accusation which are supported
14 by the evidence contained in the Default Decision Evidence Packet in this case:

15 a. Bus. & Prof. Code section 4301(f) - dishonest acts

16 b. Bus. & Prof. Code section 4301(j) – violation of laws regulating controlled
17 substances and dangerous drugs

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ORDER

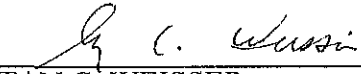
IT IS SO ORDERED that Pharmacy Technician Registration No. 139844, heretofore issued to Respondent Cynthia Saldana, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 6, 2015.

It is so ORDERED February 4, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

11657385.DOC
DOJ Matter ID:SA2014313597

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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
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5 P.O. Box 944255
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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

ACCUSATION

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.

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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:

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- (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.
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- (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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- (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.

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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.

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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;

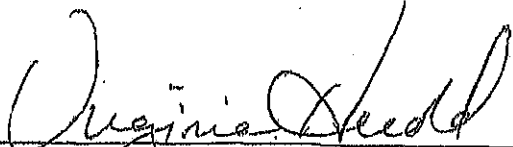
26 2. Ordering Cynthia Saldana to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3;

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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

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