

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

In the Matter of the Accusation Against:

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

**Pharmacy Technician Registration No. TCH
124898**

Respondent.

Case No. 5817

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 at 5:00 p.m. on April 26, 2017.

It is so ORDERED on March 27, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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Acting Attorney General of California
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 5817

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

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

15 Respondent.

STIPULATED SURRENDER OF
LICENSE AND ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
21 (Board). She brought this action solely in her official capacity and is represented in this matter by
22 Kathleen A. Kenealy, Acting Attorney General of the State of California, by Karen R. Denvir,
23 Deputy Attorney General.

24 2. Desiree Alyse Saldivar (Respondent) is representing herself in this proceeding and
25 has chosen not to exercise her right to be represented by counsel.

26 3. On or about August 2, 2012, the Board issued Pharmacy Technician Registration No.
27 TCH 124898 to Desiree Alyse Saldivar (Respondent). The Pharmacy Technician Registration
28 expired on March 31, 2016, and was canceled on December 28, 2016.

1 JURISDICTION

2 4. Accusation No. 5817 was filed before the (Board),, and is currently pending against
3 Respondent. The Accusation and all other statutorily required documents were properly served
4 on Respondent on December 5, 2016. Respondent timely filed her Notice of Defense contesting
5 the Accusation. A copy of Accusation No. 5817 is attached as Exhibit A and incorporated by
6 reference.

7 ADVISEMENT AND WAIVERS

8 5. Respondent has carefully read, and understands the charges and allegations in
9 Accusation No. 5817. Respondent also has carefully read, and understands the effects of this
10 Stipulated Surrender of License and Order.

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

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

20 CULPABILITY

21 8. Respondent admits the truth of each and every charge and allegation in Accusation
22 No. 5817, agrees that cause exists for discipline and hereby surrenders her Pharmacy Technician
23 Registration No. TCH 124898 for the Board's formal acceptance.

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

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 124898, issued to Respondent Desiree Alyse Saldivar, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against

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

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

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

7 4. If she ever applies for licensure or petitions for reinstatement in the State of
8 California, the Board shall treat it as a new application for licensure. Respondent must comply
9 with all the laws, regulations and procedures for licensure in effect at the time the application or
10 petition is filed, and all of the charges and allegations contained in Accusation No. 5817 shall be
11 deemed to be true, correct and admitted by Respondent when the Board determines whether to
12 grant or deny the application or petition.

13 5. Respondent shall pay the agency its costs of investigation and enforcement in the
14 amount of \$7,424.25 prior to issuance of a new or reinstated license.

15 6. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in Accusation, No. 5817 shall be deemed
18 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
19 other proceeding seeking to deny or restrict licensure.


20 7. Respondent may not apply for any license, permit, or registration from the Board for
21 three years from the effective date of this decision. Respondent stipulates that should he or she
22 apply for any license from the Board on or after the effective date of this decision, all allegations
23 set forth in the accusation shall be deemed to be true, correct, and admitted by Respondent when
24 the Board determines whether or not to grant or deny the application. Respondent shall satisfy all
25 requirements applicable to that license as of the date the application is submitted to the Board,
26 including, but not limited to certification by a nationally recognized body prior to the issuance of
27 a new license. Respondent is required to report this surrender as disciplinary action.

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ACCEPTANCE

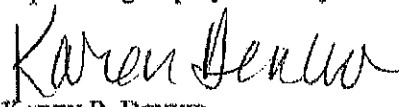
I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 01/25/2017 
DESIREE ALYSE SALDIVAR
Respondent

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: 3/2/17

Respectfully submitted,
KATHLEEN A. KENEALY
Acting Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General

KAREN R. DENVIR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5817

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2 JANICE K. LACHMAN
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7 *Attorneys for Complainant*

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BOARD OF PHARMACY
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10
11 In the Matter of the Accusation Against:

Case No. 5817

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

ACCUSATION

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

15
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.
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22
23 (o) Violating or attempting to violate, directly or indirectly, or assisting in
24 or abetting the violation of or conspiring to violate any provision or term of this
25 chapter or of the applicable federal and state laws and regulations governing
26 pharmacy, including regulations established by the board or by any other state or
27 federal regulatory agency
28

7. Code section 4060 states, in pertinent part:

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.

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

9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, 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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RESPONDENT'S DIVERSION OF CONTROLLED SUBSTANCES

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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.

28 ///

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.

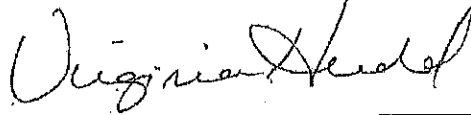
PRAYER

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

- 4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 124898,
5 issued to Desiree Alyse Saldivar;
6 2. Ordering Desiree Alyse Saldivar to pay the Board of Pharmacy the reasonable costs
7 of the investigation and enforcement of this case, pursuant to Business and Professions Code
8 section 125.3; and
9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: _____

10/7/16



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

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