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

11
12 In the Matter of the Accusation Against:

Case No. 3758

13 **NIKIN J. PATEL**
2840 Keystone Circle
14 Corona, CA 92882

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
78009

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 June 2, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 78009 to Nikin J. Patel (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on July 31, 2011, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
10 suspended or revoked."

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate the rehabilitation of a person when:

- 15 (a) Considering the denial of a license by the board under Section 480; or
16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

19 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
20 revoke a license on the ground that the licensee has been convicted of a crime substantially
21 related to the qualifications, functions, or duties of the business or profession for which the
22 license was issued.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or
26 to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 been convicted of a crime substantially related to the qualifications, functions, and
duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 ~~9. Section 4059 of the Code provides in part that a person may not furnish any~~
8 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

12 10. Section 4060 of the Code states:

13 No person shall possess any controlled substance, except that furnished to a
14 person upon the prescription of a physician, dentist, podiatrist, optometrist,
15 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
16 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
17 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant
18 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a
19 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
20 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
21 section shall not apply to the possession of any controlled substance by a
22 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
23 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
24 practitioner, or physician assistant, when in stock in containers correctly labeled
25 with the name and address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a nurse
27 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
28 stock of dangerous drugs and devices.

11. Section 4301 of the Code states:

12 The board shall take action against any holder of a license who is guilty of
13 unprofessional conduct or whose license has been procured by fraud or
14 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
15 is not limited to, any of the following:

16

17 (h) The administering to oneself, of any controlled substance, or the use of
18 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
19 dangerous or injurious to oneself, to a person holding a license under this chapter,

1 or to any other person or to the public, or to the extent that the use impairs the
2 ability of the person to conduct with safety to the public the practice authorized by
the license.

3

4 (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.

5

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

18

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

22

23 12. Health and Safety Code section 11350 provides that every person who possesses a
24 controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or
25 veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state
26 prison.

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REGULATORY PROVISIONS

13. 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.

14. 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.

COST RECOVERY

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

DRUG

16. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Use of a Controlled Substance)**

3 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
4 he used a controlled substance, marijuana. The circumstances are as follows:

5 a. On or about June 14, 2009, officers from the Corona Police Department
6 responded to a call from a security guard in reference to subjects smoking marijuana and drinking
7 beer in the parking lot of Barnes and Noble bookstore in Corona. The security guard reported to
8 officers that after he observed suspicious activity of a white Honda Civic, he started monitoring
9 and recording the vehicle with his surveillance cameras. The security guard also reported that he
10 observed the vehicle park, Respondent and Respondent's two friends exit the vehicle and "take
11 hits" off of a pipe, then get back into the vehicle and drive to the back of the theatre where they
12 parked and shared drinks from a bottle of beer. Officers then approached Respondent's friends
13 who stated that Respondent was inside the theatre watching a movie. Another officer contacted
14 Respondent via cell phone and asked Respondent if there was anything illegal or dangerous in his
15 vehicle. Respondent stated that there was only a glass pipe that they used to smoke marijuana but
16 refused to exit the movie theatre and give consent to search the vehicle. Officers then deployed a
17 K-9 dog, which alerted officers to the bottom edge of the front passenger's door. Respondent was
18 then re-contacted via telephone by the officers. Respondent exited the theatre and his vehicle was
19 searched. Officers located a multi-colored glass smoking pipe along with a green prescription
20 bottle which contained marijuana. Respondent admitted to officers that the bottle contained
21 marijuana and that it belonged to him. Respondent also admitted that he smoked marijuana with
22 his friends in front of the Barnes and Noble. Respondent was arrested and then released with a
23 citation.

24 b. On or about August 26, 2009, in a criminal proceeding entitled *People of the State*
25 *of California v. Nikin J. Patel*, in Riverside County Superior Court, case number RIM536416,
26 Respondent plead guilty to a charge of violating Health and Safety code section 11357(b), less
27 than an ounce of marijuana, a misdemeanor, and was granted deferred entry of judgment. On
28

1 January 15, 2010 and February 26, 2010, Respondent filed proof of enrollment in a drug
2 diversion program pursuant to Penal Code section 1000 with the court.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violations of the Chapter)**

5 18. Respondent is subject to disciplinary action under Code section 4301(o) for violation
6 of the Pharmacy Act in that on or about June 14, 2009, Respondent furnished to himself and
7 possessed a controlled substance, marijuana, in violation of Code sections 4059 and 4060 as is
8 more fully described in Paragraph 17 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

11 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
12 on or about June 14, 2009, Respondent violated the California Uniform Controlled Substances
13 Act (Health and Safety Code 11000, et seq.) as is more fully described in Paragraph 17 above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(January 15, 2010 Conviction for DUI on July 8, 2009)**

16 20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
17 Code in that he was convicted of crimes that are substantially related to the qualifications, duties,
18 and functions of a pharmacy technician. The circumstances are as follows:

19 a. On or about January 15, 2010, in a criminal proceeding entitled *People of the*
20 *State of California vs. Nikin J. Patel*, in Riverside Superior Court case number RIM538540,
21 Respondent was convicted on his plea of guilty of violation of Vehicle Code section 23152(a),
22 driving under the influence of alcohol, and Vehicle Code section 23152(b), driving while having
23 a blood alcohol concentration (BAC) of .08 percent or more, with an enhancement for driving
24 with a BAC of .15 or more, within the meaning of Vehicle Code section 23578.

25 b. The circumstances that led to the convictions are that on or about July 8, 2009,
26 California Highway Patrol officers observed a gold Lexus traveling at approximately 78 miles per
27 hour and weaving on highway 91. The officers initiated a traffic stop, approached the vehicle and
28 identified Respondent as the driver. While speaking to Respondent, an officer smelled the odor

1 of alcohol on Respondent's breath. When asked if he had any alcoholic beverages, Respondent
2 admitted that he had 2 beers recently. The officer also observed that Respondent had red and
3 watery eyes and slurred speech. After failing the field sobriety tests, Respondent was arrested for
4 driving under the influence of alcohol.

5 c. As a result of his convictions, Respondent was sentenced to serve 15 days in
6 custody, ordered to serve 36 months of summary probation, required to pay all fines, fees and
7 restitution and ordered to attend and complete the First Offender DUI Program.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

10 21. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301(h) of the Code in that he used alcoholic beverages to the extent or in a manner as to be
12 dangerous or injurious to himself or others, as set forth in paragraph 20, incorporated herein by
13 reference.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 (February 26, 2010 Conviction for Possession of Marijuana for Sale on September 3, 2009)

16 22. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the
17 Code in that he was convicted of crime that is substantially related to the qualifications, duties,
18 and functions of a pharmacy technician. The circumstances are as follows:

19 a. On or about February 26, 2010, in a criminal proceeding entitled *People of the*
20 *State of California vs. Nikin J. Patel*, in Riverside Superior Court case number RIF153503,
21 Respondent was convicted on his plea of guilty of violation of Health and Safety Code section
22 11359, possession of marijuana for sale, a felony.

23 b. The facts that led to the conviction are that on or about September 3, 2009
24 officers from the Corona Police Department's Vice/Narcotics Unit and Flex Team served a drug
25 search warrant at Respondent's residence in Corona. When officers arrived at the residence, they
26 saw the main garage door open and Respondent walk from the garage to a white Honda Civic
27 parked in the driveway. The Honda Civic backed out of the driveway, was stopped by officers
28 and Respondent was detained. Officers searched the vehicle and found a cloth bag on the front

1 passenger floor board containing a clear glass jar with marijuana inside, a black electronic gram
2 scale, and several pieces of torn white plastic consistent with drug packaging. Officers also
3 discovered several text messages on Respondent's cellular phone including "how much for a
4 half" with the response "180," "I need to get high homie where u at," "hey man think I could get
5 2 grams from you and pay you Tuesday when I get paid?" "I'll be home round 7. You have
6 some? Need a 20 or 2gs," and "gonna need another 20 after work u be around today?"

7 c. Officers opened the door to the residence, announced their presence and
8 detained Respondent's father and sister. When an officer explained the search warrant to
9 Respondent's family, Respondent admitted to the officer that police would only find marijuana
10 which he had for personal use. Officers searched Respondent's room and discovered a Lorcin
11 handgun in between the mattress and box spring, a .380 caliber bullet on the dresser, one large
12 electronic gram scale, and a Tupperware container containing a used baggie with marijuana
13 residue in it. Officer's searched the workout room next to Respondent's bedroom and discovered
14 a pay/owe sheet and electronic gram scale. Officers also searched Respondent's vehicle, a blue
15 Mercedes Benz, and discovered cash totaling \$475.00.

16 c. Respondent's sister admitted to officers that Respondent sold marijuana and
17 that she "sells marijuana for him" sometimes. Respondent admitted that she had sold marijuana
18 for Respondent at their residence and that she would only sell "Twenties." Respondent was
19 subsequently arrested.

20 d. As a result of his conviction, Respondent was sentenced to 90 days in custody,
21 ordered to serve 36 months of formal probation, and required to pay all fines, fees and restitution.

22 SEVENTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct-Violations of the Chapter)

24 23. Respondent is subject to disciplinary action under Code section 4301(o) for violation
25 of the Pharmacy Act in that on or about September 3, 2009, Respondent illegally furnished and
26 possessed a controlled substance, marijuana, in violation of Code sections 4059 and 4060 as is
27 more fully described in Paragraph 22 above.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

3 24. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
4 on or about September 3, 2009, Respondent violated the California Uniform Controlled
5 Substances Act (Health and Safety Code 11000, et seq.) as is more fully described in Paragraph
6 22 above.

7 **DISCIPLINE CONSIDERATIONS**

8 25. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges that on or about February 1, 2005, in a prior criminal proceeding entitled
10 *People of the State of California v. Nikin J. Patel* in Riverside Superior Court, Case Number
11 RIM462595, Respondent was convicted for violating Penal Code section 415(1), willfully and
12 unlawfully fighting in a public place, a misdemeanor and was ordered to serve 6 days in county
13 jail, required to complete 6 days of the Sheriff's Work Program, ordered to pay all fines, fees and
14 restitution, and ordered to serve 2 years summary probation.

15 26. Complainant further alleges that on or about August 2, 2006, in a prior criminal
16 proceeding entitled *People of the State of California v. Nikin J. Patel* in Riverside Superior Court,
17 Case Number RIM484951, Respondent was convicted for violating Health and Safety Code
18 section 11357(b), possession of marijuana, and was ordered to pay restitution and fees. On
19 October 9, 2007, the Court granted Respondent's motion to set aside his plea of guilty per Penal
20 Code section 1203.4(a) and the case was dismissed.

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:

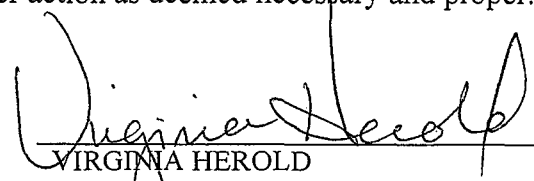
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78009,
25 issued to Nikin J. Patel;

26 2. Ordering Nikin J. Patel 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: 12/16/10



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

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