

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4708

12 **NAPOLION VASQUEZ, JR.**
13 **293 N. Lotus**
14 **Porterville, CA 93257**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
29906

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about July 9, 1999, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 29906 to Napolion Vasquez, Jr. (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2013, unless renewed.

27 ///

28 ///

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 4300 of the Code states, in pertinent part:

6 "(a) Every license issued may be suspended or revoked. . . ."

7 5. Section 4300.1 of the Code states:

8 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9 operation of law or by order or decision of the board or a court of law, the placement of a license
10 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
11 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
12 proceeding against, the licensee or to render a decision suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 6. Section 475 of the Code states, in pertinent part:

15 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
16 govern the denial of licenses on the grounds of:

17 "(1) Knowingly making a false statement of material fact, or knowingly omitting to state a
18 material fact, in an application for a license.

19 "(2) Conviction of a crime.

20 ". . .

21 "(4) Commission of any act which, if done by a licentiate of the business or profession in
22 question, would be grounds for suspension or revocation of license.

23 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall
24 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
25 of subdivision (a). . . ."

26 7. Section 490 of the Code states:

27 "(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code. . . ."

13 8. Section 493 of the Code states:

14 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
15 the department pursuant to law to deny an application for a license or to suspend or revoke a
16 license or otherwise take disciplinary action against a person who holds a license, upon the
17 ground that the applicant or the licensee has been convicted of a crime substantially related to the
18 qualifications, functions, and duties of the licensee in question, the record of conviction of the
19 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of the crime in
21 order to fix the degree of discipline or to determine if the conviction is substantially related to the
22 qualifications, functions, and duties of the licensee in question.

23 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

24 9. Section 4301 of the Code states, in pertinent part:

25 "The board shall take action against any holder of a license who is guilty of unprofessional
26 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

27 Unprofessional conduct shall include, but is not limited to, any of the following:

28 ". . .

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

6 ". . .

7 "(k) The conviction of more than one misdemeanor or any felony involving the use,
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
9 combination of those substances.

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

27 ". . .

28 "(p) Actions or conduct that would have warranted denial of a license. . . . "

1 **REGULATIONS**

2 10. California Code of Regulations, title 16, section 1770, states:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **COST RECOVERY**

10 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct—Conviction of More Than One Misdemeanor Involving the use of**
16 **Alcoholic Beverages)**

17 12. Respondent is subject to disciplinary action under sections 475, 490, and 4301(k) of
18 the Code in that Respondent has been convicted of more than one misdemeanor involving the use
19 and consumption of alcoholic beverages, as more fully set forth below.

20 13. On December 19, 2003, in *People v. Napolion Vasquez*, case no. CR-TR-03-
21 0119831-0, Respondent: (1) pled nolo contendere to a misdemeanor charge of driving while
22 having a 0.08% or higher blood alcohol (a violation of Vehicle Code section 23152(b)); and
23 (2) admitted to the special allegation of having a blood alcohol content (BAC) greater than 0.20%
24 (a special factor justifying enhanced penalties under the 2003 version of Vehicle Code section
25 23578). The court sentenced Respondent to five years of probation, twenty-two days in jail,
26 ordered Respondent to pay a fine, and ordered Respondent to enroll in and complete a six month
27 DUI program.

28 ///

1 14. On October 30, 2006, in *People v. Napolion Vasquez*, case no. PCM172132,
2 Respondent: (1) pled nolo contendere to a misdemeanor charge of driving under the influence of
3 alcohol (a violation of Vehicle Code section 23152(a)), a misdemeanor charge of driving while
4 having a 0.08% or higher BAC (a violation of Vehicle Code section 23152(b)), and a
5 misdemeanor charge of driving while his license was suspended or revoked (a violation of
6 Vehicle Code section 14601.1(a)); (2) admitted to having a BAC of 0.15% or more (a special
7 factor justifying enhanced penalties under the Vehicle Code section 23578); and (3) admitted
8 having one prior DUI conviction within the meaning of Vehicle Code sections 23540 and 23546.
9 The court sentenced Respondent to five years of probation, twenty days in jail, ordered
10 Respondent to pay a fine, and ordered Respondent to attend and complete a DUI program.

11 15. On January 15, 2013, in *People v. Napolian Vasquez, Jr.*, case no. VCM272055,
12 Respondent: (1) pled nolo contendere to a misdemeanor charge of driving while having a 0.08%
13 or higher blood alcohol (a violation of Vehicle Code section 23152(b)); (2) admitted to the special
14 allegation of having a BAC greater than 0.15% (a special factor justifying enhanced penalties
15 under Vehicle Code section 23578); and (3) admitted having two prior DUI convictions within
16 the meaning of Vehicle Code sections 23540 and 23546. The court sentenced Respondent to five
17 years of probation, 160 days of jail, ordered Respondent to pay a fine, ordered Respondent to
18 attend one weekly alcoholic anonymous meeting for six months, ordered Respondent to complete
19 a DUI program, and revoked Respondent's driver's license for three years. The facts and
20 circumstances of this conviction are as follows:

21 a. On July 26, 2012, an officer from the Visalia Police Department was dispatched to
22 Main/Church street after an individual reported that Respondent was parked in a truck and
23 appeared intoxicated. Upon the officer's arrival, Respondent was in his vehicle, with the engine
24 on, attempting to back up in a parking stall. When the officer walked up to the driver's side door
25 of Respondent's vehicle, Respondent appeared disoriented, spoke with slurred speech, had
26 droopy eyelids, and poor coordination. During the officer's contact with Respondent, the officer
27 noted a strong odor of alcohol on Respondent's breath and person. In response to the officer's
28 question regarding how much alcohol Respondent had consumed, Respondent stated, "way too

1 much.” When Respondent exited his vehicle, he was extremely unstable on his feet and the
2 officer held onto Respondent’s arm to prevent Respondent from falling down. After the officer
3 helped Respondent to the sidewalk, Respondent swayed badly and almost fell while standing.
4 Due to the severity of Respondent’s condition, the officer did not perform field sobriety tests as
5 the officer was afraid Respondent would fall and injure himself. The officer arrested Respondent
6 and took Respondent to the Visalia Police Department. While at the Visalia Police Department,
7 Respondent’s eyes were extremely droopy, he had a difficult time keeping his eyes open, and his
8 speech was slurred. At the Visalia Police Department, Respondent provided a blood sample,
9 which revealed Respondent’s BAC was 0.29%. Respondent was booked at the Tulare County
10 Main Jail for driving under the influence of alcohol.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct—Conviction of a Crime Substantially Related to Qualifications,**
13 **Functions, and Duties of Licensee)**

14 16. Respondent is subject to disciplinary action under sections 475, 490, and 4301(l) of
15 the Code in that Respondent has been convicted of crimes that are substantially related to his
16 qualifications, functions, and duties as a pharmacy technician, as more fully set forth in
17 paragraphs 11-14.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct—Use of Alcoholic Beverages in a Dangerous Manner)**

20 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
21 on July 26, 2012, Respondent used alcoholic beverages to the extent or in a manner as to be
22 dangerous or injuries to himself and the public, and to the extent that the use impaired
23 Respondent’s ability to conduct with safety to the public the practice of a pharmacy technician, as
24 set forth in more particularity in paragraph 14(a).

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

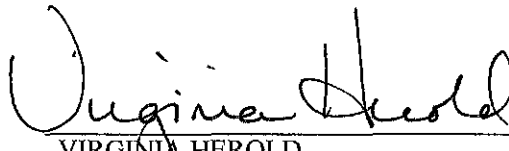
PRAYER

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 29906, issued to Napolion Vasquez, Jr.;
2. Ordering Napolion Vasquez, Jr. 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/14/13



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

SA2013111640
11113880.doc