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

11 In the Matter of the Accusation Against:
12
13 **SHAMIR MAHENDRA PATEL**
19015 Kay Ave.
14 Cerritos, CA 90703
15 **Pharmacy Technician Registration No. TCH**
97082
16 Respondent.

Case No. 4745

A C C U S A T I O N

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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 September 15, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 97082 to SHAMIR MAHENDRA PATEL (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on February 28, 2014, 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.

4 **STATUTORY PROVISIONS**

5 4. Business and Professions Code section 118, subdivision (b),¹ provides that the
6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of
7 jurisdiction to proceed with a disciplinary action during the period within which the license may
8 be renewed, restored, reissued, or reinstated.

9 5. Section 4300 permits the Board to take disciplinary action by suspending or revoking
10 any license issued by the Board.

11 6. Section 4300.1 states:

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

18 7. Section 4060 states, in pertinent part:

19 No person shall possess any controlled substance, except that furnished to
20 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
23 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
24 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
25 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph
26 (A) of paragraph (5) of, subdivision (a) of Section 4052.

27 8. Section 4021 defines "controlled substance" as "any substance listed in Chapter 2
28 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

9. 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:

¹ All further statutory references are to the Business and Professions Code unless otherwise indicated.

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(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.

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

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

...

(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.

10. Section 490 states, in pertinent part:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the

1 qualifications, functions, or duties of the business or profession for which the
licensee's license was issued.

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

6 11. Section 492 states:

7 Notwithstanding any other provision of law, successful completion of any
8 diversion program under the Penal Code, or successful completion of an alcohol and
9 drug problem assessment program under Article 5 (commencing with section
10 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
11 agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

12 This section shall not be construed to apply to any drug diversion program
13 operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

14 12. Section 493 states:

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

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

22 REGULATORY PROVISION

23 13. California Code of Regulations, title 16, section 1770, states:

24 For the purpose of denial, suspension, or revocation of a personal or
25 facility license pursuant to Division 1.5 (commencing with Section 475) of the
26 Business and Professions Code, a crime or act shall be considered substantially
27 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 **CONTROLLED SUBSTANCE**

2 14. Cocaine is a Schedule II controlled substance as designated by Section 4021 and
3 Health and Safety Code section 11055, subdivision (b)(6).

4 **COST RECOVERY**

5 15. Section 125.3 provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of a Substantially Related Crime)**

13 16. Respondent is subject to disciplinary action under Sections 490 and 4301,
14 subdivisions (l), in conjunction with California Code of Regulations, title 16, section 1770, in that
15 on May 11, 2012, Respondent was convicted of a crime substantially related to the qualifications,
16 functions, or duties of a pharmacy technician. The circumstances of the offense are as follows:

17 17. On May 11, 2012, in *People v. Shamirkumar Mahendra Patel aka Shamir Patel*
18 (Super. Ct. Orange County, 2012, No. 12NF0892), Respondent was convicted of a misdemeanor
19 violation of Vehicle Code section 23152, subdivision (a) [driving while under the influence of an
20 alcoholic beverage and/or drug (DUI)], in Count 2, and a misdemeanor violation of Vehicle Code
21 section 23152, subdivision (b) [driving while having a blood alcohol content (BAC) of 0.08% or
22 more], in Count 3. Respondent also admitted the allegation that his blood alcohol content was
23 0.15% or higher in violation of Vehicle Code section 23578. The Court placed Respondent on
24 three years informal probation with standard DUI terms and conditions including a six-month
25 level one first offender alcohol program. The Court also ordered Respondent to attend and
26 complete a Mother's Against Drunk Driving Victim's Impact Panel. As to Count 1, a felony
27 violation of Health and Safety Code section 11350, subdivision (a) [possession of a controlled
28 substance, to wit: cocaine], entry of judgment was deferred pursuant to pursuant to Penal Code

1 section 1000, and the Court placed Respondent on 18 months of the Diversion Program. On
2 December 2, 2013, the Court found that Respondent successfully completed the Drug Program
3 pursuant to Penal Code section 1000 and dismissed Count 1.

4 18. The circumstances underlying the conviction are as follows: On or about January 15,
5 2012, at approximately 12:45 a.m., a civilian witness reported a possible DUI driver in a maroon
6 vehicle who nearly collided with his vehicle before driving up onto a center divider then stopping
7 at a gas station. Officers from the La Palma Police Department arrived at the gas station and
8 made contact with Respondent, who was the driver of the maroon vehicle. Upon conducting a
9 consensual search of Respondent's person, a La Palma Police Officer located a small glass jar of
10 marijuana, for which Respondent had a medical marijuana card. The Officer smelled an odor of
11 an alcoholic beverage emitting from Respondent's person and breath. The Officer also noticed
12 that Respondent's eyes were bloodshot and watery, that he had trouble keeping his balance while
13 standing, and that his speech was slurred. The Officer requested that Respondent perform a series
14 of field sobriety tests, which Respondent failed to adequately perform. Respondent participated in
15 the preliminary alcohol screening (PAS) test and the PAS registered at 0.144% and 0.123% BAC.
16 The Officer arrested Respondent for DUI and booked him at the La Palma Police Station. During
17 the booking process, the Officer located a plastic baggy with a white powdery substance on
18 Respondent's person, which weighed 1.81 grams as packaged. During a presumptive field test,
19 the substance tested positive for cocaine. Respondent admitted to the Officer that he purchased
20 the cocaine at a party in Cerritos, California for \$25.00. He further stated that he used cocaine in
21 the past and had tried to stop using it. He told the Officer that the last time he used cocaine was
22 approximately four months prior.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct: Misdemeanor Convictions Involving Alcoholic Beverage or Drug)**

25 19. Respondent is subject to disciplinary action under Section 4301, subdivision (k), in
26 that Respondent committed an act of unprofessional conduct when he was convicted on May 11,
27 2012 of misdemeanor violations involving the use of, consumption, or self-administration of an
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1 alcoholic beverage and/or drug. Complainant refers to, and by this reference incorporates, the
2 allegations set forth above in paragraphs 17 and 18, as though set forth fully herein.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Dangerous Use of Alcoholic Beverage)**

5 20. Respondent is subject to disciplinary action under Section 4301, subdivision (h), in
6 that Respondent committed an act of unprofessional conduct when he used an alcoholic beverage
7 in a dangerous manner. Complainant refers to, and by this reference incorporates, the allegations
8 set forth above in paragraphs 17 and 18, as though set forth fully herein.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct: Possession of a Controlled Substance)**

11 21. Respondent is subject to disciplinary action under Section 4301, subdivision (j), in
12 conjunction with Section 4060, in that Respondent violated statutes regulating controlled
13 substances when he possessed cocaine on January 15, 2012.² Complainant refers to, and by this
14 reference incorporates, the allegations set forth above in paragraph 18, as though set forth fully
15 herein.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct: Violation of State Laws and Regulations Governing Pharmacy)**

18 22. Respondent is subject to disciplinary action under Section 4301, subdivision (o), in
19 that Respondent committed an act or several acts of unprofessional conduct when he violated the
20 state laws and regulations governing pharmacy. Complainant refers to, and by this reference
21 incorporates, the allegations set forth above in paragraphs 17 through 21, inclusive, as though set
22 forth fully herein.

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26 ² Pursuant to Section 492, the Board of Pharmacy is not prohibited from taking
27 disciplinary action against Respondent despite Respondent's successful completion of the
28 diversion program under Penal Code section 1000 for his violation of Health and Safety Code
section 11350, subdivision (a), in *People v. Shamirkumar Mahendra Patel aka Shamir Patel*
(Super. Ct. Orange County, 2012, No. 12NF0892).

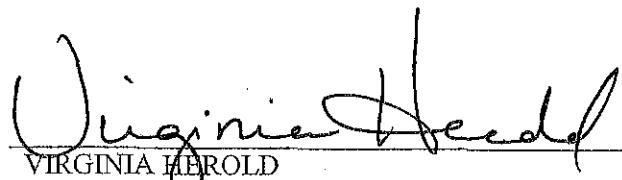
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PRAYER

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 97082, issued to SHAMIR MAHENDRA PATEL;
2. Ordering SHAMIR MAHENDRA PATEL 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: 2/4/14



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

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