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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:

Case No. 4752

12 **JIGNESH JASHBHAI PATEL**
13 **2145 Manchester Avenue**
14 **Cardiff by the Sea, CA 92007**

ACCUSATION

15 **Pharmacist License No. RPH 59344**

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 March 8, 2007, the Board of Pharmacy issued Pharmacist License
22 Number RPH 59344 to Jignesh Jashbhai Patel (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2014, 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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2 (h) The administering to oneself, of any controlled substance, or the use of any
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 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.

....

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

7 (l) The conviction of a crime substantially related to the qualifications,
8 functions, and duties of a licensee under this chapter. The record of conviction of a
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
10 States Code regulating controlled substances or of a violation of the statutes of this
11 state regulating controlled substances or dangerous drugs shall be conclusive
12 evidence of unprofessional conduct. In all other cases, the record of conviction shall
13 be conclusive evidence only of the fact that the conviction occurred. The board may
14 inquire into the circumstances surrounding the commission of the crime, in order to
15 fix the degree of discipline or, in the case of a conviction not involving controlled
16 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.

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REGULATORY PROVISIONS

19 7. California Code of Regulations, title 16, section 1769, states:

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21 (b) When considering the suspension or revocation of a facility or a personal
22 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
23 a license will consider the following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

28 (5) Evidence, if any, of rehabilitation submitted by the licensee.

1 8. California Code of Regulations, title 16, section 1770, states:

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

6 **COST RECOVERY**

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

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(March 26, 2013 Conviction for Driving Under the Influence on August 19, 2012)**

13 10. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
14 (l) of the Code in that he was convicted of a crime substantially related to the qualifications,
15 duties, and functions of a pharmacist. The circumstances are as follows:

16 a. On or about March 26, 2013, in a criminal proceeding entitled *People of the*
17 *State of California v. Patel Jignesh*, in San Diego County Superior Court, case number M156579,
18 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23153,
19 subdivision (b), driving with a blood alcohol concentration above .08 percent, with a prior
20 conviction.

21 b. As a result of the conviction, on or about March 26, 2013, the court ordered
22 Respondent placed on probation for five (5) years, and required him to complete several terms
23 and conditions of probation, including but not limited to, completing a multiple offender driving
24 under the influence program, and attend a Mother's Against Drunk Driving program, payment of
25 fines, fees, and penalties, and serve four (4) days in custody.

26 c. The facts that led to the conviction are that on or about August 19, 2012, at
27 approximately 4:10 a.m., a San Diego Police Officer observed a dark gray Acura MDX in the
28 middle of the street of the 9200 block of Judicial Dr., in San Diego. The vehicle's engine was

1 running and the headlights were on. The officer looked inside the car and saw Respondent passed
2 out and slumped behind the wheel of the car. The officer knocked on the driver's side window to
3 wake him up without success. The officer tried to open the doors on the car, but they were all
4 locked. He continued to knock on the driver's side window and Respondent opened his eyes
5 looked at the officer and then put his head back down on the steering wheel and went back to
6 sleep. The officer knocked again and Respondent looked up and rolled down his window. The
7 officer reached inside of the car and turned the engine off. As he did so, he could smell a strong
8 odor of alcohol coming from the interior of the car. The officer helped Respondent out of the car.
9 Respondent could not stand up by himself, and stumbled. The officer did not conduct field
10 sobriety tests for Respondent's safety. Respondent did not know where he was or how he got to
11 where he was. However, he did admit to drinking beer, and he thought the alcohol had affected
12 his ability to drive.

13 c. When Respondent was asked what medications he was taking he told the
14 officer he was taking Celexa (an anti-depressant), Gefrembrizoil, Lofibria (cholesterol
15 medication), and Zolipidem (sleep medication, and a Schedule IV controlled substance per
16 Health and Safety Code section 11057(d)(32).) A breath test taken at the scene indicated his
17 blood alcohol concentration (BAC) was .22 percent.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

20 11. Respondent is subject to disciplinary action for unprofessional conduct under section
21 4301, subdivision (h) of the Code, in that on or about August 19, 2012, Respondent used alcohol
22 to an extent that was dangerous and injurious to himself, and others, when he drove a vehicle with
23 a substantially high BAC of .22 percent, as described in paragraph 10, above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – More Than One Misdemeanor 26 Conviction Involving the Consumption of Alcohol)**

27 12. Respondent is subject to disciplinary action for unprofessional conduct under section
28 4301, subdivision (k) in that Respondent has sustained two misdemeanors involving the

1 consumption of alcohol, as set forth above in paragraph 10 and below in paragraphs 14 through
2 16.

3 **DISCIPLINARY CONSIDERATIONS**

4 13. On or about September 21, 2009, in a criminal proceeding entitled *People of the State*
5 *of California v. Patel Jignesh*, in San Diego County Superior Court, case number M070019,
6 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152,
7 subdivision (b), driving with a BAC above .08 percent, *to wit.* .19 percent.

8 14. As a result of the conviction, on or about September 21, 2009, the court ordered
9 Respondent placed on probation for five (5) years, and sentenced him to complete several terms
10 and conditions of probation, including but not limited to, completing a three month first offender
11 DUI program, a Mothers Against Drunk Driving Victims Impact Panel, and 4 days of public
12 service, and pay fines and fees.

13 15. On May 28, 2010, the Board issued a citation against Respondent's pharmacist
14 license based upon his 2009 conviction for DUI, and fined Respondent \$1,000.00, which he paid
15 in full on December 21, 2010.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacist License Number RPH 59344, issued to Jignesh
20 Jashbhai Patel

21 2. Ordering Jignesh Jashbhai Patel to pay the Board of Pharmacy the reasonable costs of
22 the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/12/13



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