

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 LESLIE A. WALDEN
Deputy Attorney General
4 State Bar No. 196882
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-3465
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5137

12 **VIRAL SHASHIKANT KOTHARY**
7625 Mexico Way
13 Buena Park, CA 90620

A C C U S A T I O N

14 Pharmacist License No. RPH 53998

15 Respondent.

16
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 August 28, 2002, the Board of Pharmacy ("Board") issued Pharmacist
22 License No. RPH 53998 to Viral Shashikant Kothary ("Respondent"). The Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 October 31, 2017, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

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

5 5. Section 4300.1 of the Code states:

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

11 6. Section 4011 of the Code provides that "[t]he board shall administer and enforce this
12 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
13 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
14 Safety Code). "

15 7. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
16 license issued may be suspended or revoked."

17 **STATUTORY AND REGULATORY PROVISIONS**

18 8. Section 4301 of the Code states, in pertinent part:

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

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

22

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

28

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

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

21 9. California Code of Regulations, title 16, section 1770, states:

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

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1 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Convictions of Substantially Related Crimes)**

10 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
11 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
12 convicted of crimes substantially related to qualifications, functions, or duties of a pharmacist
13 which to a substantial degree evidence his present or potential unfitness to perform the functions
14 authorized by the license in a manner consistent with the public health, safety, or welfare, as
15 follow:

16 a. On or about May 1, 2013, after pleading nolo contendere, Respondent was convicted
17 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving with
18 a 0.08% or higher blood alcohol content ("BAC"), by weight], with a further allegation of
19 violating Vehicle Code section 23578 [having a BAC of 0.15% or higher] in the criminal
20 proceeding entitled *The People of the State of California v. Viral Shashikant Kothary* (Super. Ct.
21 Fresno County, 2013, No. M11914798). Respondent's BAC was 0.19% pursuant to a stipulation.
22 The Court sentenced Respondent to 16 days in county jail, placed him on three years probation
23 with terms and condition, ordered him to complete a first offender DUI program, and ordered him
24 to pay fines.

25 b. The circumstances underlying the conviction are that on or about March 23, 2011,
26 Respondent drove a vehicle, ran a red traffic light, and hit a pole while driving at a high speed.
27 Upon contact, law enforcement officers noticed Respondent was slurring his words heavily and
28 emitting an odor of an alcoholic beverage from him. Respondent told the officers that he went to

1 his first alcoholic anonymous meeting and had a few drinks afterwards. Respondent's BAC was
2 0.22% and 0.21%.

3 c. On or about May 1, 2013, after pleading nolo contendere, Respondent was convicted
4 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving with
5 a 0.08% or higher BAC, by weight], with a further allegation of violating Vehicle Code section
6 23578 [having a BAC of 0.15% or higher] in the criminal proceeding entitled *The People of the*
7 *State of California v. Viral Shashikant Kothary* (Super. Ct. Fresno County, 2013, No.
8 M13911805). Respondent's BAC was 0.19% pursuant to a stipulation and he admitted to a prior
9 conviction of violating Vehicle Code section 23152, subdivision (b). The Court sentenced
10 Respondent to 22 days in county jail, placed him on three years probation with terms and
11 conditions, ordered him to complete a 18-month Multiple Offender Alcohol Program, and ordered
12 him to pay fines.

13 d. The circumstances underlying the conviction are that on or about July 27, 2011,
14 Respondent was stopped by law enforcement officer for a traffic violation. Upon contact, an
15 officer observed that Respondent was showing symptoms of intoxication and emitting a strong
16 odor of an alcoholic beverage from his breath. Furthermore, Respondent told the officer that he
17 had two or two and half alcoholic beverages. Respondent was given field sobriety tests, but he
18 was unable to complete it. Respondent's BAC was 0.23%, 0.20% and 0.24%.

19 e. On or about July 1, 2015, after pleading nolo contendere, Respondent was convicted
20 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
21 under the influence of alcohol], with further allegations of violating Vehicle Code sections 23578
22 [excessive BAC] and 23545, subdivision (a) [third conviction within ten years], in the criminal
23 proceeding entitled *The People of the State of California v. Viral Shashikant Kothary* (Super. Ct.
24 Kern County, 2015, No. BM829601A). The Court sentenced Respondent to 120 days in jail,
25 placed him on three years probation with terms and conditions, ordered him to complete an
26 alcohol education program, ordered him to participate in the victim impact panel, ordered him to
27 install an ignition interlock device on his vehicles, and ordered him to pay fines.

28 f. The circumstances underlying the conviction are that on or about September 21, 2013,

1 a law enforcement officer observed Respondent was unable to drive in a straight in a traffic lane.
2 Upon traffic stop, the officer contacted Respondent and detected a strong odor of an alcoholic
3 beverage emitting from him. Furthermore, the officer noticed a beeping noise from Respondent's
4 vehicle and he told the officer that he was having trouble with his ignition interlock device.
5 When the officer asked if he had any alcoholic beverages, Respondent told the officer that he had
6 not and showed his "One year chit." Respondent further stated that his last alcoholic drink was
7 the year before. Respondent was given the field sobriety tests, but he was unable to complete it.
8 Respondent's subsequent BAC was 0.22%.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol)**

11 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
12 on the grounds of unprofessional conduct, in that Respondent used alcoholic beverages to the to
13 the extent or in a manner as to be dangerous or injurious to himself or others, as follows:

14 a. On or about March 23, 2011, July 27, 2011, and September 21, 2013, used alcoholic
15 beverages to the to the extent or in a manner as to be dangerous or injurious to himself or others.

16 Complainant refers to and by this reference incorporates the allegations set for above paragraph
17 11, subparagraphs a though f, inclusive, as though set forth fully.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Multiple Convictions Involving Consumption of Alcohol)**

20 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
21 on the grounds of unprofessional conduction, in that Respondent has three convictions involving
22 consumption of alcoholic beverages. Complainant refers to and by this reference incorporates the
23 allegations set for above paragraph 12, subparagraphs a, c, and e, inclusive, as though set forth
24 fully.

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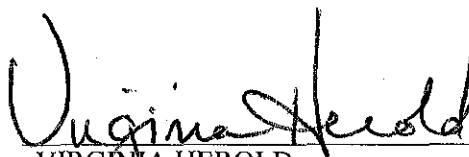
PRAAYER

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

1. Revoking or suspending Pharmacist License No. RPH 53998, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

12/22/15



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

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