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

11 In the Matter of the Accusation Against:
12 **VIRAJ VIJAY PATEL**
2727 La Salle Pointe
13 Chino Hills, CA 91709
14 **Pharmacist License No. RPH 74271**
15 Respondent.

Case No. 6037

ACCUSATION

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 December 17, 2015, the Board of Pharmacy (“Board”) issued Pharmacist
22 License No. RPH 74271 to Viraj Vijay 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 June 30,
24 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 4011 of the Code provides that “[t]he board shall administer and enforce this
2 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform
3 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
4 Safety Code).”

5 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that “[e]very
6 license issued may be suspended or revoked.”

7 6. Section 4300.1 of the Code states:

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

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

18 STATUTORY AND REGULATORY PROVISIONS

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

20 “The board shall take action against any holder of a license who is guilty of
21 unprofessional conduct or whose license has been issued by mistake.
22 Unprofessional conduct shall include, but is not limited to, any of the following:

23

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

.....

(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

1 evidence of unprofessional conduct. In all other cases, the record of conviction
2 shall be conclusive evidence only of the fact that the conviction occurred. The
3 board may inquire into the circumstances surrounding the commission of the
4 crime, in order to fix the degree of discipline or, in the case of a conviction not
5 involving controlled substances or dangerous drugs, to determine if the conviction
6 is of an offense substantially related to the qualifications, functions, and duties of a
7 licensee under this chapter. A plea or verdict of guilty or a conviction following a
8 plea of nolo contendere is deemed to be a conviction within the meaning of this
9 provision. The board may take action when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting
11 probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under Section 1203.4 of the Penal Code allowing the person to
13 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
14 the verdict of guilty, or dismissing the accusation, information, or indictment.

15

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

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

22 9. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

29 COST RECOVERY

30 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
31 administrative law judge to direct a licentiate found to have committed a violation or violations of
32 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
33 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
34 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
35 included in a stipulated settlement.

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
4 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
5 convicted of a crime substantially related to qualifications, functions, or duties of a registered
6 pharmacy technician which to a substantial degree evidence his present or potential unfitness to
7 perform the functions authorized by his registration in a manner consistent with the public health,
8 safety, or welfare, as follow:

9 a. On or about May 23, 2016, Respondent was convicted of two (2) misdemeanor
10 counts: one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
11 under the influence (“DUI”) of alcohol], and one misdemeanor count of violating Vehicle Code
12 section 23152, subdivision (b) [driving while having a blood alcohol concentration (“BAC”) of
13 0.08% or more, by weight], in the criminal proceeding entitled *The People of the State of*
14 *California v. Viraj Vijay Patel* (Super. Ct. Orange County, 2016, No. 16CM00443MA). The
15 court sentenced Respondent to 180 days in jail, placed him on five (5) years probation, ordered
16 him to complete a 18-months Multiple Offender Alcohol Program, ordered him to attend Victim
17 Impact Counseling and Alcoholics Anonymous meetings, and ordered him to pay fines and a
18 restitution.

19 b. The circumstances surrounding the conviction are that on or about November 15,
20 2015, an Orange Police Department officer was dispatched to investigate a traffic collision. Upon
21 arrival, the officer observed that a vehicle appeared to have a fresh collision damage on the front
22 bumper, and a broken fire hydrant lying on the sidewalk with water bursting out of ground. The
23 officer contacted Respondent and observed the objective symptoms of alcohol intoxication from
24 Respondent, including red and watery eyes, slurred speech, and the strong odor of an alcoholic
25 beverage coming from his breath and person. Respondent admitted drinking two beers at a
26 friend’s residence earlier, but he informed the officer that he crashed his vehicle due to looking at
27 his cellular phone. Respondent was unable to satisfactorily perform a series of field sobriety tests
28 as explained and demonstrated by the officer. Respondent’s blood test revealed a BAC of 0.13%.

1 section 23152, subdivision (b) [driving while having a blood alcohol content (“BAC”) of 0.08%
2 or higher, by weight], in the criminal proceeding entitled *The People of the State of California v.*
3 *Viraj Vijay Patel* (Super. Ct. Orange County, 2015, No. 15HM02327). The court sentenced
4 Respondent to one (1) day in jail, placed him on three (3) years probation, ordered him to
5 complete a three-month Level 1 First-Offender Alcohol Program, ordered him to complete a
6 Victim Impact Counseling, and pay fines.

7 b. The circumstances surrounding the conviction are that on or about December 11,
8 2014, a California Highway Patrol officer observed a vehicle driving at a high speed. Upon
9 traffic stop, the officer contacted Respondent with five (5) passengers. Respondent had bloodshot
10 eyes, and was emitting an odor of an alcoholic beverage on his breath. Respondent was unable to
11 satisfactorily perform a series of field sobriety tests as explained and demonstrated by the officer.
12 Respondent’s breath test revealed a BAC of 0.13%.

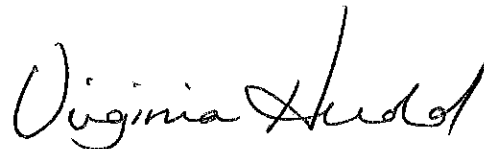
13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacist License No. RPH 74271, issued to Viraj Vijay
17 Patel;
- 18 2. Ordering Viraj Vijay Patel to pay the Board the reasonable costs of the investigation
19 and enforcement of this case, pursuant to Code section 125.3; and,
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: _____

5/16/17



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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