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

In the Matter of the Accusation Against:

Case No. 3669

**NARESH KUMAR
1455 Dolores Lane
Tracy, CA 95376
Pharmacy Technician Registration No. TCH
49281**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about May 6, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3669 against Naresh Kumar (Respondent) before the Board of Pharmacy.

2. On or about August 7, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 49281 to Respondent.

3. On or about May 11, 2010, Constance A. Ward, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3669, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1455 Dolores Lane
Tracy, CA 95376.

1 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

2 4. Service of the Accusation was effective as a matter of law under the provisions of
3 Government Code section 11505, subdivision (c).

4 5. On or about May 14, 2010, the aforementioned documents were returned by the U.S.
5 Postal Service marked "Not deliverable as addressed, unable to forward."

6 6. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
11 may nevertheless grant a hearing.

12 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
14 3669.

15 8. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
19 respondent.

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 evidence on file herein, finds that the allegations in Accusation No. 3669 are true.

23 10. The total cost for investigation and enforcement in connection with the Accusation
24 are \$1,147.50 as of June 29, 2010.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Naresh Kumar has subjected his
27 Pharmacy Technician Registration No. TCH 49281 to discipline.

28 2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
2 Registration based upon the following violations alleged in the Accusation:

3 a. Conviction of crimes which are substantially related to the qualifications, functions
4 and duties of a Pharmacy Technician pursuant to Business and Professions Code section 4301(l),
5 and conviction of multiple crimes involving consumption of alcohol, to wit:

6 i. On November 5, 2007, in the Superior Court, San Joaquin County, California in
7 the case entitled People of the State of California v. Naresh Kumar aka Kamesh Kumar , Case
8 No. TP07-09405, Respondent was convicted by the court following his plea of guilty to a
9 violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of .08 or higher) a
10 misdemeanor. The circumstances are as follows: On September 28, 2007, respondent was
11 observed returning a rental car to the agency in Tracy, California, with his 5 year old daughter in
12 the back seat. On exiting the vehicle, he was observed to stagger and was hardly able to stand.
13 He entered the agency and exhibited heavily slurred speech and was unable to focus when spoken
14 to. When an officer asked respondent for his driver's license, respondent handed the officer a
15 credit card. Respondent was unable to complete field sobriety tests, was arrested, and
16 subsequently had his blood tested at the jail at a level of .25 BAC. Felony charges of child
17 endangerment were dismissed as part of respondent's plea agreement.

18 ii. On November 3, 2009, in the Superior Court, San Joaquin County, California in
19 the case entitled People of the State of California v. Naresh Kumar aka Kamesh Kumar , Case
20 No. TP09-07961, Respondent was convicted by the court following his plea of No Contest to a
21 violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of .08 or higher) a
22 misdemeanor. The circumstances are as follows: On September 4, 2009, following a hit and run
23 accident in Stockton, Respondent was pulled over by Tracy Police. Respondent attempted to pull
24 into a parking spot but was unable to do so, nearly hitting parked cars and the police vehicles
25 which were stopped behind him. Respondent was ordered to exit his vehicle but instead
26 attempted to put the vehicle in gear. Respondent was too intoxicated to respond or obey the
27 officer's orders to exit the vehicle and had to be removed from the vehicle and arrested.

28

Exhibit A
Accusation No. 3669

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KENT D. HARRIS
Deputy Attorney General
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1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3669

12 **NARESH KUMAR**
13 **1455 Dolores Lane**
Tracy, CA 95376

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **TCH 49281**

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 August 7, 2003, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 49281 to Naresh Kumar (Respondent). Said license was in full force
23 and effect at all times mentioned herein and will expire on May 31, 2011 unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Code states in pertinent part:

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

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one year.

9 "(4) Revoking his or her license.

10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.

12 ...

13 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15 shall have all the powers granted therein. The action shall be final, except that the propriety of
16 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
17 Civil Procedure."

18 5. 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
12 or 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 ...

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Convictions)**

3 7. Respondent is subject to disciplinary action under section 4301(l) in that he has been
4 convicted of the following crimes that are substantially related to the qualifications, functions,
5 and duties of a pharmacy technician:

6 a. On November 5, 2007, in the Superior Court, San Joaquin County, California in
7 the case entitled *People of the State of California v. Naresh Kumar aka Kamesh Kumar*, Case
8 No. TP07-09405, Respondent was convicted by the court following his plea of guilty to a
9 violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of .08 or higher) a
10 misdemeanor. The circumstances are as follows: On September 28, 2007, respondent was
11 observed returning a rental car to the agency in Tracy, California, with his 5 year old daughter in
12 the back seat. On exiting the vehicle, he was observed to stagger and was hardly able to stand.
13 He entered the agency and exhibited heavily slurred speech and was unable to focus when spoken
14 to. When an officer asked respondent for his driver's license, respondent handed the officer a
15 credit card. Respondent was unable to complete field sobriety tests, was arrested, and
16 subsequently had his blood tested at the jail at a level of .25 BAC. Felony charges of child
17 endangerment were dismissed as part of respondent's plea agreement.

18 b. On November 3, 2009, in the Superior Court, San Joaquin County, California in the
19 case entitled *People of the State of California v. Naresh Kumar aka Kamesh Kumar*, Case No.
20 TP09-07961, Respondent was convicted by the court following his plea of No Contest to a
21 violation of Vehicle Code section 23152(b) (driving with a blood alcohol level of .08 or higher) a
22 misdemeanor. The circumstances are as follows: On September 4, 2009, following a hit and run
23 accident in Stockton, Respondent was pulled over by Tracy Police. Respondent attempted to pull
24 into a parking spot but was unable to do so, nearly hitting parked cars and the police vehicles
25 which were stopped behind him. Respondent was ordered to exit his vehicle but instead
26 attempted to put the vehicle in gear. Respondent was too intoxicated to respond or obey the
27 officer's orders to exit the vehicle and had to be removed from the vehicle and arrested.

28

1 **SECOND CAUSE FOR DISCIPLINE**

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

3 8. Respondent is subject to disciplinary action under section 4301(k) in that he was
4 convicted of multiple crimes involving the consumption of alcohol as set forth above in
5 paragraphs 7 (a) and 7(b).

6
7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Use of Alcoholic Beverage to the Extent or in a Manner Dangerous or Injurious to Others)**

9 9. Respondent is subject to disciplinary action under section 4301(h) in that he used
10 alcohol to an extent and in a manner so as to be dangerous or injurious to other as set forth above
11 in paragraphs 7 (a) and 7(b).

12
13 **PRAYER**

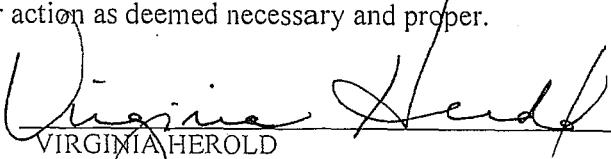
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 49281,
17 issued to Naresh Kumar.

18 2. Ordering Naresh Kumar to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;

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

22 DATED: 5/6/10

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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