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

In the Matter of the Accusation Against:
SHAMIR MAHENDRA PATEL
19015 Kay Ave.
Cerritos, CA 90703
**Pharmacy Technician Registration No. TCH
97082**

Respondent.

Case No. 4745
OAH No. 2014020971
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 4, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 4745 against Shamir Mahendra Patel (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 15, 2010, the Board issued Pharmacy Technician Registration No. TCH 97082 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4745 and will expire on February 29, 2016, unless renewed.

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1 3. On or about February 12, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4745, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 19015 Kay Ave.
8 Cerritos, CA 90703.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about February 19, 2014, Respondent signed and returned a Notice of Defense,
13 requesting a hearing in this matter. Respondent indicated on his Notice of Defense that his
14 mailing address is 638 N. Rockvale Ave., Azusa, CA, 91702.

15 6. A Notice of Hearing was served by mail at the address listed on Respondent's Notice
16 of Defense and it informed him that an administrative hearing in this matter was scheduled for
17 September 18, 2014. On or about March 21, 2014, a signed certified mail receipt for the Notice
18 of Hearing was received by the Attorney General's Office. Respondent failed to appear at that
19 hearing.

20 7. Government Code section 11506 states, in pertinent part:

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

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

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

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4745, finds that the charges and allegations in Accusation No. 4745, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$5,042.50 as of September 17, 2014.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Pharmacy Technician Registration No. TCH 97082 to discipline.

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

3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.

a. Business and Professions Code sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that on May 11, 2012, Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician.

b. Business and Professions Code section 4301, subdivision (k), in that Respondent committed an act of unprofessional conduct when he was convicted on May 11, 2012 of misdemeanor violations involving the use of, consumption, or self-administration of an alcoholic beverage and/or drug.

c. Business and Professions Code section 4301, subdivision (h), in that Respondent committed an act of unprofessional conduct when he used an alcoholic beverage in a dangerous manner.

1 d. Business and Professions Code section 4301, subdivision (j), in conjunction
2 with Section 4060, in that Respondent violated statutes regulating controlled substances when he
3 possessed cocaine on January 15, 2012.

4 e. Business and Professions Code section 4301, subdivision (o), in that
5 Respondent committed an act or several acts of unprofessional conduct when he violated the state
6 laws and regulations governing pharmacy.

7 ORDER

8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 97082, heretofore
9 issued to Respondent Shamir Mahendra Patel, is revoked.

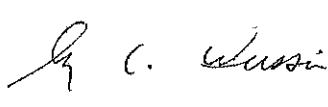
10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11 written motion requesting that the Decision be vacated and stating the grounds relied on within
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

14 This decision shall become effective on February 6, 2015.

15 It is so ORDERED on January 7, 2015.

16 BOARD OF PHARMACY
17 DEPARTMENT OF CONSUMER AFFAIRS
18 STATE OF CALIFORNIA

19
20 By


21 STAN C. WEISSER
22 Board President

23 51625796.DOC
DOJ Matter ID: LA2013509639

24 Attachment:
25 Exhibit A: Accusation
26
27
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Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 BORA SONG
Deputy Attorney General
4 State Bar No. 276475
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2674
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7
8

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

11 In the Matter of the Accusation Against:

Case No. 4745

12 **SHAMIR MAHENDRA PATEL**
13 19015 Kay Ave.
Cerritos, CA 90703

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **97082**

16 Respondent.
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18

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
2 (h) The administering to oneself, of any controlled substance, or the use
3 of any 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
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

7
8 (j) The violation of any of the statutes of this state, or any other state, or
9 of the United States regulating controlled substances and dangerous drugs.

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

13 (l) The conviction of a crime substantially related to the qualifications,
14 functions, and duties of a licensee under this chapter. The record of conviction of a
15 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
16 States Code regulating controlled substances or of a violation of the statutes of this
17 state regulating controlled substances or dangerous drugs shall be conclusive evidence
18 of unprofessional conduct. In all other cases, the record of conviction shall be
19 conclusive evidence only of the fact that the conviction occurred. The board may
20 inquire into the circumstances surrounding the commission of the crime, in order to
21 fix the degree of discipline or, in the case of a conviction not involving controlled
22 substances or dangerous drugs, to determine if the conviction is of an offense
23 substantially related to the qualifications, functions, and duties of a licensee under this
24 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere is deemed to be a conviction within the meaning of this provision. The
26 board may take action when the time for appeal has elapsed, or the judgment of
27 conviction has been affirmed on appeal or when an order granting probation is made
28 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.

29
30 (o) Violating or attempting to violate, directly or indirectly, or assisting in
31 or abetting the violation of or conspiring to violate any provision or term of this
32 chapter or of the applicable federal and state laws and regulations governing
33 pharmacy, including regulations established by the board or by any other state or
34 federal regulatory agency.

35 10. Section 490 states, in pertinent part:

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

41 (b) Notwithstanding any other provision of law, a board may exercise any
42 authority to discipline a licensee for conviction of a crime that is independent of the
43 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
6 on appeal, or when an order granting probation is made suspending the imposition of
7 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
8 the Penal Code.

9 11. Section 492 states:

10 Notwithstanding any other provision of law, successful completion of any
11 diversion program under the Penal Code, or successful completion of an alcohol and
12 drug problem assessment program under Article 5 (commencing with section
13 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
14 agency established under Division 2 ([Healing Arts] commencing with Section 500)
15 of this code, or any initiative act referred to in that division, from taking disciplinary
16 action against a licensee or from denying a license for professional misconduct,
17 notwithstanding that evidence of that misconduct may be recorded in a record
18 pertaining to an arrest.

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

22 12. Section 493 states:

23 Notwithstanding any other provision of law, in a proceeding conducted by
24 a board within the department pursuant to law to deny an application for a license or
25 to suspend or revoke a license or otherwise take disciplinary action against a person
26 who holds a license, upon the ground that the applicant or the licensee has been
27 convicted of a crime substantially related to the qualifications, functions, and duties of
28 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.

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

REGULATORY PROVISION

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

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

///

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
28

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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25 _____
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).

PRAYER

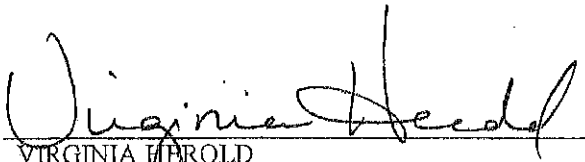
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

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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