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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:

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.

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

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

...

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

5. Section 4301 of the Code states in pertinent part:

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

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be 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.

...

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.

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SECOND CAUSE FOR DISCIPLINE

(Multiple Convictions Involving Consumption of Alcohol)

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

THIRD CAUSE FOR DISCIPLINE

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

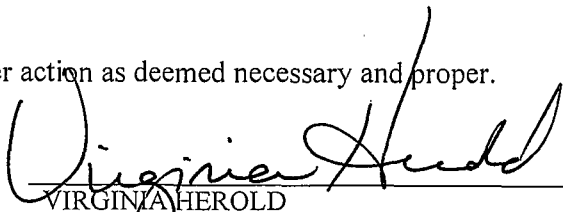
9. Respondent is subject to disciplinary action under section 4301(h) in that he used alcohol to an extent and in a manner so as to be dangerous or injurious to other as set forth above in paragraphs 7 (a) and 7(b).

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 49281, issued to Naresh Kumar.
- 2. Ordering Naresh Kumar 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: 5/6/10



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

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