

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Case No. 3758

In the Matter of the Accusation Against:

**NIKIN J. PATEL  
2840 Keystone Circle  
Corona, CA 92882**

**DEFAULT DECISION AND ORDER**

**Pharmacy Technician Registration No. TCH  
78009**

[Gov. Code, §11520]

Respondent.

**FINDINGS OF FACT**

1. On or about December 16, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3758 against Nikin J. Patel (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 2, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 78009 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2011, unless renewed.

3. On or about December 23, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3758, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 136 and 4100, and California Code of Regulations, title 16, section 1704, is required to be

1 reported and maintained with the Board, which was and is: 2840 Keystone Circle  
2 Corona, CA 92882.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
5 124.

6 5. The aforementioned documents were not returned by the U.S. Postal Service. The  
7 domestic return receipt card for the certified mail reflects that the documents were delivered and  
8 signed for by "Patel."

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
17 3758.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds  
24 Respondent is in default. The Board will take action without further hearing and, based on the  
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
26 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
27 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3758,  
28 finds that the charges and allegations in Accusation No. 3758, are separately and severally true  
and correct by clear and convincing evidence.



1 with a BAC of .15 or more, within the meaning of Vehicle Code section 23578, crimes that are  
2 substantially related to the qualifications, duties, and functions of a pharmacy technician.

3 e. Respondent is subject to disciplinary action for unprofessional conduct under  
4 section 4301(h) of the Code in that he used alcoholic beverages to the extent or in a manner as to  
5 be dangerous or injurious to himself or others.

6 f. Respondent is subject to disciplinary action under sections 490 and 4301(l) of  
7 the Code in that on or about February 26, 2010, in a criminal proceeding entitled *People of the*  
8 *State of California vs. Nikin J. Patel*, in Riverside Superior Court case number RIF153503,  
9 Respondent was convicted on his plea of guilty of violation of Health and Safety Code section  
10 11359, possession of marijuana for sale, a felony, a crime that is substantially related to the  
11 qualifications, duties, and functions of a pharmacy technician.

12 g. Respondent is subject to disciplinary action under Code section 4301(o) for  
13 violation of the Pharmacy Act in that on or about September 3, 2009, Respondent illegally  
14 furnished and possessed a controlled substance, marijuana, in violation of Code sections 4059 and  
15 4060.

16 h. Respondent is subject to disciplinary action under section 4301(j) of the Code  
17 in that on or about September 3, 2009, Respondent violated the California Uniform Controlled  
18 Substances Act (Health and Safety Code 11000, et seq.).

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

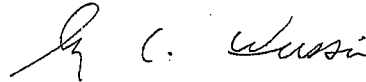
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 78009, heretofore issued to Respondent Nikin J. Patel, is revoked.

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

This Decision shall become effective on April 15, 2011.

It is so ORDERED March 16, 2011.



---

STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 NICOLE R. COOK  
Deputy Attorney General  
4 State Bar No. 263607  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2143  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against:

Case No. 3758

13 **NIKIN J. PATEL**  
2840 Keystone Circle  
14 Corona, CA 92882

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
78009

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about June 2, 2008, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 78009 to Nikin J. Patel (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on July 31, 2011, unless renewed.

26 ///

27 ///

28 ///





1 and the board may inquire into the circumstances surrounding the commission of  
2 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.

3 As used in this section, "license" includes "certificate," "permit,"  
4 "authority," and "registration."

5 ~~9. Section 4059 of the Code provides in part that a person may not furnish any~~  
6 dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10 10. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that furnished to a  
12 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
14 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
15 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
16 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
17 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
18 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This  
section shall not apply to the possession of any controlled substance by a  
19 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
20 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
21 practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

22 Nothing in this section authorizes a certified nurse-midwife, a nurse  
23 practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
24 stock of dangerous drugs and devices.

25 11. Section 4301 of the Code states:

26 The board shall take action against any holder of a license who is guilty of  
27 unprofessional conduct or whose license has been procured by fraud or  
28 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,

1 or to any other person or to the public, or to the extent that the use impairs the  
2 ability of the person to conduct with safety to the public the practice authorized by  
3 the license.

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

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

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

12. Health and Safety Code section 11350 provides that every person who possesses a  
controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or  
veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state  
prison.

///

///

REGULATORY PROVISIONS

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.

14. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

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

DRUG

16. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054; subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

///

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Use of a Controlled Substance)**

3 17. Respondent is subject to disciplinary action under section 4301(h) of the Code in that  
4 he used a controlled substance, marijuana. The circumstances are as follows:

5 a. On or about June 14, 2009, officers from the Corona Police Department  
6 responded to a call from a security guard in reference to subjects smoking marijuana and drinking  
7 beer in the parking lot of Barnes and Noble bookstore in Corona. The security guard reported to  
8 officers that after he observed suspicious activity of a white Honda Civic, he started monitoring  
9 and recording the vehicle with his surveillance cameras. The security guard also reported that he  
10 observed the vehicle park, Respondent and Respondent's two friends exit the vehicle and "take  
11 hits" off of a pipe, then get back into the vehicle and drive to the back of the theatre where they  
12 parked and shared drinks from a bottle of beer. Officers then approached Respondent's friends  
13 who stated that Respondent was inside the theatre watching a movie. Another officer contacted  
14 Respondent via cell phone and asked Respondent if there was anything illegal or dangerous in his  
15 vehicle. Respondent stated that there was only a glass pipe that they used to smoke marijuana but  
16 refused to exit the movie theatre and give consent to search the vehicle. Officers then deployed a  
17 K-9 dog, which alerted officers to the bottom edge of the front passenger's door. Respondent was  
18 then re-contacted via telephone by the officers. Respondent exited the theatre and his vehicle was  
19 searched. Officers located a multi-colored glass smoking pipe along with a green prescription  
20 bottle which contained marijuana. Respondent admitted to officers that the bottle contained  
21 marijuana and that it belonged to him. Respondent also admitted that he smoked marijuana with  
22 his friends in front of the Barnes and Noble. Respondent was arrested and then released with a  
23 citation.

24 b. On or about August 26, 2009, in a criminal proceeding entitled *People of the State*  
25 *of California v. Nikin J. Patel*, in Riverside County Superior Court, case number RIM536416,  
26 Respondent plead guilty to a charge of violating Health and Safety code section 11357(b), less  
27 than an ounce of marijuana, a misdemeanor, and was granted deferred entry of judgment. On  
28

1 January 15, 2010 and February 26, 2010, Respondent filed proof of enrollment in a drug  
2 diversion program pursuant to Penal Code section 1000 with the court.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct-Violations of the Chapter)**

5 18. Respondent is subject to disciplinary action under Code section 4301(o) for violation  
6 of the Pharmacy Act in that on or about June 14, 2009, Respondent furnished to himself and  
7 possessed a controlled substance, marijuana, in violation of Code sections 4059 and 4060 as is  
8 more fully described in Paragraph 17 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

11 19. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
12 on or about June 14, 2009, Respondent violated the California Uniform Controlled Substances  
13 Act (Health and Safety Code 11000, et seq.) as is more fully described in Paragraph 17 above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(January 15, 2010 Conviction for DUI on July 8, 2009)**

16 20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
17 Code in that he was convicted of crimes that are substantially related to the qualifications, duties,  
18 and functions of a pharmacy technician. The circumstances are as follows:

19 a. On or about January 15, 2010, in a criminal proceeding entitled *People of the*  
20 *State of California vs. Nikin J. Patel*, in Riverside Superior Court case number RIM538540,  
21 Respondent was convicted on his plea of guilty of violation of Vehicle Code section 23152(a),  
22 driving under the influence of alcohol, and Vehicle Code section 23152(b), driving while having  
23 a blood alcohol concentration (BAC) of .08 percent or more, with an enhancement for driving  
24 with a BAC of .15 or more, within the meaning of Vehicle Code section 23578.

25 b. The circumstances that led to the convictions are that on or about July 8, 2009,  
26 California Highway Patrol officers observed a gold Lexus traveling at approximately 78 miles per  
27 hour and weaving on highway 91. The officers initiated a traffic stop, approached the vehicle and  
28 identified Respondent as the driver. While speaking to Respondent, an officer smelled the odor

1 of alcohol on Respondent's breath. When asked if he had any alcoholic beverages, Respondent  
2 admitted that he had 2 beers recently. The officer also observed that Respondent had red and  
3 watery eyes and slurred speech. After failing the field sobriety tests, Respondent was arrested for  
4 driving under the influence of alcohol.

5 c. As a result of his convictions, Respondent was sentenced to serve 15 days in  
6 custody, ordered to serve 36 months of summary probation, required to pay all fines, fees and  
7 restitution and ordered to attend and complete the First Offender DUI Program.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

10 21. Respondent is subject to disciplinary action for unprofessional conduct under section  
11 4301(h) of the Code in that he used alcoholic beverages to the extent or in a manner as to be  
12 dangerous or injurious to himself or others, as set forth in paragraph 20, incorporated herein by  
13 reference.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 (February 26, 2010 Conviction for Possession of Marijuana for Sale on September 3, 2009)

16 22. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
17 Code in that he was convicted of crime that is substantially related to the qualifications, duties,  
18 and functions of a pharmacy technician. The circumstances are as follows:

19 a. On or about February 26, 2010, in a criminal proceeding entitled *People of the*  
20 *State of California vs. Nikin J. Patel*, in Riverside Superior Court case number RIF153503,  
21 Respondent was convicted on his plea of guilty of violation of Health and Safety Code section  
22 11359, possession of marijuana for sale, a felony.

23 b. The facts that led to the conviction are that on or about September 3, 2009  
24 officers from the Corona Police Department's Vice/Narcotics Unit and Flex Team served a drug  
25 search warrant at Respondent's residence in Corona. When officers arrived at the residence, they  
26 saw the main garage door open and Respondent walk from the garage to a white Honda Civic  
27 parked in the driveway. The Honda Civic backed out of the driveway, was stopped by officers  
28 and Respondent was detained. Officers searched the vehicle and found a cloth bag on the front

1 passenger floor board containing a clear glass jar with marijuana inside, a black electronic gram  
2 scale, and several pieces of torn white plastic consistent with drug packaging. Officers also  
3 discovered several text messages on Respondent's cellular phone including "how much for a  
4 half" with the response "180," "I need to get high homie where u at," "hey man think I could get  
5 2 grams from you and pay you Tuesday when I get paid?" "I'll be home round 7. You have  
6 some? Need a 20 or 2gs," and "gonna need another 20 after work u be around today?"

7 c. Officers opened the door to the residence, announced their presence and  
8 detained Respondent's father and sister. When an officer explained the search warrant to  
9 Respondent's family, Respondent admitted to the officer that police would only find marijuana  
10 which he had for personal use. Officers searched Respondent's room and discovered a Lorcin  
11 handgun in between the mattress and box spring, a .380 caliber bullet on the dresser, one large  
12 electronic gram scale, and a Tupperware container containing a used baggie with marijuana  
13 residue in it. Officer's searched the workout room next to Respondent's bedroom and discovered  
14 a pay/owe sheet and electronic gram scale. Officers also searched Respondent's vehicle, a blue  
15 Mercedes Benz, and discovered cash totaling \$475.00.

16 c. Respondent's sister admitted to officers that Respondent sold marijuana and  
17 that she "sells marijuana for him" sometimes. Respondent admitted that she had sold marijuana  
18 for Respondent at their residence and that she would only sell "Twenties." Respondent was  
19 subsequently arrested.

20 d. As a result of his conviction, Respondent was sentenced to 90 days in custody,  
21 ordered to serve 36 months of formal probation, and required to pay all fines, fees and restitution.

## 22 SEVENTH CAUSE FOR DISCIPLINE

### 23 (Unprofessional Conduct-Violations of the Chapter)

24 23. Respondent is subject to disciplinary action under Code section 4301(o) for violation  
25 of the Pharmacy Act in that on or about September 3, 2009, Respondent illegally furnished and  
26 possessed a controlled substance, marijuana, in violation of Code sections 4059 and 4060 as is  
27 more fully described in Paragraph 22 above.

28

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct-Violating Laws Regulating Controlled Substances)

3 24. Respondent is subject to disciplinary action under section 4301(j) of the Code in that  
4 on or about September 3, 2009, Respondent violated the California Uniform Controlled  
5 Substances Act (Health and Safety Code 11000, et seq.) as is more fully described in Paragraph  
6 22 above.

7 DISCIPLINE CONSIDERATIONS

8 25. To determine the degree of discipline, if any, to be imposed on Respondent,  
9 Complainant alleges that on or about February 1, 2005, in a prior criminal proceeding entitled  
10 *People of the State of California v. Nikin J. Patel* in Riverside Superior Court, Case Number  
11 RIM462595, Respondent was convicted for violating Penal Code section 415(1), willfully and  
12 unlawfully fighting in a public place, a misdemeanor and was ordered to serve 6 days in county  
13 jail, required to complete 6 days of the Sheriff's Work Program, ordered to pay all fines, fees and  
14 restitution, and ordered to serve 2 years summary probation.

15 26. Complainant further alleges that on or about August 2, 2006, in a prior criminal  
16 proceeding entitled *People of the State of California v. Nikin J. Patel* in Riverside Superior Court,  
17 Case Number RIM484951, Respondent was convicted for violating Health and Safety Code  
18 section 11357(b), possession of marijuana, and was ordered to pay restitution and fees. On  
19 October 9, 2007, the Court granted Respondent's motion to set aside his plea of guilty per Penal  
20 Code section 1203.4(a) and the case was dismissed.

21 PRAYER

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

24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 78009,  
25 issued to Nikin J. Patel;

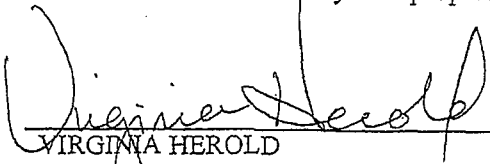
26 2. Ordering Nikin J. Patel to pay the Board of Pharmacy the reasonable costs of the  
27 investigation and enforcement of this case, pursuant to Business and Professions Code section  
28 125.3;



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 12/16/10



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

SD2010703218/70392186.doc