

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

In the Matter of the Accusation Against:

PARESHKOMAR B. PATEL
4709 W. Imperial Hwy
Inglewood, CA 90304

Pharmacy Technician Registration No.
TCH 58874

Respondent.

Case No. 4437

OAH No. 2013070546

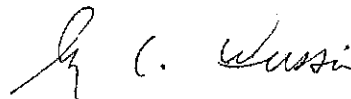
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 18, 2014.

It is so ORDERED on March 19, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on December 5, 2013, in Los Angeles, California.

Michael Brown, Deputy Attorney General, represented Complainant.

Respondent was present and was represented by attorney Kirt Hopson.

Evidence was received, and the matter was submitted for decision on December 5, 2013.

REDACTION OF PERSONAL IDENTIFYING INFORMATION

During and after the hearing, it was discovered that Exhibits 6 and 7 contained unredacted personal identifying numbers. These references were redacted from the Office of Administrative Hearings' file.

FACTUAL FINDINGS

1. Complainant Virginia Herrold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed the Accusation in her official capacity. Respondent filed a notice of defense requesting a hearing.

2. Respondent is a pharmacy technician, registered with the Board under number TCH 58874 since September 29, 2004. His license has no disciplinary history. Respondent's registration is due to expire December 31, 2013. If Respondent's registration expires before a final decision is rendered in this matter, the Board will have continuing jurisdiction to issue such a decision under Business and Professions Code sections 118, subdivisions (b) and (c), and 4300.1.

3. The Accusation pleads a single cause for discipline: unprofessional conduct (Bus. & Prof. Code § 4301, subs. (j) and (o)), based on Respondent's alleged unlawful possession on June 9, 2010, of five pint bottles of promethazine with codeine oral syrup. On that date, Respondent was pulled over by police for failing to signal a lane change and for having an inoperable brake light. The officers who stopped Respondent observed him to appear nervous, with his hands "trembling" (Exhibit 7) as he took out his driver's license. The officers noticed a plastic bag on the passenger seat and asked Respondent what was inside, to which Respondent answered, "Uh, I dunno. I just found it on the street." (Exhibit 7.) Respondent consented to a search of the plastic bag. Inside, the officers found five pint bottles labeled as promethazine with codeine, and "containing a liquid substance resembling codeine." (*Id.*) The bottles were not prescription-labeled, and no drugs had been prescribed to Respondent. Respondent denied knowing to whom the bottles belonged, reiterating his statement that he had simply found them. Respondent also "admit[ted] he knew it¹ [*sic*] was illegal to possess[.]" (Exhibit 7.) Respondent was neither charged with, nor convicted of, any offense in connection with the incident.

4. It was not shown that the bottles actually contained any controlled substance. Indeed, no evidence was presented establishing *what* the bottles held. Respondent's conduct during the traffic stop and ensuing questioning, although nervous—even suspicious—does not establish that he possessed any controlled substance at that time. Respondent's nervousness *may* have reflected consciousness of wrongdoing, as Complainant insinuates, but it is equally possible that Respondent was simply distressed (as many people are) at being pulled over. Respondent's statements to the officers who stopped him likewise do not establish that he was in possession of a controlled substance. At most, they establish Respondent's awareness that possessing codeine without a prescription is illegal. And no evidence was presented of any laboratory assay to ascertain the contents of the bottles. In short, the evidence of Respondent's alleged unlawful conduct was equivocal.

5. Complainant seeks recovery of investigation and enforcement costs totaling \$3,967.50. Because the Accusation will be dismissed, the request for cost recovery will be denied. Accordingly, no finding need be made on the reasonableness of the costs.

¹ The evidence did not disclose what "it" referred to, but given the context, presumably "it" means "codeine."

LEGAL CONCLUSIONS

1. Complainant failed to establish cause to discipline Respondent's pharmacy technician registration under Business and Professions Code sections 4300, subdivision (a), and/or 4301, subdivisions (j) and/or (o). (Factual Findings 3 and 4.)

2. The standard of proof in this case is preponderance of the evidence. (*See San Benito Foods v. Veneman* (1996) 50 Cal.App. 4th 1889, 1894-1895 (proceeding to revoke non-professional license governed by preponderance standard of proof).) Complainant failed to demonstrate by a preponderance of the evidence² that Respondent engaged in unprofessional conduct within the meaning of Business and Professions Code sections 4300, subdivision (a), and/or 4301, subdivisions (j) and/or (o). (Factual Findings 3 and 4.) The evidence did not establish that Respondent more likely than not violated Business and Professions Code section 4060, or Health and Safety Code section 11377, subdivision (a), or any other state or federal statute pertaining to controlled substances, dangerous drugs, or any law or regulation governing pharmacy. (Factual Findings 3 and 4.) On the contrary, the evidence was equivocal: Respondent *might* have unlawfully possessed of codeine, or he might not have done so. (*Id.*) Without a showing sufficient to demonstrate a greater-than-50-percent probability that Respondent engaged in the misconduct alleged, there is no basis for imposing discipline against his registration at this time.

3. Complainant's request for an award of costs under Business and Professions Code section 125.3 must be denied. Business and Professions Code section 125.3, subdivision (a), provides that costs are recoverable only against "a licentiate found to have committed a violation or violations of the licensing act[.]" Since Respondent has not been found to have committed such a violation, costs are not recoverable against him in this proceeding. (Factual Finding 5.)

ORDER

1. The Accusation against Respondent Pareshkomar B. Patel (pharmacy technician registration number TCH 58874) is hereby dismissed.

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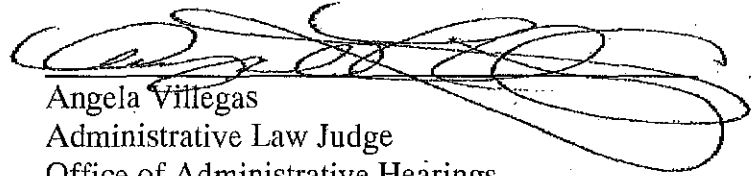
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² Since the evidence failed to meet even a preponderance standard, it would necessarily also fall short of meeting the more rigorous clear and convincing standard, if that standard governed.

2. Complainant's request for cost recovery is denied.

Dated: December 11, 2013



Angela Villegas
Administrative Law Judge
Office of Administrative Hearings

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7
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BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Accusation Against:

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13 **Inglewood, CA 90304**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **58874**

Respondent.

16
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 September 29, 2004, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 58874 to Pareshkomar B. Patel (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on December 31, 2013, unless renewed.

25 **JURISDICTION**

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

1 4. Section 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
6 revoke a license issued by the Board.

7 6. Section 4301 of the Code states:

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

11 ...

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

14 ...

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

19 7. Section 4060 of the Code states:

20 "No person shall possess any controlled substance, except that furnished to a person upon
21 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
22 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
23 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
24 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
25 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
26 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
27 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
28 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

1 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
2 labeled with the name and address of the supplier or producer.

3 8. Health and Safety Code section 11377, subsection (a) states in pertinent

4 "Every person who possesses any controlled substance which is (1) classified in Schedule
5 III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054,
6 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of
7 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section
8 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the
9 prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state,
10 shall be punished by imprisonment in a county jail for a period of not more than one year or
11 pursuant to subdivision (h) of Section 1170 of the Penal Code."

12 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

13 9. Section 4021 of the Code provides that a "controlled substance" means any substance
14 listed in Schedules I through V contained in Health and Safety Code section 11053 et seq.

15 10. Section 4022 of the Code states

16 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
17 humans or animals, and includes the following:

18 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
19 prescription," "Rx only," or words of similar import.

20 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
21 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
22 in with the designation of the practitioner licensed to use or order use of the device.

23 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
24 prescription or furnished pursuant to Section 4006."

25 11. Codeine, generic name codeine phosphate, is a Schedule II controlled substance as
26 defined in Health and Safety Code section 11055 (b)(1)(g); or "Codeine", not more than 1.8
27 grams per 100 milliliters, Schedule III controlled substance as defined in Health and Safety Code
28 section 11056 (e)(2), and categorized as a dangerous drug pursuant to section 4022 of the Code.

1 CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 12. Respondent's license is subject to disciplinary action for unprofessional conduct
4 under section 4301, subdivisions (j) and (o) of the Code, in that Respondent was in possession of
5 a controlled substance, Codeine, in violation of section 4060 of the Code and Health and Safety
6 Code section 11377, subdivision (a). The circumstances are as follows:

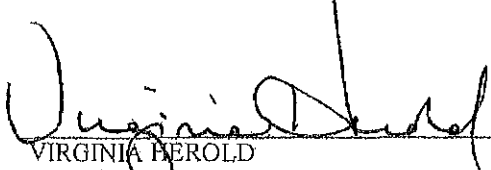
7 13. On or about June 9, 2010, during a routine traffic stop of Respondent's vehicle, a Los
8 Angeles Deputy Sheriff (Deputy) noticed a yellow plastic bag on the front passenger seat.
9 Respondent consented to a search of the bag. The Deputy retrieved the bag and located five
10 bottles of Codeine inside. Respondent admitted that he knew it was illegal to possess the bottles
11 of Codeine. Respondent was arrested for violating felony Health and Safety Code Section 11379
12 (transportation of a controlled substance).

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 58874,
17 issued to Respondent Pareshkomar B. Patel;
- 18 2. Ordering Respondent Pareshkomar B. Patel to pay the Board of Pharmacy the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 3/21/13

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

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accusation.rtf