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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**

Case No. 4745  
OAH No. 2014020971  
**DEFAULT DECISION AND ORDER**  
Respondent. [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.

///

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.

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

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

11 DETERMINATION OF ISSUES

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

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

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

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

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

26 c. Business and Professions Code section 4301, subdivision (h), in that  
27 Respondent committed an act of unprofessional conduct when he used an alcoholic beverage in a  
28 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.

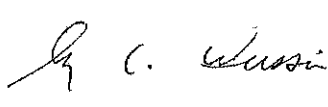
10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
11 written motion requesting that the Decision be vacated and stating the grounds relied on within  
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
13 vacate the 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  
28

# 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**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **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.  
17

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 JURISDICTION

2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws.

4 STATUTORY PROVISIONS

5 4. Business and Professions Code section 118, subdivision (b),<sup>1</sup> provides that the  
6 suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of  
7 jurisdiction to proceed with a disciplinary action during the period within which the license may  
8 be renewed, restored, reissued, or reinstated.

9 5. Section 4300 permits the Board to take disciplinary action by suspending or revoking  
10 any license issued by the Board.

11 6. Section 4300.1 states:

12 The expiration, cancellation, forfeiture, or suspension of a board-issued  
13 license by operation of law or by order or decision of the board or a court of law, the  
14 placement of a license on a retired status, or the voluntary surrender of a license by a  
15 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
16 investigation of, or action or disciplinary proceeding against, the licensee or to render  
17 a decision suspending or revoking the license.

18 7. Section 4060 states, in pertinent part:

19 No person shall possess any controlled substance, except that furnished to  
20 a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
22 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
23 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
24 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
25 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph  
26 (A) of paragraph (5) of, subdivision (a) of Section 4052.

27 8. Section 4021 defines "controlled substance" as "any substance listed in Chapter 2  
28 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

9. Section 4301 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:

<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

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  
on appeal, or when an order granting probation is made suspending the imposition of  
sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of  
the Penal Code.

6 11. Section 492 states:

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

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

14 12. Section 493 states:

15 Notwithstanding any other provision of law, in a proceeding conducted by  
16 a board within the department pursuant to law to deny an application for a license or  
17 to suspend or revoke a license or otherwise take disciplinary action against a person  
18 who holds a license, upon the ground that the applicant or the licensee has been  
19 convicted of a crime substantially related to the qualifications, functions, and duties of  
20 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.

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

22 **REGULATORY PROVISION**

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

24 For the purpose of denial, suspension, or revocation of a personal or  
25 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  
26 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  
27 to perform the functions authorized by his license or registration in a manner  
consistent with the public health, safety, or welfare.

28 ///



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.<sup>2</sup> 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.

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>2</sup> 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).

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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:

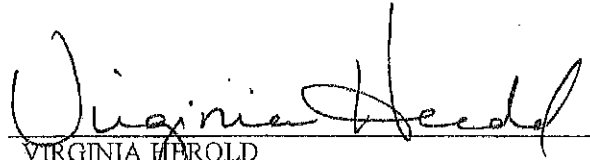
1. Revoking or suspending Pharmacy Technician Registration Number TCH 97082, issued to SHAMIR MAHENDRA PATEL;

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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