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

In the Matter of the Accusation Against:	
DOUGLAS LEON RAY,	Case No. 2858
Original Pharmacist License No. RPH 28277	OAH No. L2006050032
Respondent.	

PROPOSED DECISION

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on September 7, 2006.

Michael A. Cacciotti, Deputy Attorney General, represented Patricia F. Harris (complainant).

Due notice of the time and place for hearing was given, as required by law. Douglas Leon Ray (respondent) failed to appear for the hearing and was not represented by counsel. The matter proceeded on a default basis.

Oral and documentary evidence was received and the matter was argued. The record was closed and the matter submitted on September 7, 2006.

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that complainant Patricia F. Harris filed the Accusation while acting in her official capacity as the Executive Officer of the California State Board of Pharmacy, Department of Consumer Affairs, State of California.

2. Service of the Accusation and Notice of Hearing on respondent was in accordance with Government Code section 11509.

3. On July 31, 1973, the California State Board of Pharmacy issued Original Pharmacist License No. RPH 28277 to respondent. At all times relevant to the charges in this matter, respondent was licensed and authorized to practice as a pharmacist in the State of California. The license is in full force and effect and is due to expire on November 30, 2007.

4. The California State Board of Pharmacy has continuing jurisdiction in this matter pursuant to Business and Professions Code section 118, subdivision (b).

5. On October 29, 2003, in the Superior Court of California, County of Los Angeles, in Case No. TA070043, *People v. Douglas* Ray, the court convicted respondent on pleas of guilty of violating Health and Safety Code section 11350, subdivision (a), possession of a narcotic control substance, a felony offense (count 1); and Vehicle Code section 23152, subdivision (a), driving a vehicle while under the influence of an alcoholic beverage or drug, a misdemeanor offense (count 3).

With respect to respondent's conviction on count 1, the court deferred entry of judgment for a period of 18 months for respondent to participate in a drug diversion program that included drug abuse counseling and compliance with other terms and conditions. With respect to respondent's conviction on count 3, the court suspended imposition of sentence and placed respondent on summary probation for a period of five years under terms and conditions, including serving two days in the county jail, with credit for time served, and requiring that he: pay a fine and state penalty fund assessment in the amount of $1,053; enroll and participate in a three-month first-offender alcohol and drug education counseling program; not drink any alcoholic beverage or be present in places where they are the chief item for sale; and, obey all laws and orders of the court. Respondent's driving privilege was suspended for a period of six months.

With respect to count 1, on both April 26, 2004, and July 13, 2004, the court revoked the deferred entry of judgment and reinstated criminal proceedings against respondent. With respect to count 3, on July 13, 2004, the court revoked respondent's probation for failure to comply with its terms and conditions. On August 20, 2004, the court found respondent to be in violation of the deferred entry of judgment program (count 1), suspended imposition of sentence, and placed respondent on formal probation for a period of three years. Under the terms and conditions of probation for count 1, respondent was required to spend 90 days in the county jail, with credit for time served and good time/work time; pay a restitution fine and the costs of probation services; not drink any alcoholic beverage; not use or possess any narcotic, dangerous or restricted drugs, or related paraphernalia, except with a valid prescription; submit to anti-narcotic drug testing; cooperate with a plan for drug abuse counseling; and, obey all laws and orders of the court and Probation Department. Probation for count 1 was to run concurrently with the probation for count 3.

Respondent's probation under count 1 is not scheduled to end until October 2008. His probation under count 3 is not scheduled to end until August 2007.

6. The following facts and circumstances pertain to respondent's arrest and conviction. On August 10, 2002, Los Angeles deputy sheriffs observed respondent driving a vehicle in an area of Compton, California, known for a high volume of drug sales and use. Based on their observations of respondent's contact with an individual on the street and the multiple Vehicle Code violations respondent made while driving away from the area, the deputies thought that respondent may have been involved in a drug transaction. They initiated a traffic stop of respondent's vehicle. During their initial contact with respondent, the deputies noticed that respondent tried to hide an object from their view. Respondent also displayed objective symptoms of being under the influence of a controlled substance, i.e., a stimulant, in that he exhibited agitation, nervous mannerisms, disorientation and confusion, watery eyes, constricted pupils, a dry mouth, and rapid pulse. The deputies arrested respondent for driving while under the influence of a drug and recovered the object that respondent tried to hide, which was later identified as "rock" cocaine. Respondent subsequently admitted to investigating officers that he had smoked cocaine earlier in the day and that he had purchased cocaine in the past.

7. In a letter dated January 5, 2005, respondent replied to a notice he had received from the California State Board of Pharmacy, advising him that he had violated pharmacy laws. Although respondent claimed to "humbly accept full responsibility for this circumstance," he did not convey remorse, but rather attempted to minimize the effect of his arrest and conviction. There was noting in the letter to indicate that respondent had been rehabilitated.

8. The California State Board of Pharmacy incurred reasonable costs for the investigation and enforcement of this case in the amount of $8,596.75.

LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is "clear and convincing evidence to a reasonable certainty," meaning that complainant is obliged to adduce evidence that is clear, explicit, and unequivocal – so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*Ettinger v. Bd. of Med. Quality Assurance* (1982) 135 Cal.App.3d 853; *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1893; *In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 490 states, in pertinent part: "A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued." Under Business and Professions Code section 493,

> [t]he 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.

3. Under Business and Professions Code section 4301, the California State Board of Pharmacy shall take action against a licensee who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, administering to oneself a controlled substance or dangerous drug to an extent so as to be dangerous or injurious to oneself or the public, or to an extent that impairs the licensee's ability to safely practice pharmacy; violating any state or federal law regulating controlled substances and dangerous drugs; being convicted of a crime substantially related to the qualifications, functions, or duties of a licensee under the Pharmacy Law (Bus. & Prof Code, § 4300 et seq.); violating any provision or term of state and federal laws and regulations governing pharmacy; and engaging in any act or conduct that would warrant denial of a license.

4. Cause exists to revoke or suspend respondent's original pharmacist license pursuant to Business and Professions Code section 4300, for unprofessional conduct, as defined in code sections 490 and 4301, subdivisions (f) and (l), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist. (Factual Findings 1 through 7; Legal Conclusions 1, 2, and 3.)

5. Cause exists to revoke or suspend respondent's original pharmacist license pursuant to Business and Professions Code section 4300, for unprofessional conduct, as defined in code section 4301, subdivision (h), in that respondent administered cocaine to himself on August 9, 2002. (Factual Findings 1 through 7; Legal Conclusions 1, 2, and 3.)

6. Cause exists to revoke or suspend respondent's original pharmacist license pursuant to Business and Professions Code section 4300, for unprofessional conduct, as defined in code section 4301, subdivision (j), in that respondent violated Business and Professions Code section 4060 and Health and Safety Code sections 11370 and 11350, subdivision (a), when he illegally possessed and administered cocaine to himself on August 9, 2002. (Factual Findings 1 through 7; Legal Conclusions 1, 2, 3, and 5.)

7. Cause exists to revoke or suspend respondent's original pharmacist license pursuant to Business and Professions Code section 4300, for unprofessional conduct, as defined in code section 4301, subdivisions (j) and (o), in that respondent violated state laws and regulations governing pharmacy. (Factual Findings 1 through 7; Legal Conclusions 1 through 6.)

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8. The total amount of the reasonable costs for the investigation and enforcement of this matter is $8,596.75, which the California State Board of Pharmacy may recover from respondent under the provisions of Business and Professions Code section 125.3. (Factual Finding 8.)

ORDER

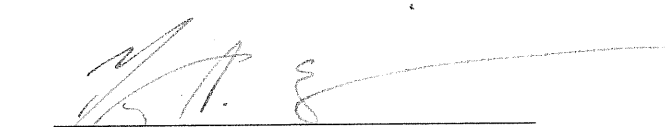
WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. License number RPH 28277, issued to respondent Douglas Leon Ray is revoked pursuant to Legal Conclusions 4, 5, 6, and 7, separately and together.

2. Respondent shall relinquish his wall license and pocket renewal license to the California State Board of Pharmacy within 10 days of the effective date of this Decision. Respondent may not petition the board for reinstatement of his revoked license for three years from the effective date of this Decision.

3. In the event respondent applies for reinstatement of his license, he shall pay to the California State Board of Pharmacy the sum of $8,596.75 as a condition precedent to issuance of the license. The board, in its discretion, may permit the payment of said sum in installments after issuance of the license.

September 18, 2006.



ROBERT S. EISMAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: DOUGLAS LEON RAY Original Pharmacist License No. RPH 28277, Respondent.	Case No.: 2858 OAH No.: L2006050032

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on November 15, 2006

IT IS SO ORDERED October 16, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

rfm

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Attorneys for Complainant

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

In the Matter of the Accusation Against: DOUGLAS LEON RAY 533 E. Collamer Drive Carson, CA 90746 Original Pharmacist License No. RPH 28277 Respondent.	Case No. 2858 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

2. On or about July 31, 1973, the Board issued Original Pharmacist License No. RPH 28277 to Douglas Leon Ray (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license.

5. Section 4301 of the Code states:

"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.

. . . .

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of shall be conclusive evidence only of the fact that the conviction occurred.

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of Chapter 9 (commencing with Section 4000) of the Business and Professions Code or of the applicable federal and state

laws and regulations governing pharmacy, including regulations established by the board."

6. Section 490 states that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

7. Section 118, subdivision (b), states that the suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated.

8. Section 4060 provides that no person shall possess any controlled substance, except that furnished to a person upon the prescription or order of an authorized prescriber.

9. 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."

10. Health & Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code section 11350, subdivision (a), states, in pertinent part, that except as otherwise provided in this division, every person who possesses any controlled substance which is a narcotic drug, unless upon the written prescription of a physician licensed to practice in this state, shall be punished by imprisonment in the state prison.

12. Section 125.3 provides, in part, that the Board may request the

administrative law judge to direct any licentiate found to have committed a violation of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related)

13. Respondent has subjected his license to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivisions (f) and (l), and section 490 in conjunction with, California Code of Regulations, title 16, section 1770 in that Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacist, by reason of the following:

a. On or about October 29, 2003, Respondent was convicted on a plea of guilty to one count of violating section 11350, subdivision (a), of the Health & Safety Code (possession of a narcotic control substance - a felony) and one count of violating section 23152, subdivision (a), of the Vehicle Code (driving under the influence of alcohol) in the State of California, County of Los Angeles, Compton Judicial District, case no. TA070043 entitled *The People of The State of California v. Douglas Ray.*

b. The circumstances surrounding the conviction are that on or about August 10, 2002, Respondent did unlawfully possess a controlled substance, to wit, cocaine. In addition, on or about August 10, 2002, Respondent did unlawfully, while under the influence of an alcoholic beverage, drive a vehicle.

SECOND CAUSE FOR DISCIPLINE

(Possession and Furnishing Controlled Substances)

14. Respondent has subjected his license to discipline pursuant to section 4300 for unprofessional conduct as defined in sections 4301, subdivision (h), in that on or about August 10, 2002, Respondent admitted to Los Angeles County Sheriff deputies he had administered cocaine to himself on or about August 9, 2002.

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THIRD CAUSE FOR DISCIPLINE

(Violation of the Controlled Substance Law)

15. Respondent has subjected his license to discipline pursuant to section 4300 as defined in section 4301, subdivision (j), for unprofessional conduct in conjunction with Health and Safety Code sections 11370 and 11350, subdivision (a) by reason of the facts alleged in paragraphs 13 and 14 hereinabove.

FOURTH CAUSE FOR DISCIPLINE

(Violating the Pharmacy Law)

16. Respondent has subjected his license to discipline pursuant to section 4300 as defined in sections 4301, subdivisions (j) and (o), for unprofessional conduct by reason of the facts alleged in paragraphs 13 - 15 hereinabove.

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 Original Pharmacist License No. RPH 28277, issued to Douglas Leon Ray.

2. Ordering Douglas Leon Ray 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: 8/15/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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