

BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

KENTON LANCE CROWLEY
2540 South Maryland Parkway, #162
Las Vegas, Nevada 89109

Respondent.

Case No. AC 2107

OAH No. L2004120424

DECISION

This matter came on regularly for hearing before a quorum of the Board of Pharmacy (Board) at El Segundo, California, on January 20, 2005. Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner represented himself.

Oral and documentary evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. On September 29, 1983, the Board issued Pharmacist License No. RPH 38214 to Petitioner.
2. On February 5, 1999, Petitioner entered into a Stipulation for Surrender of Licenses wherein he surrendered his license, which surrender became effective July 6, 1999. In surrendering his license, Petitioner admitted the truth of the allegations in an accusation filed on September 3, 1998 (Accusation), and stipulated that these allegations constituted cause for discipline. Petitioner further agreed to reimburse the Board for its costs of investigation and enforcement, an amount established at \$29,426.25, as a condition precedent to any future license reinstatement.

3. The Accusation alleged as the bases for discipline multiple violations of pharmacy law uncovered during a June 2, 1997 audit of the Crowley Family Pharmacy, where Petitioner was the responsible pharmacist. The alleged violations included acting as a manufacturer and wholesaler without appropriate licensure, dispensing drugs without prescriptions or proper authorization, dispensing drugs in inappropriate containers and without required labels, allowing an unregistered person to act as a pharmacy technician, failing to maintain required documentation pertaining to pharmacy operation and drug acquisition and dispensation, and failing to properly store drugs. The Accusation also alleged that on February 19, 1997 Petitioner dispensed the wrong medication, Promethazine 50mg/ml instead of Prochlorperazine 5 mg/l, to a customer who became very ill and suffered a seizure as a result of the error. The Accusation further alleged that on October 15, 1997, while working in the pharmacy, Petitioner was found under the influence of Morphine and Benzodiazepines, and that on August 7, 1998, Petitioner nearly overdosed from self-administered Demerol.

4. Subsequent to the filing of the Accusation, Petitioner suffered criminal convictions and served time in state prison. On November 19, 1998, he was convicted of violating Health and Safety Code sections 11153 (providing an addict with a controlled substance) and 11350 (possession of a controlled substance), both felony crimes. He was sentenced to three years of formal probation and 120 days in jail. On September 23, 1999, Petitioner was convicted of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance), a felony, and was sentenced to 16 months in state prison.

5. Petitioner initially sought reinstatement of his pharmacist license on December 27, 2002. The petition for reinstatement was denied on June 26, 2003. In its Decision, the Board expressed concern about the relatively short period of recovery and about Petitioner's lack of sustained exposure to pharmaceuticals in the State of Nevada, where he had obtained a license in September 2002; the Board also expressed a desire to hear from those familiar with Petitioner's recovery efforts.

6. The instant Petition for Reinstatement of Certificate to Practice Pharmacy was filed on September 18, 2004.

7. Petitioner's violation of pharmacy rules and regulations occurred during a period of substance abuse. He nevertheless accepts responsibility for his actions and for his substance abuse. He has been clean and sober since August 6, 1998 and is committed to continued sobriety. He participated in the Board's diversion program, Hill Solutions (a private recovery program), and in programs offered by the California Department of Corrections. During the period of July 26, 2002 to October 1, 2004, Petitioner participated in the substance abuse recovery program affiliated with the Nevada State Board of Pharmacy, Professionals Reaching Nevada – Pharmacists Recovery Network (PRN-PRN). He is presently a member of PRN-PRN's Steering Committee. Petitioner regularly attends twelve-step meetings as part of his continuing recovery efforts.

8. Ira Porter, Petitioner's sponsor for the past 6 years, wrote a letter and testified on his behalf. He has seen Petitioner work harder to change his life and to maintain sobriety than anyone he has sponsored.

9. John Cronin, Pharm.D., J.D., also testified on Petitioner's behalf. He is Senior Vice President of the California Pharmacists Association and represented Petitioner in the matter that led to the license surrender. He has kept in contact with Petitioner over the years and has seen the transformation as sobriety has taken hold. Approximately 1½ years ago, Petitioner addressed his organization about the benefits of PRN-PRN and expressed interest in helping other pharmacists with substance abuse problems.

10. Petitioner obtained a pharmacist license in the State of Nevada on September 26, 2002, which license was issued on a probationary basis. He successfully completed probation in October 2004.

11. Petitioner has been working as a pharmacist for Smith's Food and Drug, a retail store in Las Vegas, Nevada since October 2, 2003. He works an average of 59 hours per week in two pharmacies, often in 13-hour shifts. He is personally involved in dispensing medications. On June 6, 2003, he was promoted to pharmacist manager, a promotion made possible by removal of a restriction on his probationary Nevada license. His supervisor, Henry Medina, R.Ph., wrote in support of the Petition that Petitioner has been candid about his addiction, that he has been a good employee, and that he has never suspected Petitioner of using controlled substances or taking the pharmacy's opiates.

12. Petitioner's wife and six children have provided support during the recovery process. They continue to reside in Temecula, California, and Petitioner divides his time between his work in Las Vegas and his family in Temecula. He would like to return to full time practice in California, although he plans to continue to work in Nevada to complete certain projects.

13. He has completed 51.5 hours of continuing education during the October 25, 2002 to November 13, 2004 period.

14. Petitioner has been unable to pay the Board's costs of investigation and enforcement because of personal financial difficulties that have led to the filing for bankruptcy relief.

15. In addition to the two letters of recommendation written by Petitioner's sponsor and by his supervisor, discussed above, five others were submitted with the Petition. Henry Milner, Pharm.D. has known Petitioner for 21 years and attests to his skills as a pharmacist and to his recovery commitment. Tim A. Lopez, Pharm.D., has known Petitioner since 1998 and provides him with part time employment in Las Vegas; he echoes the comments of Dr. Milner and urges reinstatement. Brian Haimovitz employed Petitioner in 2002 and 2003 to provide

operations and marketing assistance and credits him for turning the business around. Duane Rogers, M.A., M.P.H., and Larry Espadero supervised Petitioner's participation in the Board diversion and PRN-PRN recovery programs, respectively, and offered a positive prognosis for his continued sobriety.

16. By reason of the foregoing, Petitioner has established sufficient rehabilitation to warrant reinstatement of his license.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Board concludes that cause was established pursuant to Business and Professions Code section 4309 and Government Code section 11522 to grant the Petition and to reinstate Petitioner's certificate. However, because of the seriousness of the conduct that led to the revocation, and the additional concerns raised by the criminal convictions, a period of continued monitoring is necessary for the protection of the public.

ORDER

The Petition is granted and Petitioner's license is reinstated; provided, however, that the license is revoked; provided, further, that the revocation is stayed and the license is placed on probation for a period of three (3) years on the following terms and conditions:

1. Obey All Laws. Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Respondent shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; or (4) discipline, citation, or other administrative action filed by any state and federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

2. Reporting to the Board. Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. He shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

3. Interview with the Board. Upon receipt of reasonable notice, Petitioner shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

4. Cooperation with Board Staff. Petitioner shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

5. Continuing Education. Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

6. Notice to Employers. Petitioner shall notify all present and prospective employers of the reinstatement of his license in this matter and the terms, conditions and restrictions imposed on the license. Within 30 days of the effective date of this Decision, and within 15 days of Petitioner undertaking new employment, Petitioner shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read this Decision.

If Petitioner works for or is employed by or through a pharmacy employment service, respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms and conditions of this Decision in advance of Petitioner commencing work at each pharmacy.

Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the respondent is considered an employee or independent contractor.

7. Probation Monitoring Costs. Petitioner shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

8. Status of License. Petitioner shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled. If Petitioner's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender while on Probation/Suspension. Following the effective date of this decision, should Petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Petitioner may tender his or her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Petitioner will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Petitioner shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Petitioner may not reapply for any license from the Board for three years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. Notification of Employment/Mailing Address Change. Petitioner shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Petitioner shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

11. Tolling of Probation. Should Petitioner cease practicing pharmacy, Petitioner must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Petitioner's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

12. Examination. Petitioner shall take and pass the California Pharmacist Jurisprudence Examination (CPJE) as scheduled by the Board after the effective date of this decision at Petitioner's own expense. If Petitioner fails to take and pass the examination within six months after the effective of this Decision, Petitioner shall be suspended from practice upon written notice. Petitioner shall not resume the practice of pharmacy until he takes and passes CPJE at a subsequent examination and is notified, in writing, that he has passed the examination.

During suspension, Petitioner shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Petitioner shall not practice

pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances.

During suspension, Petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the Board. Subject to the above restrictions, Petitioner may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until Petitioner passes the examination and is notified in writing.

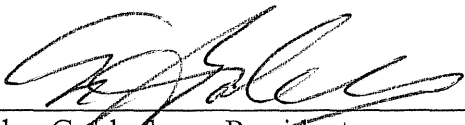
13. Violation of Probation. If Petitioner violates probation in any respect, the Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Petitioner during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Petitioner, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

14. Completion of Probation. Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: April 8, 2005

EFFECTIVE DATE: April 8, 2005



Stanley Goldenberg, President
Board of Pharmacy
State of California

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of the State of California
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6 Attorneys for Complainant
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation)
12 Against:)
13 CROWLEY FAMILY PHARMACY)
25405 Hancock Avenue) CASE NO. AC 2107
14 Suite 100)
Murrieta, CA 92562)
15 Pharmacy License)
16 No. PHY 41147)
17 and) STIPULATION FOR
SURRENDER OF LICENSES
18 KENTON CROWLEY)
40970 Alton Court)
19 Temecula, CA 92591)
20 Pharmacist License)
No. RPH 38214)
21 Respondents.)
22

23
24 IT IS HEREBY STIPULATED by and between Crowley Family
25 Pharmacy and Kenton Crowley, the respondents in this proceeding
26 and the Board of Pharmacy, State of California, by and through
27 its attorney, Karen L. Gordon, Deputy Attorney General, that:

1 1. Crowley Family Pharmacy ("Respondent Pharmacy") and
2 Kenton Crowley ("Respondent Crowley") have received and read the
3 Accusation which is presently on file and pending in Case No. AC
4 2107 before the Board, a copy of which is attached hereto as
5 Exhibit A and incorporated herein.

6 2. Respondents are represented by counsel John
7 Cronin, Esq. in this matter. Respondents have fully and
8 completely discussed with their counsel the effects of this
9 Stipulation.

10 3. Respondents understand the nature of the charges
11 alleged in the Accusation and that, if proven at hearing, such
12 charges and allegations would constitute cause for imposing
13 discipline upon respondent pharmacy's license and respondent
14 Crowley's pharmacist's license issued by the Board.

15 4. Respondents admit the truth of each and every
16 factual allegation contained in the Accusation and further admit
17 that cause exists thereby to impose discipline against their
18 licenses, as set forth in the Accusation. If this matter had
19 gone to hearing, respondents would have presented evidence in
20 defense of the allegations contained in the Accusation.

21 5. Respondents are fully informed regarding the
22 provisions and effects of this stipulation, which respondents
23 have carefully read. Respondents are fully aware of their right
24 to a hearing on the charges contained in the Accusation, their
25 right to confront and cross-examine witnesses against them, their
26 right to reconsideration, appeal, and any and all other rights
27 which may be accorded them under the California Administrative
Procedure Act (Government Code Section 11500 et seq.).

1 6. Respondents freely and voluntarily waive each and
2 every one of the rights set forth above.

3 7. Respondents understand that in signing this
4 stipulation rather than contesting the Accusation, they are
5 agreeing that the Board of Pharmacy of the State of California
6 may issue its order accepting the surrender of their licenses
7 without further legal process.

8 8. It is acknowledged by the parties that this
9 stipulation constitutes an offer in settlement to the Board of
10 Pharmacy and is not effective until adoption by the Board.

11 9. In the event this stipulation is not adopted by the
12 Board of Pharmacy, nothing herein recited shall be construed as a
13 waiver of respondents' right to a hearing or as an admission of
14 the truth of any of the matters charged in the Accusation.

15 10. The parties agree that the Stipulation recited
16 herein shall be null and void and not binding upon the parties
17 unless approved by the Board, except for this paragraph, which
18 shall remain in effect. The respondents understand and agree
19 that in deciding whether or not to adopt this Stipulation the
20 Board may receive oral and written communications from its staff
21 and the Attorney General's office. Communications pursuant to
22 this paragraph shall not disqualify the Board or other persons
23 from future participation in this or any other matter affecting
24 respondent. In the event the Board in its discretion does not
25 approve this settlement, this Stipulation, with the exception of
26 this paragraph, is withdrawn and shall be of no evidentiary value
27 and shall not be relied upon or introduced in any disciplinary

1 action by either party hereto. Respondents agree that should the
2 Board reject this Stipulation and if this case proceeds to
3 hearing, respondents will assert no claim that the Board was
4 prejudiced by its review and discussion of this Stipulation or of
5 any records related hereto.

6 11. The parties agree that facsimile copies of this
7 Stipulation, including facsimile signatures of the parties, may
8 be used in lieu of original documents and signatures. The
9 facsimile copies will have the same force and effect as
10 originals.

11 12. Respondents hereby surrender Pharmacy License No.
12 PHY 41147 and Pharmacist License No. RPH 38214 subject to the
13 Board's formal acceptance of said surrender. Upon acceptance of
14 the stipulation and surrender by the Board, respondents agree to
15 surrender and cause to be delivered to the Board their licenses
16 and for Respondent Crowley his wallet certificate as well.
17 Respondents further understand that when the Board accepts the
18 surrender of their licenses, they will no longer be permitted to
19 practice pharmacy in California.

20 13. Respondents fully understand and agree that in
21 acting upon any application for licensure, relicensure, or
22 reinstatement which respondents ever file in the State of
23 California or in any other state, respondents' admissions herein
24 may be used by the licensing agency in acting on such
25 application.

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1 14. Respondents fully understand and agree that they
2 shall not be eligible to either reapply or petition for the
3 reinstatement of their pharmacy and pharmacist licenses for at
4 least three (3) years from the effective date of the Board's
5 decision.

6 15. Respondents also agree that prior to their
7 petitioning for reinstatement of their pharmacy and pharmacist
8 licenses or their reapplication for licensure, respondents shall
9 pay costs to the Board for investigation and prosecution of this
10 case.

11 16. Respondent Kenton Crowley understands that if he
12 reapplies or petitions for the reinstatement of his pharmacist
13 license, he shall not resume the practice of pharmacy until he
14 takes and passes the pharmacist's licensure examination.

15 17. If Respondent Crowley Family Pharmacy desires to
16 sell its interest in the pharmacy, the surrender of its license
17 will be stayed for 90 days from the effective date of this
18 decision to allow the sale of the pharmacy. Any proposed sale of
19 Crowley Family Pharmacy must be approved by the Board of Pharmacy
20 prior to the sale. At the conclusion of the 90 days from the
21 effective date of this decision, the surrender of Pharmacy
22 License No. PHY 41147 will be accepted by the Board.

23 18. The costs incurred by the Board for the
24 investigation and enforcement of this case total \$29,426.25.
25 Payment by respondents of the cost recovery sum of \$29,426.25
26 shall be deferred unless and until respondent Kenton Crowley, or
27 any entity of which he is or will be an officer, director,
associate, partner, owner, qualifier, or other personnel of

1 record, shall apply for reinstatement or relicensure, in any
2 capacity, to the Board of Pharmacy, at which time, should the
3 Board grant respondent Kenton Crowley a license, payment of the
4 above cost recovery amount shall be a condition precedent to
5 issuance of any such license.

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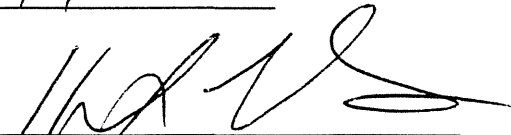
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ACKNOWLEDGEMENT


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I, Kenton Crowley, hereby certify that I have read this Stipulation in its entirety. I have discussed the terms and conditions set forth in the Stipulation and Order with my attorney, John Cronin, Esq. I enter into the Stipulation freely, voluntarily, intelligently, on advice of counsel, and with full knowledge of its force and effect. I understand that in signing this Stipulation I am waiving my right to a hearing on the charges set forth in the Accusation on file in this matter. I do hereby voluntarily surrender my certificates of licensure, Pharmacist License No. RPH 38214 and Pharmacy License No. PHY 41147, to the Board of Pharmacy, for its acceptance. I recognize that upon formal acceptance of this Stipulation by the Board, I will lose all rights and privileges to practice as a pharmacist or operate a pharmacy in the State of California. I agree that a facsimile copy of this Stipulation, including a facsimile copy of my signature may be used with the same force and effect as the originals.

DATED: 2/5/99



KENTON CROWLEY
Respondent



KENTON CROWLEY, Owner and
Authorized Representative of
CROWLEY FAMILY PHARMACY
Respondent


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ENDORSEMENT

I concur in the above stipulation.


DATED: 2-23-99

BILL LOCKYER, Attorney General
of the State of California



KAREN L. GORDON
Deputy Attorney General
Attorneys for Complainant

DATED: 2/12/99



JOHN A. CRONIN
Attorney for Respondents

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ORDER OF THE BOARD OF PHARMACY

The surrender of Pharmacy License No. PHY 41147 by respondent, Crowley Family Pharmacy, and Pharmacist License No. RPH 38214 by respondent, Kenton Crowley, is accepted, on the terms set forth in the Stipulation For Surrender of License, by the Board of Pharmacy of the State of California.

This decision shall become effective on the 6th day of July, 1999.

IT IS SO ORDERED this 7th day of June, 1999.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
THOMAS S. NELSON
Board President

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of the State of California
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8

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

11 In the Matter of the Accusation) CASE NO. AC 2107
12 Against:)
13 CROWLEY FAMILY PHARMACY) A C C U S A T I O N
25405 Hancock Avenue)
14 Suite 100)
Murrieta, CA 92562)
15 Pharmacy License)
16 No. PHY 41147)
17 and)
18 KENTON CROWLEY)
40970 Alton Court)
19 Temecula, CA 92591)
20 Pharmacist License)
No. RPH 38214)
21 Respondents.)
22

23 Complainant Patricia F. Harris, who as cause for
24 disciplinary action, alleges:

25 PARTIES

26 1. Complainant is the Executive Officer of the
27 California State Board of Pharmacy ("Board") and makes and files
this accusation solely in her official capacity.

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License Status

2. On or about September 18, 1995, the Board of Pharmacy issued Pharmacy License No. PHY 41147 to Crowley Family Pharmacy (hereinafter "Respondent Pharmacy"). This license was in full force and effect at all relevant times herein and will expire on September 1, 1999, unless renewed.

3. On or about September 29, 1983, the Board of Pharmacy issued Pharmacist License No. RPH 38214 to Kenton Crowley ("Respondent Crowley"). This license was in full force and effect at all relevant times herein and will expire on September 30, 1999, unless renewed.

JURISDICTION

3. This accusation is made in reference to the following statutes of the California Business and Professions Code:

A. Section 4059(a) states that no person shall furnish any dangerous drug, except upon a prescription.

B. Section 4059.5 prohibits dangerous drugs from being transferred, sold, or delivered outside this state unless done in compliance with California laws.

C. Section 4301 states that the board shall take action against any license holder who is guilty of unprofessional conduct including, but not limited to:

(f) The Commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption.

/ / /

1 (h) The administering to oneself, of any controlled
2 substance, or the use of any dangerous drug to
3 the extent or in a manner as to be dangerous
4 or injurious to oneself, or to any other person
5 or to the public, or to the extent that the use
6 impairs the ability of the person to conduct
7 with safety to the public the practice authorized
8 by the license.

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

12 (n) Violating any provision or terms of this
13 chapter or of the applicable federal and
14 state laws and regulations governing
15 pharmacy.

16 D. Section 4306.5 states that unprofessional
17 conduct for a pharmacist may include acts or omissions
18 that involve, in whole or in part, the exercise of his
19 education, training, or experience as a pharmacist,
20 whether or not the act or omission arises in the course
21 of the practice of pharmacy or the ownership,
22 management, administration, or operation of a pharmacy
23 or other entity licensed by the board.

24 E. Section 4327 provides that any person who, while
25 on duty, sells, dispenses or compounds any drug while under
26 the influence of any dangerous drug shall be guilty of a
27 misdemeanor.

1 F. Section 4350 provides that every certificate,
2 license, permit, registration or exemption issued by
3 the Board may be suspended or revoked.

4 G. Section 4359 provides that the Board may
5 discipline a license holder who has been found guilty
6 by placing him on probation, suspending his right to
7 practice for a period not exceeding one year, revoking
8 his license, or taking such other action as the board
9 in its discretion may deem proper.

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

16 4. This accusation is made in reference to the
17 following regulations of the California Penal Code:

18 A. Section 1000 states that the court may set a
19 hearing for deferred entry of judgment if a defendant is
20 found eligible following a charge of being under the
21 influence of a controlled substance.

22 B. Section 1000.2 indicates that the court shall hold
23 a hearing and, after consideration of any information
24 relevant to its decision, shall determine if the defendant
25 should be granted deferred entry of judgment. If the court
26 does not deem the defendant a person who would be benefitted
27 by deferred entry of judgment, or if the defendant does not

1 consent to participate, the proceedings shall continue as in
2 any other case.

3 5. This accusation is made in reference to the
4 following regulations of the California Code of Regulations,
5 Title 16:

6 A. Section 1716 states that pharmacists shall not
7 deviate from the requirements of a prescription except upon
8 the prior consent of the prescriber or to select the drug
9 product in accordance with Section 4047.6 of the Business
10 and Professions Code.

11 B. Section 1770 provides that for the purpose of
12 denial, suspension, or revocation of a personal or
13 facility license, a crime or act shall be considered
14 substantially related to the qualifications, functions
15 or duties of a licensee or registrant if to a
16 substantial degree it evidences present or potential
17 unfitness of a licensee or registrant to perform the
18 functions authorized by his license or registration in a
19 manner consistent with the public health, safety, or
20 welfare.

21 6. This accusation is made in reference to the
22 following regulations of the California Health and Safety Code:

23 A. Section 11170 states that no person shall
24 prescribe, administer, or furnish a controlled substance for
25 himself.

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FACTS

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2 7. Respondent Crowley Family Pharmacy and Respondent
3 Kenton Crowley have subjected their licenses to discipline as set
4 forth in paragraphs 8 through 10 below.

5 8. On or about May 21, 1997, the Board received
6 complaints of numerous violations of the pharmacy law by
7 Respondent Crowley Family Pharmacy and Respondent Kenton Crowley.
8 On June 2, 1997, Pharmacy Board Inspectors conducted an
9 investigation of Crowley Family Pharmacy. The investigation and
10 an audit of Respondent Crowley Family Pharmacy revealed 25
11 separate violations of the Pharmacy Act by Respondent Pharmacy
12 and Respondent Crowley. Respondent Pharmacy acted as a
13 manufacturer without proper licensure from the U.S. Food and Drug
14 Administration. Respondent Pharmacy acted as a wholesaler
15 without proper licensure from the Board. Respondents Crowley and
16 Pharmacy provided dangerous drugs, including controlled
17 substances, to persons without prescriptions from authorized
18 prescribers. Respondents Crowley and Pharmacy provided dangerous
19 drugs, including controlled substances, to prescribers without
20 proper sales records. Respondents Crowley and Pharmacy
21 transferred, sold, or delivered dangerous drugs to persons not
22 licensed or authorized to receive or order dangerous drugs.
23 Respondents Crowley and Pharmacy refilled prescriptions without
24 authorizations from authorized prescribers. Respondents Crowley
25 and Pharmacy allowed persons other than a pharmacist to reduce to
26 writing orally transmitted prescriptions for dangerous drugs,
27 including controlled substances. Respondents Crowley and

1 Pharmacy substituted generic products rather than brand products
2 to dispense on prescriptions despite indications by prescribers
3 that such substitution was not permissible. Respondents Crowley
4 and Pharmacy dispensed prescriptions in containers that did not
5 meet the requirements of state law and were incorrectly labeled.
6 Respondents Crowley and Pharmacy furnished compounded dangerous
7 drugs without proper warning labeling. Respondents Crowley and
8 Pharmacy did not properly maintain records of acquisition or
9 disposition of dangerous drugs and did not maintain a current
10 inventory. Respondents Crowley and Pharmacy could not provide
11 the names of employee pharmacists and their employment dates.
12 Respondents Crowley and Pharmacy allowed pharmacy technicians to
13 perform packaging without assistance, supervision and control of
14 a pharmacist. Respondents Crowley and Pharmacy allowed a person
15 to act as a pharmacy technician without being registered with the
16 Board. Respondents Crowley and Pharmacy furnished dangerous
17 drugs to patients other than what was prescribed for them.
18 Respondents Crowley and Pharmacy exceeded the amount of
19 "reasonable quantities" when compounding unapproved drugs for
20 prescriber office use. Respondents Crowley and Pharmacy did not
21 maintain accurate records of compounded items made for future
22 furnishing. Respondents Crowley and Pharmacy did not maintain
23 accurate, readily retrievable information as to which pharmacist
24 checked prescriptions filled by pharmacy technicians.
25 Respondents Crowley and Pharmacy did not annually certify the
26 laminar flow hood used for compounding. Respondents Crowley and
27 Pharmacy did not properly store pharmaceuticals in an aseptic

1 environment. Respondents Crowley and Pharmacy filled
2 prescriptions which contained significant omissions and
3 uncertainties, without notation of contacting the prescriber for
4 clarification. Respondents Crowley and Pharmacy did not develop
5 written policies and procedures for pharmacy technicians.
6 Respondents Crowley and Pharmacy possessed more controlled
7 substances than were accounted for. Respondents Crowley and
8 Pharmacy utilized DEA-222 order forms in an improper manner.
9 Respondent Crowley falsely made prescriptions for dangerous
10 drugs, including controlled substances.

11 9. On February 19, 1997, Respondent Pharmacy and
12 Respondent Crowley dispensed the wrong medication, Promethazine
13 50mg/ml instead of Prochlorperazine 5mg/ml, to customer M.L. M.L.
14 became very ill and suffered a seizure following the drug error.
15 Respondent Pharmacy and Respondent Crowley dispensed medication
16 other than what was prescribed for customer M.L. in violation of
17 California Code of Regulations, Title 16, section 1716. This
18 constitutes unprofessional conduct as defined in Business and
19 Professions Code section 4301 (n).

20 10. On or about February 24, 1998, Respondent Pharmacy
21 and Respondent Crowley provided dangerous drugs, including
22 controlled substances, to persons without prescriptions from
23 authorized prescribers and sent controlled substances out of
24 state without prescriptions in violation of Business and
25 Professions Code sections 4059(a) and 4059.5. This constitutes
26 unprofessional conduct as defined in Business and Professions
27 Code section 4301 (f), (j), and (n).

1 11. Respondent Kenton Crowley has subjected his
2 license to discipline as set forth in paragraphs 12 through 15
3 below.

4 12. On October 15, 1997, Respondent Kenton Crowley was
5 found to be under the influence of controlled substances
6 (Morphine and Benzodiazepines) not prescribed for him, within the
7 Crowley Family Pharmacy premises while working as a pharmacist in
8 violation of Business and Professions Code section 4327 and
9 Health and Safety Code section 11170. This constitutes
10 unprofessional conduct as defined in Business and Professions
11 Code section 4301 (h), (j), and (n).

12 13. On October 15, 1997, Respondent Crowley was
13 arrested for being under the influence of controlled substances
14 while working as a pharmacist. Respondent was not convicted of
15 being under the influence of controlled substances following this
16 arrest because he was granted a deferred entry of judgment to
17 allow him to participate in a drug diversion program pursuant to
18 Penal Code sections 1000 and 1000.2.

19 14. On August 7, 1998, Respondent Crowley self-
20 administered Demerol, a controlled substance, resulting in a
21 nearly fatal overdose. Respondent was admitted to Sharp Murrieta
22 Medical Center and revived.

23 15. Respondent was arrested on August 7, 1998 for
24 possession of controlled substances. Respondent Crowley's
25 conduct violated Health and Safety Code section 11170 and
26 constituted unprofessional conduct as defined in Business and
27 Professions Code section 4301 (h), (j), and (n).

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PRAYER

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Number PHY 41147, heretofore issued to Respondent Crowley Family Pharmacy;
2. Revoking or suspending Pharmacist Number RPH 38214, heretofore issued to Respondent Kenton Crowley;
3. Directing Respondents Crowley Family Pharmacy and Kenton Crowley to pay to the Board a reasonable sum for its investigative and enforcement costs of this action; and
4. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: September 3, 1998

Patricia F. Harris
PATRICIA F. HARRIS
Executive Officer *Mol*
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant