

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

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

KENTON LANCE CROWLEY
40970 Alton court
Temecula, CA 32591-6948

Pharmacist License No. RPH 38214

Respondent.

Case No. 3107

OAH No. L2008040153

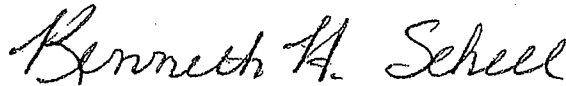
ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective, NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Order of Adoption and Decision and Order in this matter shall become effective October 31, 2008.

IT IS SO ORDERED this 30th day of October 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

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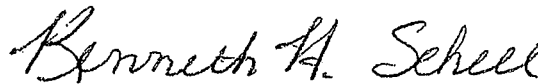
STAY OF EFFECTIVE DATE

Respondent filed a Petition for Reconsideration in the above-entitled matter on October 20, 2008. In accordance with the provisions of Section 11521 of the Government Code, and for the sole purpose of considering the Petition for Reconsideration, the effective date of the Decision is hereby stayed until October 31, 2008.

IT IS SO ORDERED this 21st day of October, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL

Board President

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Accusation and Petition to
Revoke Probation Against:

KENTON LANCE CROWLEY
40970 Alton Court
Temecula, California 92291-6948

Pharmacist License No. RPH 38214,

Respondent.

Case No. 3107

OAH No. L2008040153

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 October 23, 2008.

It is so ORDERED on September 23, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

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

In the Matter of the First Amended
Accusation and Petition to Revoke Probation
Against:

KENTON LANCE CROWLEY,

Pharmacist No. RPH 38214,

Respondent.

Case No. AC 3107

OAH No. L2008040153

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 16, 2008, in Los Angeles, California.

Anne Hunter, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (the Board).

Robert C. Martinez, Attorney at Law, Fredrickson, Mazeika & Grant, represented Kenton Lance Crowley (Respondent). Respondent was present.

The parties submitted the matter for decision on July 16, 2008.

FACTUAL FINDINGS

1. On or about February 1, 2008, Complainant filed the First Amended Accusation and Petition to Revoke Probation. Respondent had already filed his Notice of Defense on October 1, 2007, in response to the Accusation and Petition to Revoke Probation originally filed on September 12, 2007.

The Parties' Contentions

2. Complainant contends there are four causes to discipline Respondent's pharmacist license. All four causes emanate from a 2007 misdemeanor conviction suffered by Respondent for driving with a blood alcohol level greater than .08 percent. Complainant further contends Respondent's conviction constitutes a failure to obey all laws, and that that failure constitutes cause to revoke the probation the Board previously imposed on Respondent's pharmacist license in 2005. Complainant seeks the revocation of Respondent's license and the costs of investigation and prosecution.

3. Respondent acknowledges his conviction, but contends it should not result in the revocation of his license because that conviction is not related to his professional work as a pharmacist. Respondent acknowledges he has struggled with a substance abuse problem in the past, but argued that his conviction is not evidence of a current addiction problem and further contends the conviction does not constitute a violation of the probationary terms and conditions of his pharmacist license. Respondent argued that, if anything, the Board should extend his probationary period by three years, a period that would adequately assure the Board of Respondent's on-going lawful conduct.

Respondent's Licensure and Background

4. The Board issued pharmacist license number RPH 38214 to Respondent on September 29, 1983; it expires on September 30, 2008, unless renewed. Respondent stipulated to the surrender of his license, as set forth in Factual Findings 6 and 7, and consequently, the Board cancelled his license on July 6, 1999. On April 8, 2005, Respondent's license was reinstated, but placed on a three-year probation with various terms and conditions. (Factual Finding 8.)

5. Respondent works in various capacities as a pharmacist. Currently, he is the Chief Executive Officer of Crowley Consultants Inc., in Temecula, California. He has maintained this employment since July 1998. In this capacity, he provides, among other things, consulting, staffing, and marketing services to compounding pharmacies. Respondent is also the Vice-President of Marketing and Scientific Affairs for Applied Pharmacy Services, a corporation in Las Vegas, Nevada, and Pasadena, California. He has maintained this employment since December 2000. Thirdly, Respondent is also a contract pharmacist for Advocate Rx Solutions West in Carson City, Nevada. In this capacity, he provides pharmacist services to contract pharmacy operations. He has maintained this employment since January 2006. Respondent is a member of various professional and community service organizations; he has written a number of publications on various issues of pertinence to the pharmacist community.

The Stipulated Surrender of Respondent's Pharmacist License

6. In February 1999, Respondent stipulated to the surrender of his California pharmacist license after an Accusation was filed against him. In a case entitled, *In the Matter of the Accusation Against Crowley Family Pharmacy and Kenton Crowley*, case number AC 2107, the Board's then-Executive Officer alleged that: 1) in February 1997, Respondent had dispensed the wrong medication to a customer (Cal. Code Regs., tit. 16, § 1716); 2) in October 1997, while working as a pharmacist, Respondent was under the influence of non-prescribed controlled substances (Bus. & Prof. Code, § 4327; Health & Saf. Code, § 11170); 3) in February 1998, Respondent provided dangerous drugs, including sending them out of state, without a prescription (Bus. & Prof. Code, §§ 4059, subd. (a), and 4059.5); and 4) in August 1998, Respondent self-administered Demerol, resulting in a nearly fatal overdose, and was arrested for possessing a controlled substance. (Health & Saf. Code, § 11170.) Pursuant to all of these allegations, the Board's then-Executive Officer alleged

unprofessional conduct by Respondent, pursuant to Business and Professions Code section 4301, and sought revocation of his pharmacist license.

7. On February 5, 1999, Respondent admitted the “truth of each and every factual allegation contained in the Accusation and further admit[ted] that cause exist[ed] thereby to impose discipline against [his license], as set forth in the Accusation.” Among other things, Respondent agreed to surrender his license and that he would not reapply or petition for reinstatement for at least three years from the effective date of the stipulated surrender, July 6, 1999.

Respondent's Petitions for Reinstatement

8(a). More than three years after the effective date of the stipulated surrender of his pharmacist license, Respondent petitioned the Board for reinstatement, but the Board denied his petition in June 2003.

8(b). In September 2004, Respondent re-petitioned for reinstatement, and a quorum of the Board heard this second petition on January 20, 2005. In that proceeding, the Board considered Respondent's underlying actions, his evidence of rehabilitation¹, and criminal convictions Respondent suffered after the underlying Accusation, as discussed in Factual Finding 6, had been filed. Specifically, the Board found that Respondent was convicted on November 19, 1998, for providing an addict with a controlled substance (a violation of Health & Saf. Code, § 11153), and possessing a controlled substance (a violation of Health & Saf. Code, § 11350), both felonies. Those convictions resulted in three years of formal criminal probation and a jail sentence of 120 days. The Board also found that Respondent was convicted on September 23, 1999, for possessing a controlled substance (a violation of Health & Saf. Code, § 11377, subd. (a)), also a felony. For that conviction, Respondent served a 16-month prison sentence. Ultimately, however, the Board granted Respondent's petition, reinstated his pharmacist license, then revoked, but stayed the revocation, and placed Respondent's license on three years of probation with various terms and conditions.

8(c). One of the probationary conditions required Respondent to obey all laws. Another condition required Respondent to report, within 72 hours: 1) any arrest for a violation of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances law; 2) a guilty or nolo contendere plea in any state or federal criminal proceeding; 3) a conviction of any crime, or a fourth action irrelevant to the instant matter. Pursuant to the probationary terms, if Respondent violated a condition of probation during the three-year period, after giving Respondent notice and an opportunity to be heard, the Board could then revoke the probation and carry out the disciplinary order stayed. The Board's decision became effective on April 8, 2005.

¹ Among other things, the Board found Respondent participated in a substance abuse recovery program between July 2002 and October 2004.

Respondent's Conviction

9. On July 16, 2007, following a plea of no contest, the Sonoma County Superior Court, in case number SCR513206, convicted Respondent of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 percent or more), a misdemeanor. The court suspended imposition of sentence and granted Respondent a 36-month conditional sentence.

10. Respondent's conditional sentence included serving eight days in the county jail, paying approximately \$1,923 in fines and fees, agreeing to obey all laws, not drive with alcohol in his system, and self-enrolling in a "driving under the influence" program/school.

11. The facts underlying Respondent's conviction were that, on May 20, 2007, in Santa Rosa, California, Respondent caused an automobile accident while driving. Respondent swerved to avoid hitting a deer that appeared on the road and consequently hit another automobile. The driver of the other automobile sustained some injury, but the evidence did not establish the severity of the injury. Respondent was driving from a family celebration at a winery in Sonoma, California, to a medical center in Santa Rosa, where he was starting a work shift later that night. At hearing, Respondent clarified that he was heading back to his hotel before then going to a medical center to begin his shift. The police arrived at the accident scene just after 9:40 p.m. Respondent told the police, "I had one glass of wine at 8:00 p.m." At hearing, Respondent stated that he had had "a few" drinks that evening. According to the arresting officer, Respondent was observed with "watery/glassy eyes, slurred speech, and the odor of an alcoholic beverage." The officer further observed that Respondent "swayed in a counter-clockwise motion" while standing. The authorities eventually tested Respondent and found him to have a 0.12 percent blood alcohol level. He could not and did not work as a pharmacist that evening.

12. At hearing, Respondent admitted that on occasion, while not a regular custom, when working in Santa Rosa, he would consume a glass of wine with lunch, or with dinner, before starting a work shift that would begin at 9:30 p.m. He emphasized the fact that he would drink in moderation and do so well before his work shift. Respondent would regularly have dinner at approximately 4:30 p.m., and lunch significantly earlier.

13. On July 3, 2007, as part of his probationary requirements, Respondent submitted a quarterly report, for the second quarter of 2007, to the Board. In that report, Respondent wrote, "I received a citation for a DUI on 5/20/07." The report was dated July 3, 2007. A handwritten note on the report indicates that the report was faxed on July 10, 2007, but there was no conclusive evidence establishing transmission by facsimile. The report bears a stamp of receipt, dated July 19, 2007.

The Nevada State Board of Pharmacy's Action

14. On April 16, 2008, the Nevada State Board of Pharmacy (the Nevada Board) heard the matter entitled, "*Nevada State Board of Pharmacy v. Kenton L. Crowley, R.Ph.*"

case number 08-013-RPH-S. In that case, the Nevada Board heard evidence of, among other things, Respondent's July 2007 conviction and placed Respondent's Nevada pharmacist license on five years of probation with various terms and conditions, including his agreement to participate in a substance abuse treatment program. The substance abuse treatment program is affiliated with the program he completed in October 2004. (See Factual Finding 8(b), fn. 1.) The Nevada Board's decision was effective May 14, 2008.

Other Earlier Convictions in Aggravation

15. On February 24, 1999, following a guilty plea, the Riverside County Superior Court, in case number PEF001711, convicted Respondent of violating Health and Safety Code section 11153 (providing an addict with a controlled substance), a felony. The court suspended proceedings and placed Respondent on formal probation for 36 months.

16. The terms and conditions of probation included serving two days in jail, with two days of credit for time served, paying \$580 in fines and fees. The court ordered Respondent not to possess or use any controlled substance unless prescribed, and violate no law. The sentencing court also ordered Respondent to complete a counseling, rehabilitation, or treatment program, surrender his pharmacist license to the Board, sell any interest he owned in any pharmacy, not enter his office in Murrieta, California, not practice as a pharmacist during his criminal probation, and not enter any licensed area within any pharmacy in California.

17. There was insufficient evidence to establish the facts underlying this conviction.

18. On February 24, 1999, following a guilty plea, the Riverside County Superior Court, in case number PEF001712, separately convicted Respondent of violating Health and Safety Code section 11350 (possessing a controlled substance), a felony. The court suspended proceedings and placed Respondent on formal probation for 36 months.

19. The terms and conditions of probation included serving 120 days in jail, with two days of credit for time served (the court allowed Respondent to serve his jail time on weekend days). The court required Respondent to pay \$580 in fines and fees. The evidence did not conclusively establish whether this figure was in addition to the \$580 paid in the previous criminal conviction (Factual Findings 15 & 16), or whether it constituted one payment for both convictions.

20. There was insufficient evidence to establish the facts underlying this conviction.

21. On February 24, 1999, following a guilty plea, the Riverside County Superior Court, in case number PEM09309, separately convicted Respondent of violating Health and Safety Code section 11550, subdivision (a) (using or being under the influence of a

controlled substance), a misdemeanor. The court denied probation and imposed sentence on Respondent.

22. Respondent's sentence included serving 90 days in the county jail, with four days of credit for time served. The court allowed Respondent to serve his sentence on weekend days. This case ran concurrent to his conviction in Factual Finding 18.

23. There was insufficient evidence to establish the facts underlying this conviction.

24. On November 4, 1999, following a guilty plea, the Riverside County Superior Court, in case number PEF003121, convicted Respondent of violating Health and Safety Code section 11377, subdivision (a) (possessing a controlled substance), a felony. The court denied probation and imposed sentence on Respondent.

25. Respondent's sentence included paying \$200 in fines and fees and serving one year and four months in state prison, with credit for 28 days of time served.

26. There was insufficient evidence to establish the facts underlying this conviction.

Other Facts

27. Respondent has been involved in substance abuse treatment and counseling programs since at least 1998. He continues to work through his addiction. However, while he admits to drinking alcohol with dinner and on other occasions, he does not believe he has a problem with alcohol. He has a deep interest in issues of pertinence to the pharmacist community and feels he has complied with the terms and conditions of his Board-imposed probation. Consequently, he does not believe he is a danger to the public if he remains a licensed pharmacist in California.

Complainant's Costs

28. Complainant incurred \$8,184.75 in investigation and prosecution costs. Complainant's counsel submitted a declaration stating it was her good faith estimate that, up to the date of hearing, the Office of the Attorney General would incur and bill the Board an additional five hours of time (\$790) to prepare for the prosecution of this matter.

LEGAL CONCLUSIONS

The Standard and Burden of Proof

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) Complainant must prove her case by clear and convincing evidence to a

reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is “so clear as to leave no substantial doubt” and is “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

The Law

2. Business and Professions Code section 4300 states in pertinent part:

(a) Every license may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board . . . whose case has been heard by the board and found guilty, by any of the following methods:

[¶] . . . [¶]

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

3. Business and Professions Code section 4301 states in pertinent part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct 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.

[¶] . . . [¶]

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 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.

[¶] . . . [¶]

(p) Actions or conduct that would have warranted denial of a license.

4. 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.

5. California Code of Regulations, title 16, section 1773 states:

(a) Unless otherwise directed by the Board in its sole discretion, any pharmacist who is serving a period of probation shall comply with the following conditions:

(1) Obey all laws and regulations substantially related to the practice of Pharmacy;

[¶] . . . [¶]

(c) When the circumstances of the case so require, the Board may impose conditions of probation in addition to those enumerated herein by the terms of its decision in an administrative case or by stipulation of the parties.

6. California Code of Regulations, title 16, section 1769 states in pertinent part:

[¶] . . . [¶]

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

7. Business and Professions Code section 125.3 states in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department [of Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

Discussion

8. Cause does not exist to revoke Respondent's pharmacist license, for unprofessional conduct, pursuant to Business and Professions Code section 4301, subdivision (k), as set forth in Factual Findings 1, 4, 9-11, and Legal Conclusions 1-3, 9, and 11.

9. Respondent argued that his 2007 conviction did not provide cause for discipline because it was not substantially related to a pharmacist's qualifications, functions, and duties. Respondent further argued, as one conviction, it does not meet the statutory requirement to warrant discipline because Business and Professions Code section 4301, subdivision (k) requires the conviction of "more than one misdemeanor."

10. Respondent's 2007 crime is, contrary to Respondent's argument, substantially related to a pharmacist's qualifications, functions, and duties. Respondent's 2007 arrest and conviction came about because he drove while intoxicated. He first told the arresting officer he had only one glass of wine, but then admitted at hearing to having "a few" drinks. Ultimately, it was undisputed that he had a 0.12 percent blood alcohol level, not an insignificant concentration. In choosing to drive after drinking beyond moderation, he acted in a way that was dangerous to himself and others, and showed a disregard for the law. Saliently, Respondent was driving on his way to work as a pharmacist. Thus, Respondent's actions evidence a present and potential unfitness to perform the functions of a pharmacist in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1770.) Therefore, Respondent's crime of driving with a blood alcohol level greater than .08 percent is substantially related to a pharmacist's qualifications, functions, and duties.

11. In the Accusation, Complainant alleged Respondent's 2007 conviction as the first cause for discipline, but solely pled Business and Professions Code sections 4300 and 4301, subdivision (k), as the legal bases for cause. It is noted that the Accusation sets forth Business and Professions Code section 4301, subdivision (l) (wherein the Legislature equates unprofessional conduct to a single conviction of a crime substantially related to a pharmacist's qualifications, functions, and duties), but that provision is set forth under the jurisdictional section of the pleading and is absent from the four causes for discipline pled thereafter. It cannot be said Complainant pled subdivision (l) as a basis for discipline. Since Complainant relied solely on the one 2007 misdemeanor conviction as the conviction at issue, there is no cause for discipline pursuant to Business and Professions Code section 4301, subdivision (k).

12. Cause exists to revoke Respondent's pharmacist license, for unprofessional conduct, pursuant to Business and Professions Code section 4301, subdivision (h), as set forth in Factual Findings 1-27, and Legal Conclusions 1-4, 6, 10, 13-15, and 22.

13. Complainant also pled cause for discipline pursuant to Business and Professions Code sections 4301, subdivision (h), namely that Respondent used alcohol in a manner that was dangerous or injurious to himself as a licensed pharmacist and to others, and impaired his ability to practice as a pharmacist. The evidence established cause for discipline under this provision. Respondent drank, then drove, and, as a consequence of his impaired state, crashed into another car, caused injury to the other driver, and failed to appear at work that evening. His actions were dangerous, injurious to himself and others, and impaired his ability to practice as a pharmacist, and thus constitute unprofessional conduct. (Bus. & Prof. Code, § 4301, subd. (h).) Therefore, his crime and conviction establish cause to revoke Respondent's pharmacist license. (*Ibid.*)

14. Respondent's history of substance abuse and related criminal convictions raise cause for concern that Respondent may be using and potentially abusing a different addictive substance, alcohol. Given Respondent's problems with addiction, as evidenced by his criminal history, it is reasonable to consider his one alcohol-related conviction is more than just an isolated incident, but more likely, a relapse into dangerous and injurious activities related to his roughly decade-long problem with addiction. Respondent argued that the four 1999 convictions were already considered by the Board when it issued him a probationary license, and that those convictions should not be reconsidered here. The evidence did not establish that, in 2005, the Board considered all four convictions,² however, in any case, nothing precludes consideration of those convictions in this proceeding. Respondent's criminal history, his significant prison and jail time, and his long-standing participation in treatment and counseling programs (all events that should have impressed upon Respondent to stay away from addictive substances) preclude a conclusion that his single alcohol-related conviction is an isolated incident unlikely to be repeated.

15. Respondent provided limited and unpersuasive evidence of rehabilitation. (Cal. Code of Regs., tit. 16, § 1769, subd. (b)(5).) Nothing proffered by Respondent sufficiently tempered the concerns raised by his 2007 conviction, in light of his history. (*Ibid.*) Moreover, when assessing the quality of Respondent's evidence of rehabilitation, using the regulatory criteria (Legal Conclusion 6), the evidence failed to support a conclusion that Respondent was rehabilitated. For example, while the severity of the crime, a misdemeanor, is not great, the nature of the crime, an additional crime involving the abuse of an addictive substance, continuing in a long line of such crimes, was concerning as discussed in Legal Conclusion 14 above. (Cal. Code Regs., tit. 16, § 1769, subds. (b)(1) & (b)(2).) Furthermore, the crime and conviction occurred just over one year ago; significant time has

² It is noted that the findings by the Board in 2005, setting forth the dates of the earlier convictions in aggravation do not match the dates established by the evidence proffered at the instant hearing. (Compare Factual Findings (8)(b) with Factual Findings 15, 18, 21, and 24.)

not passed. (Cal. Code of Regs., tit. 16, § 1769, subd. (b)(3).) Lastly, Respondent remains on criminal probation. (Cal. Code of Regs., tit. 16, § 1769, subd. (b)(4).) Therefore, it cannot be concluded that Respondent is rehabilitated.

16. Cause exists to revoke Respondent's pharmacist license, for unprofessional conduct, pursuant to Business and Professions Code section 4301, subdivision (p), as set forth in Factual Findings 1-27, and Legal Conclusions 1-4, 6, 10, 13-15, 17, and 22.

17. Establishing cause for discipline pursuant to Business and Professions Code section 4301, subdivision (h), establishes additional cause for discipline pursuant to subdivision (p) of the same provision. The Legislature provides that the Board may take disciplinary action against a licensee whose actions or conduct would warrant denial of a pharmacist license application. (Bus. & Prof. Code, § 4301, subd. (p).) The Legislature further provides that the Board may deny a license application to any applicant guilty of unprofessional conduct. (Bus. & Prof. Code, § 4300, subd. (c).) Therefore, since unprofessional conduct was established, pursuant to Legal Conclusion 12, above, Respondent's conviction provides additional cause to revoke his pharmacist license, pursuant to Business and Professions Code section 4301, subdivision (p).

18. Cause does not exist to revoke Respondent's pharmacist license, for failing to notify the Board within 72 hours of his 2007 plea and conviction, pursuant to Business and Professions Code section 4301, subdivision (p) or California Code of Regulations, title 16, section 1773, subdivisions (a)(1) or (c), as set forth in Factual Findings 1, 4, 6-13, and Legal Conclusions 1-3, 5, and 19.

19. Respondent argued that he did not violate the terms and conditions of his probation regarding the 72-hour written notice requirement, a requirement that he notify the Board of an arrest, plea, or conviction, as discussed in Factual Finding 8(c). Respondent wrote the Board and stated that he had been cited for a "DUI," a notice the Board received by July 19, 2007. On July 3 or 10, 2007, when Respondent wrote the notice, he had not yet been convicted. While legally inaccurate (because by then, he was undoubtedly aware that he was being prosecuted for drinking and driving, not just cited by the police), he nonetheless, reported a criminal action against him to the Board on, at the latest, July 19, 2007, and within 72 hours of his no contest plea, entered on July 16, 2007. As his Vehicle Code violation was not a violation of the pharmacy law, state or federal food and drug laws, or state or federal controlled substance laws, he was not obligated, under his probationary terms and conditions, to inform the Board of his arrest within 72 hours, only his plea and conviction. Complainant pled that Respondent's alleged failure to provide the Board with a written report constituted violations of Business and Professions Code section 4301, subdivision (p) (actions or conduct that would warrant denial of a pharmacist license application) and California Code of Regulations, title 16, section 1773, subdivisions (a)(1) and (c) (requiring pharmacists with probationary licenses to obey all laws and regulations substantially related to the practice of pharmacy, and providing for the Board's regulatory power to impose additional conditions of probation). The evidence did not establish a violation under those provisions.

20. Cause exists to revoke Respondent's pharmacist license, for violating the terms and conditions of probation, pursuant to Business and Professions Code section 4300, subdivision (d) and the Decision and Order *In the Matter of the Petition for Reinstatement of Kenton Lance Crowley*, case number AC 2107, as set forth in Factual Findings 1, 4, 8-13, 27, and Legal Conclusions 1, 2, 21, and 22.

21. Respondent's conviction established a violation of Vehicle Code section 23152, subdivision (b), a state law. Therefore, Respondent failed to obey all laws, as required by the terms and conditions of his probation. In accordance with the probationary order issued by the Board, effective April 8, 2005, the conviction establishes cause to revoke the probationary license and carry out the stayed disciplinary order, revocation. (Bus. & Prof. Code, § 4300, subd. (d).)

22. In accordance with all of the facts established by the evidence, it is reasonable to conclude that the public safety cannot be assured if Respondent remains licensed as a pharmacist. Therefore, revocation is appropriate.

23. Cause exists to award Complainant costs, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1-28, and Legal Conclusions 1-22 and 24.

24. The costs incurred by Complainant for this matter's investigation and enforcement (\$8,184.75) are just and reasonable to the extent that the causes for discipline were established. Complainant failed to establish cause for discipline under two of the four causes alleged in the Accusation. The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure the award does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45.) Therefore, and in light of the Order below revoking Respondent's pharmacist license, it is appropriate to reduce the cost award by approximately half, and award Complainant \$4,100 in costs. Complainant did not establish that the additional five hours of preparation time estimated by Complainant's counsel were incurred (see Factual Finding 28), therefore, the additional \$790 requested was not granted.

ORDER

1. License number RPH 38214, issued to Respondent Kenton Lance Crowley is revoked.
2. Respondent shall relinquish his wall license and pocket renewal license to the Board of Pharmacy within 10 days of the effective date of this Decision. Respondent may not petition the Board of Pharmacy for reinstatement of his revoked license for three years from the effective date of this Decision.
3. Respondent shall pay to the Board of Pharmacy its costs of investigation and prosecution in the amount of \$4,100 within 15 days of the effective date of this Decision.

Dated: August 14, 2008



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR. Attorney General
of the State of California
2 MARC D. GREENBAUM, State Bar No. 138213
Supervising Deputy Attorney General
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7 Attorneys for Complainant

8

9

10

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

11

12 In the Matter of the Petition to Revoke Probation
Against:

Case No. AC 3107

13

KENTON LANCE CROWLEY
40970 Alton Court
14 Temecula, CA 92591-6948

**FIRST-AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

15

Pharmacist No. RPH 38214

16

Respondent.

17

18

Complainant alleges:

19

PARTIES

20

1. Virginia Herold (complainant) brings this First-Amended Accusation and
21 Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board
22 of Pharmacy, Department of Consumer Affairs (Board).

23

2. On or about September 29, 1983, the Board issued Registered Pharmacist
24 License No. RPH 38214 to Kenton Lance Crowley (respondent). On February 5, 1999,
25 respondent entered into a stipulation to surrender his license to the Board. The surrender became
26 effective July 6, 1999. Effective April 8, 2005, the Board reinstated the license, immediately
27 revoked it and placed respondent on 3 years probation. The license will expire on September 30,
28 2008, unless renewed.

JURISDICTION

1
2 3. This First-Amended Accusation and Petition to Revoke Probation is
3 brought before the Board, under the authority of the following laws. All section references are to
4 the Business and Professions Code unless otherwise indicated.

5 4. Section 4300 provides in pertinent part:

6 “(a) Every license issued may be suspended or revoked.

7 “....

8 “(c) The Board may refuse a license to any applicant guilty of unprofessional
9 conduct.

10 “(d) The board may initiate disciplinary proceedings to revoke or suspend any
11 probationary certificate of licensure for any violation of the terms and conditions of
12 probation. Upon satisfactory completion of probation, the board shall convert the
13 probationary certificate to a regular certificate, free of conditions.”

14 5. Section 4301 states that the Board shall take action against any holder of a
15 license who is guilty of unprofessional conduct or whose license has been procured by fraud or
16 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited
17 to, any of the following:

18 “(h) The administering to oneself, of any controlled substance, or the use of
19 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
20 dangerous or injurious to oneself, to a person holding a license under this chapter, or to
21 any other person or to the public, or to the extent that the use impairs the ability of the
22 person to conduct with safety to the public the practice authorized by the license.

23 “....

24 “(k) The conviction of more than one misdemeanor or any felony involving the
25 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or
26 any combination of those substances.

27 “(l) The conviction of a crime substantially related to the qualifications, functions,
28 and duties of a licensee under this chapter. The record of conviction of a violation of
Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
regulating controlled substances or of a violation of the statutes of this state regulating
controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
conduct. In all other cases, the record of conviction shall be conclusive evidence only of
the fact that the conviction occurred. The board may inquire into the circumstances
surrounding the commission of the crime, in order to fix the degree of discipline or, in the
case of a conviction not involving controlled substances or dangerous drugs, to determine
if the conviction is of an offense substantially related to the qualifications, functions, and
duties of a licensee under this chapter. A plea or verdict of guilty or a conviction

1 following a plea of nolo contendere is deemed to be a conviction within the meaning of
2 this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation
4 is made suspending the imposition of sentence, irrespective of a subsequent order under
5 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
6 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
7 the accusation, information, or indictment.

8 "

9 "(p) Actions or conduct that would have warranted denial of a license."

10 6. Section 4309, subdivision (g), states:

11 No petition under this section shall be considered while the petitioner is under
12 sentence for any criminal offense, including any period during which the petitioner is on
13 court-imposed probation or parole. No petition shall be considered while there is an
14 accusation or petition to revoke probation pending against the person. The board may
15 deny without a hearing or argument any petition filed pursuant to this section within a
16 period of two years from the effective date of the prior decision following a hearing under
17 this section."

18 7. Section 4313 states that public protection takes priority over rehabilitation.

19 In determining whether to grant an application for licensure or whether to
20 discipline or reinstate a license, the board shall give consideration to evidence of
21 rehabilitation. However, public protection shall take priority over rehabilitation and,
22 where evidence of rehabilitation and public protection are in conflict, public protection
23 shall take precedence.

24 8. Section 118, subdivision (b), states the suspension, expiration, or
25 forfeiture by operation of law of a license issued by a Board in the department, or its suspension,
26 forfeiture, or cancellation by order of the Board or by order of a court of law, or its surrender
27 without the written consent of the Board, shall not, during any period in which it may be
28 renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or
continue a disciplinary proceeding against the licensee.

9. California Code of Regulations, title 16, section 1773, provides in
pertinent part:

"(a) Unless otherwise directed by the Board in its sole discretion, any
pharmacist who is serving a period of probation shall comply with, but not limited to, the
following conditions:

"(1) Obey all laws and regulations substantially related to the practice of
Pharmacy.

"

"(c) When the circumstances of the case so require, the Board may impose

1 conditions of probation in addition to those enumerated herein by the terms of its decision
2 in an administrative case or by stipulation of the parties."

3 10. California Code of Regulations, title 16, section 1770, states:

4 "For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
6 Professions Code, a crime or act shall be considered substantially related to the
7 qualifications, functions or duties of a licensee or registrant if to a substantial degree it
8 evidences present or potential unfitness of a licensee or registrant to perform the functions
9 authorized by his license or registration in a manner consistent with the public health,
10 safety, or welfare."

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

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 12. Respondent has subjected his license to discipline pursuant to section 4300
18 for unprofessional conduct as defined in section 4301, subdivision (k), and California Code of
19 Regulations, title 16, section 1770, in that on or about July 16, 2007, respondent was convicted
20 of a crime substantially related to the qualifications, functions, or duties of a pharmacist, by
21 reason of the following:

22 a. On July 16, 2007, respondent was convicted on his plea of no contest to
23 one count of violating Vehicle Code section 23152, subdivision (b) (driving with an excessive
24 blood alcohol level), a misdemeanor, in the Superior Court of California, County of Sonoma,
25 Case No. SCR 513206, entitled *People v. Kenton Lance Crowley*. Respondent's sentence
26 included 8 days in county jail, 3 years probation, payment of various fines, and self-enrollment in
27 a DUI school deemed appropriate by the DMV.

28 b. The circumstances of the conviction are that on or about May 20, 2007, at
approximately 9:43 p.m., while driving on the Sonoma Highway from the Homewood Vineyard
in Sonoma to start his shift at the Sutter Medical Center, respondent lost control of his vehicle,
crossed over the center median and broadsided a vehicle driving east on the same highway.

1 Respondent admitted to an officer dispatched to the scene that he had had one glass of wine at
2 8:00 p.m. The officer noticed that respondent had watery/glassy eyes, slurred speech, and the
3 odor of an alcoholic beverage. The officer also observed that respondent swayed when he stood.
4 Respondent submitted to a breath test which showed he had a blood alcohol concentration of
5 0.12 percent. Respondent was arrested and charged with one count of violating Vehicle Code
6 section 23152, subdivision (a)(driving while under the influence of alcohol or drugs), and one
7 count of violating Vehicle Code section 23152, subdivision (b)(driving with an excessive blood
8 alcohol level).

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Conduct Warranting Denial of License)**

11 13. Respondent has subjected his license to discipline pursuant to Section
12 4300, subdivision (c), for unprofessional conduct as defined in Section 4301, subdivision (p)
13 (action or conduct that would have warranted the denial of a license). The circumstances are set
14 forth in paragraph 12 above and incorporated herein by reference as though re-alleged in full.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Use of Alcohol Dangerous To Self)**

17 14. Respondent has subjected his license to discipline pursuant to section 4300
18 for unprofessional conduct as defined in sections 4301, subdivisions (h) and (p), in that on or
19 about May 20, 2007, at approximately 9:43 p.m., while driving on the Sonoma Highway from the
20 Homewood Vineyard in Sonoma to begin his work shift at the Sutter Medical Center, respondent
21 crossed over the center median and broadsided another vehicle. Respondent was driving while
22 under the influence of alcohol or drugs and while he had a blood alcohol concentration exceeding
23 the legal limit.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Failure To Report Arrest within 72 Hours)**

26 15. Respondent has subjected his license to discipline pursuant to Section
27 4300 for unprofessional conduct as defined in Section 4301, subdivision (p), in conjunction with
28 California Code of Regulations, title 16, section 1773, subdivisions (a)(1) and (c), in that

1 respondent failed to report the arrest to the Board within 72 hours as required by the Board in its
2 order granting respondent's petition for reinstatement effective April 8, 2005.¹ A true and correct
3 copy of the Board's order granting respondent's petition for reinstatement is attached hereto as
4 exhibit A and incorporated herein by reference.

5 OTHER MATTERS

6 16. Respondent has four prior convictions that are substantially related to the
7 qualifications, duties and functions of a licensed pharmacist. The circumstances are as follows:

8 a. On or about February 24, 1999, respondent was sentenced to three years
9 formal probation following his guilty plea on November 19, 1998, to violating Health and Safety
10 Code section 11153 (providing an addict with a controlled substance) (*People v. Crowley*, Super.
11 Ct. Riverside County, 1998, No. PEF001711).

12 b. On or about February 24, 1999, respondent was sentenced to three years
13 formal probation following his guilty plea on November 19, 1998, to violating Health and Safety
14 Code section 11150 (possessing a controlled substance, Demerol) (*People v. Crowley*, Super. Ct.
15 Riverside County, 1998, No. PEF001712).

16 c. On or about September 23, 1999, respondent pled guilty to violating
17 Health & Safety Code section 11377 (possessing a controlled substance, Ketamine/Ritalin and
18 Testosterone) (*People v. Crowley*, Super. Ct. Riverside County, 1999, No. PEF003121).

19 d. On or about February 24, 1999, respondent pled guilty to violating Health
20 & Safety Code section 11150, subdivision (a) (unlawfully using and being under the influence of
21 a controlled substance) (*People v. Crowley*, Super. Ct. Riverside County, 1998, No. PEM09309).

22
23 PETITION TO REVOKE PROBATION

24 17. In a disciplinary action entitled "In the Matter of the Accusation against
25 Crowley Family Pharmacy, Pharmacy License No. PHY 411477 and Kenton Crowley,

26 _____
27 1. Pursuant to Penal Code section 11105.2., the Board was notified of respondent's arrest
28 on May 20, 2007, for suspected driving under the influence and driving with an excessive blood
alcohol level in violation of Vehicle Code section 23152, subdivisions (a) and (b).

1 Pharmacist License No. RPH 38214,” Board of Pharmacy Case No. AC 2107, the Board issued a
2 decision, effective July 6, 1999, accepting the surrender of both licenses. A true and correct copy
3 of the Board’s decision is attached hereto as exhibit A and incorporated herein by reference.

4 18. On or about December 27, 2002, respondent sought reinstatement of his
5 pharmacist license only. The petition was denied on June 26, 2003.²

6 19. On September 18, 2004, respondent again petitioned for reinstatement of
7 his surrendered pharmacist license no. RPH 38214. After considering the second petition, the
8 Board issued a decision in Case No. AC 2107, effective April 8, 2005, concluding that
9 respondent had established cause to grant his petition for reinstatement, but that “because of the
10 seriousness of the cause that led to the revocation and the additional concerns raised by the
11 criminal convictions, a period of continued monitoring is necessary for the protection of the
12 public.”³ The Board’s decision included an order reinstating respondent’s pharmacist license No.
13 RPH 38214 provided that the license was immediately revoked, the revocation order was stayed,
14 and the license was placed on probation for three (3) years under specified terms and conditions.
15 The terms and conditions included:

16 **Condition 1 of Probation:**

17 “1 **Obey All Laws.** Respondent shall obey all state and federal laws and
18 regulations substantially related to or governing the practice of pharmacy. Respondent shall
19 report any of the following occurrences to the board, in writing, within 72 hours of such
20 occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the
21 Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances
22 laws. . . .”

23 “. . . .

24 \ \ \

25 _____
26 2. Exhibit A, Board’s decision granting the second petition for reinstatement, Case No. AC
27 2107, effective April 8, 2005, p. 2, ¶ 5.

28 3. Exhibit A (decision in Case No. AC 2107 granting reinstatement effective April 8,
2005), p. 4 (Legal Conclusions).

1 Condition 13 of Probation:

2 “13. Violation of Probation. If petitioner violates probation in any respect, the
3 Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and
4 carry out the disciplinary order which was stayed. If a petition to revoke probation or an
5 accusation is filed against Petitioner during probation, the Board shall have continuing
6 jurisdiction and the period of probation shall be extended, until the petition to revoke probation
7 or accusation is heard and decided.”⁴

8 GROUNDS FOR REVOKING PROBATION

9 20. Grounds exist for revoking probation and reimposing the Order of
10 revocation of respondent’s license in that he failed to comply with the following terms of
11 probation:

12 FIRST CAUSE FOR VIOLATION OF PROBATION

13 (Failure to Obey State and Federal Laws)

14 21. Respondent violated Condition 1 of his probation in that he failed to obey
15 state and federal laws substantially related to the practice of pharmacy in that respondent was
16 convicted of driving with an excessive blood alcohol level, used alcohol in a way that was
17 dangerous to himself, and failed to report his arrest for driving under the influence and with an
18 excessive blood alcohol level to the Board within 72 hours of the occurrence. The circumstances
19 of these violations are set forth more fully in paragraphs 12, 13, subdivision (e), 14, 15 and 16
20 above and incorporated herein by reference as though re-alleged in full.

21 \\ \

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28 4. Exhibit A (decision in Case No. AC 2107 granting reinstatement effective April 8,
2005), pp. 4 and 7 (Order).

1 PRAYER

2 WHEREFORE, complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy, Department of Consumer
4 Affairs, issue a decision:

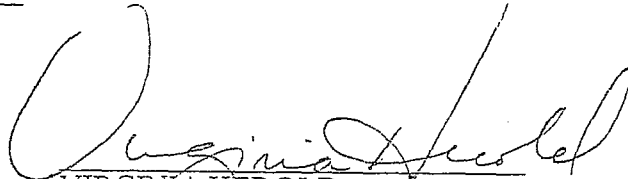
5 1. Revoking the probation granted in Case No. AC 2107 and imposing the
6 disciplinary order that was stayed effective April 8, 2005, thereby revoking pharmacist No. RPH
7 38214 issued to Kenton Lance Crowley;

8 2. Revoking or suspending pharmacist No. RPH 38214, issued to Kenton
9 Lance Crowley;

10 3. Directing Kenton Lance Crowley to pay to the Board a reasonable sum for
11 its investigative and enforcement costs of this action; and

12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: 2/1/08

14 

15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 State of California
Complainant

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20 60273936.wpd

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Exhibit A
Decision and Order
Board of Pharmacy Case No. AC-2107

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

Case No. AC 2107

OAH No. L2004120424

Respondent.

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.

RECEIVED
SECRETARY HERBIV
DATE: 10/10/05

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THESE DOCUMENTS MAY BE MADE BY
OF THE RECORD TO HEREAFTER

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.

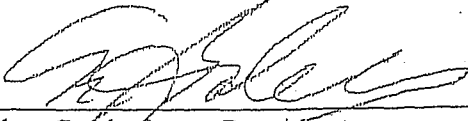
13. Violation of Probation. If Petitioner violates probation in any respect, the Board, after giving Petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Petitioner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

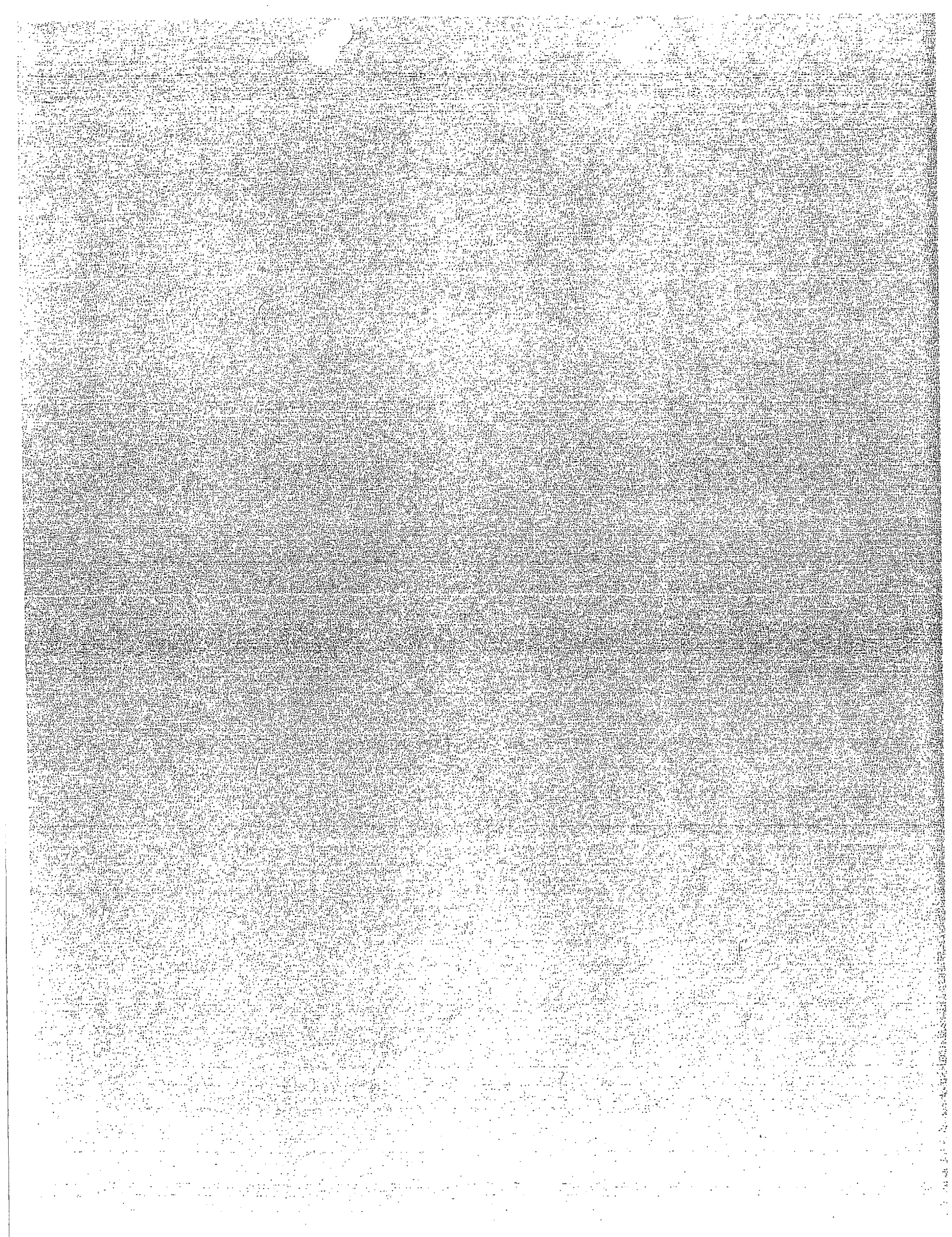
If Petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Petitioner, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the 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



1 BILL LOCKYER, Attorney General
of the State of California
2 KAREN L. GORDON
Deputy Attorney General
3 State Bar No. 137969
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-2073
6
7 Attorneys for Complainant

8
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)
14 Suite 100)
Murrieta, CA 92562)

CASE NO. AC 2107

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.)
21 No. RPH 38214)

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

PHARMACY BOARD OF CALIFORNIA
RECORDS DIVISION
SECURITY DIVISION
FILED: [Signature]
JAN 11 1988
OFFICE OF THE CLERK
PHARMACY BOARD OF CALIFORNIA
1000 W. BROADWAY, SUITE 1000
SAN FRANCISCO, CA 94133
TELEPHONE: (415) 398-2000

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.

26 / / /

27 / / /

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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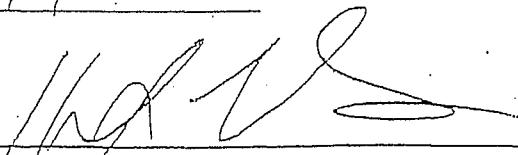
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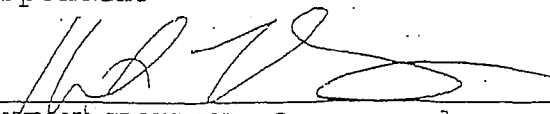
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ACKNOWLEDGEMENT

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2
3 I, Kenton Crowley, hereby certify that I have read this
4 Stipulation in its entirety. I have discussed the terms and
5 conditions set forth in the Stipulation and Order with my
6 attorney, John Cronin, Esq. I enter into the Stipulation freely,
7 voluntarily, intelligently, on advice of counsel, and with full
8 knowledge of its force and effect. I understand that in signing
9 this Stipulation I am waiving my right to a hearing on the
10 charges set forth in the Accusation on file in this matter. I
11 do hereby voluntarily surrender my certificates of licensure,
12 Pharmacist License No. RPH 38214 and Pharmacy License No. PHY
13 41147, to the Board of Pharmacy, for its acceptance. I recognize
14 that upon formal acceptance of this Stipulation by the Board, I
15 will lose all rights and privileges to practice as a pharmacist
16 or operate a pharmacy in the State of California. I agree that a
17 facsimile copy of this Stipulation, including a facsimile copy of
18 my signature may be used with the same force and effect as the
19 originals.

20
21 DATED: 2/5/99

22
23 
24 _____
KENTON CROWLEY
Respondent

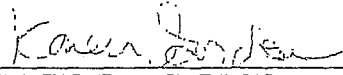
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26 
27 _____
KENTON CROWLEY, Owner and
Authorized Representative of
CROWLEY FAMILY PHARMACY
Respondent

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

ORDER OF THE BOARD OF PHARMACY

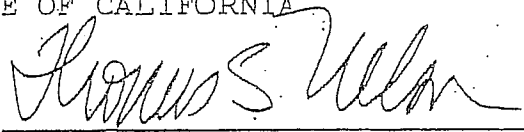
The surrender of Pharmacy License No. PHY 41147 by respondent, Crowley Family Pharmacy, and Pharmacist License No. RPH 38214 by respondent, Kenton Crowley, is accepted, on the terms set forth in the Stipulation For Surrender of License, by the Board of Pharmacy of the State of California.

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

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 KAREN L. GORDON
Deputy Attorney General
3 State Bar No. 137969
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-2073
6 Attorneys for Complainant

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 licensee 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.
26
27

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).

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 *Mal*
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant