

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

In the Matter of the Accusation Against:

LOUIS H. KRUGER,

Pharmacist License No. RPH 21665

Respondent.

Case No. 5992

OAH No. 2017040605

DECISION AND ORDER

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

This decision shall become effective at 5:00 p.m. on October 18, 2017.

It is so ORDERED on September 18, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

LOUIS H. KRUGER,

Original Pharmacist License No. RPH 21665

Respondent.

Case No. 5992

OAH No. 2017040605

PROPOSED DECISION

This matter was heard by Administrative Law Judge Darlette C. Brown, Office of Administrative Hearings, State of California, on July 17, 2017, in Sacramento, California.

Anahita S. Crawford, Deputy Attorney General, represented complainant Virginia K. Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs (Department), State of California.

Respondent Louis H. Kruger was present and was represented by Michael A. Holtz with the Rooney Law Firm.

Evidence was received, the record was closed, and the matter was submitted for decision on July 17, 2017.

FACTUAL FINDINGS

1. The Board issued Original Pharmacist License No. RPH 21665 (license) to respondent on July 22, 1960. The license expires June 30, 2018, unless renewed or revoked.
2. On February 13, 2017, complainant signed an Accusation solely in her official capacity. The Accusation alleges that cause exists to discipline the license based on respondent's criminal conviction and the underlying criminal conduct.

Criminal Conviction

3. On August 23, 2016, in the Superior Court of the State of California, in and for the County of Butte, Case No. 16CM02602, respondent pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (DUI). Respondent admitted to an enhancement pursuant to Vehicle Code section 23578, driving with a blood alcohol content of .15 percent or higher. Imposition of judgment and sentence was suspended, and respondent was placed on conditional probation for three years. He was ordered to serve four days in county jail, refrain from use or possession of alcohol, complete a Level 2 DUI program, attend a minimum of three Alcoholics Anonymous (AA) meetings per week or other approved self-help program as directed by his probation officer, and maintain an attendance log. He was also ordered to pay court fees and fines, and restitution to the victim.

4. The factual basis for respondent's conviction arose out of his arrest by the Chico Police Department for DUI. On January 7, 2016, at approximately 2:00 p.m., an officer from the Chico Police Department responded to the scene of a traffic accident. When he arrived, the Chico Fire Department and Butte County emergency personnel were already attending to respondent and the victim.

The responding officer made contact with respondent, who was still seated in his vehicle. Both of respondent's airbags deployed. The officer determined that respondent's vehicle hit and jumped a raised concrete curb before coming to rest. The officer smelled the odor of alcohol on respondent. He asked respondent if he had been drinking. Respondent admitted that he drank alcohol, and stated, "I'm [f]ucked [u]p!" Respondent also stated that he lost control of his vehicle, and the accident occurred. Respondent disclosed to the officer that he had taken high blood pressure medication and hydrocodone at 10:00 a.m. that morning. Respondent did not know the dosage of the medications he had taken. However, he explained to the officer that he consumed three ounces of vodka at noon on the day of the accident.

The accident occurred when respondent rear-ended a parked vehicle. The vehicle belonged to an elementary school crossing guard who was sitting in her vehicle at the time, waiting for classes to end. She was not wearing her seat belt at the time of the collision. The impact from respondent's vehicle pushed her vehicle forward approximately 15 to 20 feet. The crossing guard observed respondent continue to drive, then hit a curb. The crossing guard sustained a whiplash injury. Witnesses in another vehicle observed respondent nearly strike their driver's side mirror, then observed respondent rear-end the crossing guard's vehicle, drive off, and hit a curb. Another onlooker checked on the crossing guard, then went to check on respondent, who was still seated in his vehicle. Respondent did not respond to him. Instead, respondent revved his engine, tried to engage the transmission, and was honking his horn. As respondent was trying to engage the gears, the onlooker warned others in the area to be cautious, as he was not sure what respondent was going to do with his vehicle.

After his arrest, respondent was transported to the hospital for a blood test. A subsequent analysis of a sample of respondent's blood drawn at the time of his arrest determined a blood alcohol content of .28 percent.

Substantial Relationship

5. Respondent's conviction involved alcohol and drunk driving, resulting in harm to persons and property, as discussed in Finding 4, and is substantially related to the qualifications, functions, and duties of a licensed pharmacist. (Cal. Code Regs., tit. 16, § 1770 ["[A] crime or act shall be considered substantially related . . . if to a substantial degree it evidences present or potential unfitness of a licensee . . . to perform the functions authorized by his license . . . in a manner consistent with the public health, safety, or welfare".]) His underlying criminal conduct demonstrated a lack of respect for, and an unwillingness and/or inability to comply with, laws designed for the protection of the public. Furthermore, respondent's conduct reflected poorly on his common sense and professional judgment, qualities essential to his profession, and tends to undermine public confidence in and respect for the profession. (See, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771 [analyzing factors used to determine whether a crime is substantially related to the qualifications, functions, and duties of particular profession].)

Use of Alcohol to an Extent and Manner Dangerous to Himself and Others

6. Respondent's DUI conviction was based on his consumption of alcohol. The dangers of driving while under the influence of alcohol are well known. (See, *Griffiths v. Superior Court, supra*, 96 Cal.App.4th 757, 770 ["Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy".]) Moreover, respondent admitted to the officer at the accident scene that he took his heart and blood pressure medications, and hydrocodone, at approximately 10:00 a.m. on the morning of the accident.

7. Hydrocodone is an opioid analgesic, used for severe, chronic pain. It is a Schedule II controlled substance. "Concomitant use of opioids with benzodiazepines or other CNS depressants, including alcohol, may result in profound sedation, respiratory depression, coma, and death." (<http://reference.medscape.com/drug/zohydro-er-hysingla-er-hydrocodone-343312#5>.) Respondent's choice to consume alcohol, combined with medications, particularly hydrocodone, and his decision to drive thereafter, established that respondent used alcohol to an extent and manner dangerous to himself and others.

Respondent's Testimony and Evidence

8. Respondent is 80 years old. He has been a licensed pharmacist for 57 years. Respondent has no history of discipline with the Board.

9. Respondent explained at hearing that, in 2012, he had open heart surgery for an aortic valve transplant. Respondent asserted that this was the first time in his life that he

was prescribed any kind of prescription medication. Respondent resumed work in the summer of 2012, working three days per week. He gradually reduced his work days to three or four days per month. He admitted that he was not able to "keep up" with the new medications, as they were "too fast and furious to keep up." By this, respondent meant that he found it difficult to learn about and remember new medications on the market. Respondent was working as a pharmacist for three pharmacies at the time: Chico Pharmacy, Paradise Drug Company, and Willows Pharmacy.

10. On the morning of his DUI arrest on January 7, 2016, respondent testified that he was home working in the garden. He went to his vehicle, opened the trunk, and found three to four miniature bottles of alcohol. The miniature bottles were stored in his trunk for consumption by respondent and his friends for a hiking trip that was to take place in 2016. Respondent explained that in the past, he and two friends hiked in the Sierras during the summer, and at the end of seven to 10 days of hiking, each of them would mix one bottle with Tang, and consume the drink to celebrate the completion of the hike. In 2016, their hiking trip was cancelled, and respondent stored the bottles in his trunk. Upon discovering the bottles, respondent "downed a few bottles with Coke within minutes."

11. Respondent was prescribed hydrocodone after a fall in December 2015, after respondent broke his left arm and injured his hip. On the morning of the accident, he took hydrocodone because his shoulder was sore. After taking hydrocodone and consuming alcohol, respondent decided to drive to Raleys, a nearby grocery store. Instead, respondent drove six to seven miles from his home, and caused a car accident in front of an elementary school. At hearing, respondent did not recall why he drove outside of the vicinity of his home and Raleys, and ended up at the school. He did not recall rear-ending the vehicle of the crossing guard as she sat in her car, or jumping a concrete curb. He did not recall how long he drove before rear-ending the crossing guard's vehicle at the school. Respondent could only recall that his airbag deployed.

12. Respondent continues to take hydrocodone, usually one in the morning, and one in the evening. He asserted that he does not go to work on the days that he takes hydrocodone.

13. Respondent completed a three-month alcohol program on June 15, 2016, and a nine-month alcohol program on February 27, 2017. Both of the programs were entitled "Solutions for Positive Choices." Respondent learned about the consequences of excessive use of drugs and alcohol. He also learned that one can be arrested and convicted of a DUI involving drugs such as hydrocodone and fentanyl.

14. Respondent asserted that he has not consumed alcohol since March 2016. He did not provide a sobriety date. Prior to his conviction, respondent voluntarily attended approximately sixteen AA meetings, from April 11, 2016, to July 12, 2016. After his conviction, respondent completed court-ordered Alcoholics Anonymous (AA) meetings, which he attended from August 25, 2016, to February 5, 2017. Respondent conceded that he has not voluntarily attended AA meetings since completing his court-ordered AA meetings.

Respondent did not have a sponsor during his time with AA, because he did not feel comfortable having one. He feels that he can manage his sobriety by himself. He asserted that he learned from AA by paying particular attention to the individual stories. He was gratified to see the successes of individuals in his AA meetings.

15. Respondent admitted that he has a 1999 conviction for DUI,¹ in addition to the DUI conviction alleged in the present case. Respondent explained that he was coming home from a convention or a party, and "lost track I guess." He did not provide any further explanation of the circumstances of that conviction. Respondent considered his alcohol consumption underlying his 1999 and 2016 convictions as an "aberration."

16. Respondent vehemently believes that he is fit to practice as a pharmacist. He asserted that he has never consumed alcohol while on duty as a pharmacist. Respondent could not provide a reason why he drank three miniature bottles of alcohol on the day of his arrest for DUI on January 7, 2016. He had no explanation for his high blood alcohol content of .28 percent.

17. Respondent described his experience in dealing with the consequences of his 2016 conviction as "difficult emotionally." He characterized this experience as "traumatizing not only for me, but for the person I injured." He wished that he could apologize to his victim for his actions. Respondent felt "invulnerable" when he drank and drove on January 7, 2016. His arrest and conviction got his attention, and he knew "this time it was serious."

Rehabilitation

18. The Board has adopted criteria for consideration when evaluating a licensee's rehabilitation since committing the criminal conduct underlying the conviction for which discipline is sought. Pursuant to California Code of Regulations, title 16, subdivision (c), the criteria are:

- (1) The 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.

¹ Respondent's 1999 DUI conviction was not pled as a basis for discipline or a matter in aggravation in the Accusation.

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

19. Here, the Board seeks to discipline respondent's license because he was convicted of DUI with an enhancement of driving with a blood alcohol content of .15 percent or higher. Discipline is also sought based on his use of alcohol to an extent and manner dangerous to himself and others. Such overall conduct poses a grave risk to the public since the overindulgence in alcohol, particularly when consumed after taking hydrocodone, a controlled substance, has the strong potential for impairing a pharmacist's ability to perform his licensed duties in a manner consistent with public health, safety, and welfare.

20. Additionally, respondent's conduct giving rise to his DUI conviction was serious, in that he consumed a substantial amount of alcohol, likely more than the amount he admitted to drinking, and drove in an extremely reckless manner causing injury to another. Respondent's blood alcohol content suggests an alcohol problem greater than he is willing to acknowledge. Absent such acknowledgment, rehabilitation is not possible. Fully acknowledging the wrongfulness of one's actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d 933, 940.)

21. Respondent admitted to a previous DUI conviction in 1999. He did not take his actions seriously then, and it was only after his most recent DUI conviction that he felt his conduct was "serious."

22. Respondent is currently on criminal probation, which will be completed in August 2019. He completed three and nine-month DUI programs, and attended court-mandated AA. He appears to have done nothing more than what was required by the court. It is well-established that rehabilitative efforts when a person is on criminal probation are accorded less weight, "[s]ince persons under the direct supervision of correctional authorities are required to behave in exemplary fashion. . . ." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent's 12-month participation in DUI programs did not appear to have helped him gain sufficient insight into his abuse of alcohol as demonstrated by the substance of his testimony. Overall, respondent failed to demonstrate sufficient insight into his alcohol consumption. This lack of insight was highlighted by his lack of an explanation of why he chose to drink after taking hydrocodone, his lack of a sobriety date, his characterization of his DUI convictions as an "aberration," his assertion that he can manage his sobriety by himself, and his lack of reflection on his actions which could have resulted in fatalities.

23. Respondent has a long history of work, and has no history of discipline by the Board. However, other than his proof of AA attendance and completion of DUI programs, he presented no other evidence of rehabilitation, for instance, continued attendance at AA, completion of any courses for medical professionals with alcohol or substance abuse problems, expungement of his conviction, character testimony by friends, family and colleagues, and service and care for others in his community. While respondent has undoubtedly learned important lessons from his mistake, his period of sobriety is in its infancy, and he has provided very little assurances that he will not drink and drive again, particularly when he continues to take hydrocodone.

24. Cause exists to discipline respondent's license for the reasons explained in the Legal Conclusions below. Considering the evidence as a whole, it would not be consistent with the public health, safety, and welfare to allow respondent to maintain his license, even on a restricted basis. Therefore, his license must be revoked.

Costs of Investigation and Enforcement

25. Pursuant to Business and Professions Code section 125.3, complainant has requested prosecution costs in the total amount of \$1,917.50. This amount consists of costs incurred directly by the Office of the Attorney General and billed to the Board. At hearing, complainant introduced, without objection, a Certification of Prosecution Costs; Declaration of Anahita S. Crawford, which requests costs in the amount of \$1,917.50. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of \$1,917.50. The entire amount requested by the Office of the Attorney General is reasonable in light of the description of the work performed and in light of the issues involved in this matter, as discussed in the Legal Conclusions below. Respondent did not introduce any evidence of his inability to pay costs.

LEGAL CONCLUSIONS

Applicable Law

1. To discipline respondent's license, complainant must prove cause for disciplinary action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

2. The Pharmacy Law is set forth in Business and Professions Code section 4000 et seq. Pursuant to Business and Professions Code section 4301, the Board may discipline any holder of a license who has engaged in 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 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.

[¶] ... [¶]

(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.

(Paragraph breaks added.)

Causes for Discipline

3. A pharmacist license may be disciplined if the licensee has engaged in unprofessional conduct. Unprofessional conduct includes the conviction of a crime that is substantially related to the qualifications, functions, and duties of a licensee. (Bus. & Prof. Code, § 4301, subd. (l).) For the reasons discussed in Findings 3 through 5, and 24, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (l), based on his DUI conviction.

4. Unprofessional conduct also includes "the use of any dangerous drug or 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.” (Bus. & Prof. Code, § 4301, subd. (h).) On January 7, 2017, respondent chose to drive his vehicle after having consumed an excessive amount of alcohol as discussed in Findings 4, 6 and 7. Therefore, cause exists to discipline respondent’s pharmacist license pursuant to Business and Professions Code section 4301, subdivision (h).

Conclusion

5. Cause exists to discipline respondent’s pharmacist license for the reasons explained in Legal Conclusions 3 and 4, individually and collectively. When all the evidence discussed above is considered, respondent failed to sufficiently demonstrate his continued ability to perform the duties of a pharmacist in a manner consistent with public health, safety, and welfare, even on a restricted basis, for the reasons discussed in Findings 18 through 24 above. Therefore, his license should be revoked.

Award of Costs

6. 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 or before the Osteopathic Medical Board, 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. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs

incurred and the reasonableness of the costs, which shall be presented as follows:

[¶] . . . [¶]

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

7. The declaration signed by Ms. Crawford constitutes prima facie evidence of the reasonableness of the costs incurred by the Office of the Attorney General and billed to the Board (\$1,917.50). (Bus. & Prof., § 125.3, subd. (c).) Respondent failed to rebut such evidence. After considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$1,917.50 are reasonable and are awarded as set forth in the Order below.

ORDER

1. Pharmacist License No. RPH 21665 issued to respondent Louis H. Kruger is REVOKED. Respondent shall relinquish his wall license and pocket renewal license to the Board within 10 days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked license for three years from the effective date of this decision.

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2. As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Board for its costs of prosecution in the amount of \$1,917.50. Said amount shall be paid in full prior to the reapplication or reinstatement of his license, unless otherwise ordered by the board.

DATED: July 28, 2017

DocuSigned by:
Danette C. Brown
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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:	Case No. 5992
12 LOUIS H. KRUGER	
13 8 Lazy S Lane	ACCUSATION
14 Chico, CA 95928	
15 Original Pharmacist License No. RPH 21665	
16 Respondent.	

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about July 22, 1960, the Board of Pharmacy issued Original Pharmacist License
23 Number RPH 21665 to Louis H. Kruger (Respondent). The Original Pharmacist License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on June 30,
25 2018, unless renewed.

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1 JURISDICTION

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

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

9 STATUTORY PROVISIONS

10 5. Section 4301 of the Code states:

11 The board shall take action against any holder of a license who is guilty of
12 unprofessional conduct or whose license has been issued by mistake. Unprofessional
conduct shall include, but is not limited to, any of the following:

13 (h) The administering to oneself, of any controlled substance, or the use of any
14 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
15 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.

16 ...

17 (i) The conviction of a crime substantially related to the qualifications, functions, and
18 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
19 regulating controlled substances or of a violation of the statutes of this state regulating
controlled substances or dangerous drugs shall be conclusive evidence of
20 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
21 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
22 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
23 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
24 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,
25 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
26 setting aside the verdict of guilty, or dismissing the accusation, information, or
indictment.

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1 COST RECOVERY

2 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 FIRST CAUSE FOR DISCIPLINE

9 (Criminal Conviction)

10 7. Respondent's License is subject to discipline under Code section 4301, subd. (l) in that
11 Respondent was convicted a crime that is substantially related to the qualifications, functions or
12 duties of a pharmacist:

13 a. On or about August 23, 2016, in the case of *People v. Luis Henry Kruger*, (Super. Ct.
14 Butte County, Case No. 16CM02602), Respondent was convicted by the Court on his plea of
15 contest to violating Vehicle Code section 23152(a), driving under the influence of alcohol, a
16 misdemeanor, and admitted to the enhancement pursuant to Vehicle Code section 23578 of driving
17 with a blood alcohol content of .15% or higher. The circumstances are as follows:

18 On or about January 7, 2016, the vehicle Respondent was driving drifted towards another
19 vehicle and nearly collided with the vehicle's driver side mirror. Respondent continued driving
20 and rear-ended a vehicle in which a school crossing guard was seated waiting for students to end
21 their classes. The impact pushed the vehicle forward 15-20 feet. Respondent continued driving
22 and struck a curb. Respondent then attempted to re-engage the transmission to drive away. Upon
23 officers' arrival, Respondent smelled of alcohol, admitted to officers that he had been drinking
24 vodka and had taken hydrocodone and that he felt "f---ed up!" Respondent submitted to a
25 chemical blood test which revealed a blood alcohol content of .28%.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Dangerous Use of Alcohol)

3 8. Respondent is subject to disciplinary action under section 4301(h) in that Respondent
4 used alcoholic beverages to an extent and in a manner dangerous or injurious to himself or others,
5 and more fully set forth in paragraph 7 above.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

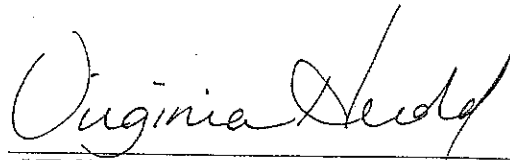
9 1. Revoking or suspending Original Pharmacist License Number RPH 21665, issued to
10 Louis H. Kruger;

11 2. Ordering Louis H. Kruger to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3; and,

14 3. Taking such other and further action as deemed necessary and proper.

15
16
17
18 DATED: _____

2/13/17



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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