

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

In the Matter of the Accusation Against:

HOWARD LEW

Pharmacist License No. 37849

Agency Case No. 7282

OAH No. 2022080019

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 February 8, 2023.

It is so ORDERED on January 9, 2023.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh", is written over a light blue rectangular background.

Seung W. Oh, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

HOWARD LEW, Respondent.

Agency Case No. 7282

OAH No. 2022080019

PROPOSED DECISION

Harden Sooper, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on November 10, 2022.

Gillian E. Friedman, Deputy Attorney General, represented complainant Anne Sodergren, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Frederick M. Ray, Attorney at Law, represented respondent Howard Lew, who was also present.

During the hearing, complainant moved to amend page 4, line 16 of the Accusation to read, "December 20, 2018," instead of "December 22, 2018." The motion

was unopposed. The ALJ granted complainant's motion, and the Accusation is so amended.

The ALJ received oral and documentary evidence. The record was closed and the matter was submitted for decision on November 10, 2022.

On his own motion, the ALJ moved to seal page A128 of Exhibit 9, as it contains criminal history information not authorized for public release. On December 2, 2022, the ALJ issued a protective order sealing page A128 of Exhibit 9.

During a review of the evidence, the ALJ redacted dates of birth and a medical record number from Exhibit 9, for confidentiality purposes.

SUMMARY

Complainant seeks to discipline respondent's pharmacist license for unprofessional conduct related to respondent's two recent criminal convictions for driving while under the influence of dangerous drugs. Complainant established cause to discipline respondent's license for conviction of substantially related crimes, dangerous use of drugs, and multiple convictions involving alcohol or drugs. To ensure public protection, it is appropriate to revoke respondent's license, as recommended by the Board's Disciplinary Guidelines.

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FACTUAL FINDINGS

Jurisdictional Matters

1. On August 12, 1983, the Board issued respondent Pharmacist License Number RPH 37849 (license). The license was in full force and effect during the incidents giving rise to the Accusation. Respondent's license will expire on September 30, 2024, unless renewed.

2. On May 18, 2022, complainant executed the Accusation in her official capacity. The Accusation alleges three causes for discipline of respondent's license: (1) convictions of substantially related crimes, (2) dangerous use of drugs, and (3) multiple convictions involving alcohol or drugs.

3. On June 2, 2022, respondent filed a Notice of Defense, requesting a hearing.

Respondent's Criminal Convictions

DECEMBER 2018 INCIDENT

4. On December 7, 2021, in the Superior Court of California, County of Orange, case number 19NM08850, respondent was convicted upon his plea of guilty of violating Vehicle Code section 23152, subdivision (g), driving while under the combined influence of alcohol and drugs, a misdemeanor. Respondent's initial charge was a violation of Vehicle Code section 23152, subdivision (f), driving while under the influence of any drug, a misdemeanor. Pursuant to a plea agreement, he pled guilty instead to violating subdivision (g), as described above.

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5. The court suspended imposition of sentence and placed respondent on summary probation for five years under terms and conditions including serving 60 days in county jail, completing an 18-month Multiple Offender Alcohol Program, and paying fines and fees totaling \$1,526.

6. The facts and circumstances underlying the criminal conviction occurred on December 20, 2018, when respondent drove while under the influence of drugs while on his way home from work. At approximately 1:17 a.m., California Highway Patrol (CHP) officers observed respondent's vehicle weaving within its lane on Highway 91 near Harbor Boulevard. Respondent told the CHP officers he had been taking several prescription medications for high blood pressure and shoulder and knee pain, but stated he was currently only taking Relafen for high blood pressure. This statement was untrue, as respondent was taking multiple prescription drugs at the time. Respondent failed a series of Field Sobriety Tests (FSTs), and the officers subsequently placed him under arrest for driving under the influence (DUI).

JULY 2020 INCIDENT

7. On November 17, 2021, in the Superior Court of California, County of Los Angeles, case number 1BL00422, respondent was convicted upon his plea of no contest of violating Vehicle Code section 23152, subdivision (g), driving while under the combined influence of alcohol and drugs, a misdemeanor. Respondent's initial charge was a violation of Vehicle Code section 23152, subdivision (f), driving while under the influence of any drug, a misdemeanor. Pursuant to a plea agreement, he pled no contest instead to violating subdivision (g), as described above.

8. The court suspended imposition of sentence and placed respondent on summary probation for three years under terms and conditions including completing

an 18-month Multiple Offender Alcohol Program, completing a Mothers Against Drunk Driving (MADD) victim impact program, and paying fines and fees totaling \$911.

9. The facts and circumstances underlying the criminal conviction occurred on July 28, 2020, when respondent drove his vehicle while under the influence of drugs while on his way home from work. At approximately 2:45 a.m., CHP officers responded to a report of a collision near the interchange of Interstate 605 and Highway 91 in Cerritos. Respondent had driven his vehicle off the roadway and down an embankment, which is where the CHP officers observed respondent upon their arrival, standing next to his damaged vehicle. Respondent told officers he swerved in response to a semi-truck appearing to weave out of its lane on Interstate 605, causing him to lose control of his vehicle. Officers observed respondent stumbling and speaking incoherently. Respondent stated he was currently taking seven different types of medication for pain. He did not successfully complete FSTs, and the officers subsequently placed him under arrest for DUI.

Respondent's Drug Use

10. Respondent takes multiple prescription drugs to treat various conditions. He testified he takes opioid medications such as hydrocodone, used to treat pain, for foot, leg, and shoulder pain. He takes diazepam, an anti-anxiety medication, as a sleep aid. Respondent takes additional medication to treat high blood pressure and asthma. Both respondent and Michael Ajayi, a Board inspector and licensed pharmacist, testified it is not advisable to take opioids and diazepam together. The side effects of opioids include drowsiness and sleepiness. Diazepam is a sedative. Both hydrocodone and diazepam may be dispensed only with a prescription.

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11. Respondent acknowledged the presence of multiple drugs in his blood drawn after his December 2018 arrest, including hydrocodone and diazepam, as detailed in an Orange County Crime Lab report. (Ex. 7.) He also acknowledged the presence of benzodiazepines, which includes diazepam, in his blood drawn after his July 2020 arrest, as detailed in a Los Angeles County Sheriff's Department laboratory report. (Ex. 10.) Consistent with his admission to CHP officers at the time of his arrest, respondent testified hydrocodone was "probably in [his] system, too," despite his blood testing negative for it.

12. Respondent's efforts to stop using opioids and diazepam have not been successful. He testified he is "trying to get off opioid medications" and has reduced his usage from 200 tablets per month to 60 tablets per month. He is also "trying to get off diazepam" and has reduced his number of tablets per month from 100 to 20. Respondent acknowledged, "prescription medications can be a problem for myself and everybody." He further testified, "sometimes it's not okay to take medications," even if he has a prescription for them.

Respondent's Evidence

13. Respondent is 65 years old. Between when he became licensed in 1983 and 1999, respondent worked as a pharmacist for Thrifty, which later became RiteAid. Since 1999, respondent has worked as a pharmacist for Kaiser. He works in a central refill pharmacy in Downey, overseeing and verifying prescription refills completed by automated dispensing machines and conducting manual prescription refills. He works a shift from 4:00 p.m. to 12:30 a.m., five days per week.

14. Respondent has no prior license discipline.

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15. Respondent received positive performance evaluations in 2018, 2019, and 2020. During those years, he received a “fully effective” rating in each evaluated category. (Ex. A.) Respondent testified he has not since received a formal performance review, making 2020 his most recent evaluation. Complainant did not present evidence of any discipline of respondent during his tenure at Kaiser.

16. Respondent remains on summary probation for both his criminal convictions and has thus far complied with the required terms and conditions. He completed a home confinement program in lieu of 60 days in county jail. (Ex. D.) He paid all fines and fees owed for both cases. (Ex. 8, p. A96; Ex. 11, p. A142.) On December 15, 2021, he filed proof of enrollment in an 18-month Multiple Offender Alcohol program. (Ex. 8, p. A96.) As part of that program, he attends weekly Alcoholics Anonymous (AA) meetings. (Ex. B.) He has no subsequent arrests or criminal convictions.

17. Respondent’s longtime friend and former colleague, Thuy Tien Nguyen, PharmD, testified in support of respondent. Dr. Nguyen vouched for respondent’s character and work ethic, describing him as an important mentor when she entered the pharmacy profession approximately 28 years ago. The two remain close friends, speaking often about professional and personal matters. Dr. Nguyen also wrote a letter in support of respondent. (Ex. C.) She was aware of respondent’s criminal convictions. The credibility of Dr. Nguyen’s testimony was diminished by her failure to disclose that respondent currently lives with Dr. Nguyen and her family.

18. Respondent demonstrated a limited appreciation of the seriousness of his misconduct. In his testimony, respondent provided a detailed description of each incident, in which he acknowledged taking various prescription drugs before driving but denied engaging in poor or dangerous driving. He also stated he believed he

performed well on both sets of FSTs administered by CHP officers. These descriptions were inconsistent with the information contained within the police reports. On cross-examination, respondent admitted, "it's very possible I was under the influence" and the officers made "a good call for public safety for myself and others."

19. The evidence provided little assurance respondent would not reoffend. Respondent attributed the poor decision-making underlying his DUI convictions to stress, fatigue, and lack of proper nutrition. Although he expressed a desire to reduce his use of prescription drugs, he did not directly connect his prescription drug use to his misconduct. Respondent testified AA and Narcotics Anonymous (NA) meetings are helpful because they remind him to maintain structure, discipline, and boundaries in his life. However, he did not elaborate on how he does so. Overall, it is unclear how respondent intends to address the issues underlying his misconduct.

Costs

20. The Board seeks reimbursement of \$5,968.75. Of those costs, 15.25 hours totaling \$3,355 were incurred by attorneys, and 12.75 hours totaling \$2,613.75 were incurred by paralegals working on the matter.

21. Respondent did not offer evidence of his inability to pay the costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Respondent's pharmacist license is a professional license. (Bus. & Prof. Code, § 4050; *Murphy v. E.R. Squibb & Sons, Inc.* (1985) 40 Cal.3d 672, 678-679.) To impose discipline on a professional license, complainant must prove cause for

discipline by clear and convincing evidence to a reasonable certainty. (*Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, 1171; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487.)

Applicable Law

2. The Board shall take disciplinary action against any licensee who is guilty of unprofessional conduct. Unprofessional conduct includes any of the following:

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

[¶] . . . [¶]

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

(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.

(Bus. & Prof. Code, § 4100, subds. (h), (j), (k), (l).)

3. Substantially related crimes include those which involve a conviction for driving under the influence of drugs or alcohol. (Cal. Code Regs., tit. 16 (CCR), § 1770, subd. (c)(5).)

4. A dangerous drug includes any drug that by federal or state law can be lawfully dispensed only on prescription. (Bus. & Prof. Code, § 4022.)

Causes for Discipline

CONVICTION OF SUBSTANTIALLY RELATED CRIMES

5. Complainant established by clear and convincing evidence respondent's two criminal convictions were substantially related to the qualifications, functions, and duties of a licensed pharmacist. The Board's regulations define substantially related crimes to include those involving a conviction for driving under the influence of drugs or alcohol. Both of respondent's criminal convictions were for DUI offenses. Cause therefore exists to discipline respondent's license, pursuant to Business and Professions Code section 4301, subdivision (l), in conjunction with CCR section 1770, subdivision (c)(5).

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DANGEROUS USE OF DRUGS

6. Hydrocodone and diazepam are dangerous drugs, as defined by Business and Professions Code section 4022. Both can be lawfully dispensed only on prescription.

7. Complainant established by clear and convincing evidence respondent used dangerous drugs in a manner as to be dangerous to himself and the public. Both of respondent's DUI offenses occurred while he was driving home from work. Respondent admitted he took prescription drugs, specifically hydrocodone and diazepam, before driving. Respondent or another member of the public could easily have been injured in either DUI incident, especially the July 2020 incident, when respondent's vehicle left the roadway and traveled down an embankment. Cause therefore exists to discipline respondent's license, pursuant to Business and Professions Code section 4301, subdivisions (h) and (j).

MULTIPLE CONVICTIONS INVOLVING ALCOHOL OR DRUGS

8. Complainant established by clear and convincing evidence respondent suffered multiple misdemeanor criminal convictions involving the use of dangerous drugs, because both of respondent's DUI convictions involved the use of hydrocodone and diazepam. Cause therefore exists to discipline respondent's license, pursuant to Business and Professions Code section 4301, subdivision (k).

Disposition

9. Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection

of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 4001.1.)

CATEGORY OF VIOLATION

10. The Board's Disciplinary Guidelines, revised February 2017 (Guidelines), describe categories of violations and recommended penalties. Most criminal convictions involving alcohol or dangerous drugs constitute Category III violations. (Guidelines, p. 40.) For Category III violations, the minimum recommended penalty is revocation stayed, 90 days of actual suspension, and three to five years of probation. The maximum recommended penalty is revocation. (*Id.*) Repeat criminal convictions involving the abuse of alcohol or drugs or repeat Category III violations constitute Category IV violations. For Category IV violations, the recommended penalty is revocation. (*Id.* at p. 41.)

11. Respondent's conduct warrants Category IV discipline. Each of his criminal convictions involved the use of dangerous drugs and is a Category III violation. Because respondent committed multiple Category III violations, each involving the use and abuse of dangerous drugs, the Board's Guidelines require a higher level of discipline.

LEVEL OF DISCIPLINE

12. The Guidelines state, "the Board believes there should be no tolerance for licensees . . . who, in the absence of appropriate evidence of rehabilitation, personally abuse drugs or alcohol." (Guidelines, p. 1.)

13. Despite having a prescription for the dangerous drugs he used, respondent's repeated irresponsible use of hydrocodone and diazepam constitutes

abuse. A prescription alone does not ensure respondent's safety nor that of the public. Respondent acknowledged it is not always appropriate to take dangerous drugs, even with a prescription. As a pharmacist, respondent was especially well-positioned to understand and assess the risks of his own conduct. However, as evidenced by his two DUI offenses, respondent did not properly manage his own use of prescription drugs, and he has not provided adequate assurances he will be able to do so in the future.

14. Rehabilitation is a "state of mind," and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940). However, a truer indication of rehabilitation than remorse is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) "The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

15. Respondent did not present sufficient evidence of rehabilitation to warrant deviation from the recommended discipline of revocation for Category IV violations. Respondent's criminal convictions occurred only approximately one year ago, and he remains on probation in both cases. Respondent did not fully acknowledge the wrongfulness of his past actions. Respondent's testimony at the hearing was inconsistent with statements he made to CHP officers investigating his DUI offenses, the most recent of which occurred only two and one-half years ago. He appeared to downplay the role prescription drugs played in his misconduct, despite admitting it was "very possible" he was under the influence while driving in both incidents. Respondent did not offer a coherent plan to avoid recurrence of his

misconduct or to ensure public safety while he worked as a pharmacist. He did not stop using hydrocodone or diazepam after his first DUI arrest, his second DUI arrest, both his criminal convictions, or in the year that has elapsed since his criminal convictions. He still takes both drugs, despite acknowledging it is dangerous to take them together. A pharmacist working while under the influence of dangerous drugs poses a significant danger to public safety. Because respondent has not demonstrated he is rehabilitated, it is therefore appropriate to revoke his license, as recommended by the Guidelines.

Costs

16. Pursuant to Business and Professions Code section 125.3, complainant is entitled to recover the reasonable costs of prosecution and enforcement of this matter. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 (*Zuckerman*), the Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or the severity of the discipline imposed 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. (*Zuckerman*, supra, 29 Cal.4th at p. 45.)

17. Complainant requests reimbursement of \$5,968.75 in enforcement costs. The requested costs are unreasonable under the *Zuckerman* factors. Respondent was unsuccessful in getting charges dismissed or reducing the severity of the proposed discipline. He did not raise a colorable challenge to the proposed discipline. Respondent did not offer any evidence of his inability to pay the costs. Complainant

did not conduct a significant investigation of respondent's conduct. Based on respondent's subjective good faith belief in the merits of his position and the severity of the order below, it is appropriate to reduce the costs by 25 percent to \$4,476.56.

ORDER

License number RPH 37849, issued to respondent Howard Lew, is revoked. Respondent shall relinquish his license, including any indicia of licensure issued by the Board, 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.

As a condition precedent to reinstatement of his revoked license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$4,476.56. Said amount shall be paid in full prior to the reinstatement of his license unless otherwise ordered by the Board.

DATE: 12/06/2022

Harden Sooper

HARDEN SOOPER

Administrative Law Judge

Office of Administrative Hearings

1 ROB BONTA
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 KIM KASRELIOVICH
Supervising Deputy Attorney General
4 State Bar No. 261766
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 269-6444
6 Facsimile: (916) 731-2126
E-mail: Kim.Kasreliovich@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 7282

13 **HOWARD LEW**
14 **P.O. Box 5559**
Diamond Bar, CA 91765

ACCUSATION

15 **Pharmacist License No. RPH 37849**

16 Respondent.
17

18 **PARTIES**

19 1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

21 2. On or about August 12, 1983, the Board issued Pharmacist License Number RPH
22 37849 to Howard Lew (Respondent). The Pharmacist License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on September 30, 2022, unless
24 renewed.

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JURISDICTION

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

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

5. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS AND REGULATORY PROVISIONS

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of

unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

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

....

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

(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.

10. 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.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Convictions of Substantially Related Crimes)**

7 12. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
8 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
9 was convicted of a crime substantially related to the qualifications, functions, and duties of a
10 Pharmacist as follows:

11 a. On or about November 17, 2021, after a plea of nolo contendere, Respondent was
12 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (g)
13 (driving under the influence of combined alcohol/drugs), in the criminal proceeding titled: *The*
14 *People of the State of California v. Howard Lew* (Super. Ct. Los Angeles County, 2021, No.
15 1BL00422). The court placed Respondent on 36-months of probation with terms and conditions.
16 The circumstances surrounding the conviction are that on or about December 22, 2018, officers
17 observed Respondent weaving on the freeway. Officers conducted a traffic stop, noticed
18 Respondent's pupils were constricted, and his speech was slow. Respondent submitted to a blood
19 test, which resulted in positive levels of the following drugs: Acetaminophen, Alprazolam,
20 Caffeine, Codeine, Diazepam, Duloxetine, Hydrocodone, Hydromorphone, Morphine,
21 Naumetone, Nordiazepam, Norhydrocodone, Oxazepam-glucuronide, Pramoxine, Propranolol, and
22 Temazepam-glucuronide.

23 b. On or about December 7, 2021, after pleading guilty, Respondent was convicted of
24 one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (g) (driving
25 under the influence of combined alcohol/drugs), in the criminal proceeding titled: *The People of*
26 *the State of California v. Howard Lew* (Super. Ct. Orange County, 2021, No. 19NM08850). The
27 court sentenced Respondent to serve 60-days in jail and placed him on five (5) years of probation
28 with terms and conditions. The circumstances surrounding the conviction are that on or about July

1 28, 2020, officers responded to a call of a traffic collision with property damage. Officers
2 observed Respondent's vehicle at the bottom of the embankment, on the roadway edge of the
3 transition between freeways. Officers contacted the Respondent and observed him display
4 objective symptoms of being under the influence of drugs. Respondent informed the officers he
5 was driving home from work and admitted to taking seven (7) different types of medication for
6 pain.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Dangerous Use of Drugs)**

9 13. Respondent is subject to disciplinary action under Code section 4301, subdivisions
10 (h) and (j), in the Respondent used dangerous drugs to the extent or in a manner as to be
11 dangerous or injurious to himself, another person, or to the public. Complainant refers to, and by
12 this reference incorporates, the allegations set forth above in paragraph 12, as though fully set
13 forth herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Multiple Convictions Involving Alcohol/Drugs)**

16 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
17 in that Respondent multiple convictions of more than one misdemeanor or any felony involving
18 the use, consumption, or self-administration of any dangerous drug. Complainant refers to, and by
19 this reference incorporates, the allegations set forth above in paragraph 12, as though fully set
20 forth herein.

21 **PRAYER**

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

24 1. Revoking or suspending Pharmacist License Number RPH 37849, issued to Howard
25 Lew;

26 2. Ordering Howard Lew to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED: 5/18/2022

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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