

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

In the Matter of the Accusation
Against:

JACOB AYNEHCHI
aka YAGHOUB AYNEHCHI
204 South Oakhurst Drive
Beverly Hills, California 90212,
Pharmacist's License No. RPH-42372,

And

IMPERIAL CENTURY PHARMACY, INC.
dba IMPERIAL CENTRAL PHARMACY
1136 East Imperial Highway
Los Angeles, California 90059,
Pharmacy Permit No. PHY-39707,

Respondents.

Case No. 2430

OAH No. L-2002010100

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on March 28, 2002, at Los Angeles. Complainant was represented by Linda Sun, Deputy Attorney General. Respondent was present and represented by Herbert L. Weinberg, Attorney at Law.

At the conclusion of the hearing, the record was held open for respondent to file court documents. On April 25, 2002, respondent filed documents from the U.S. Department of Justice regarding the civil judgment and fine and restitution; said documents were thereupon admitted into evidence as Exhibit E pursuant to Government Code Section 11513.

Oral and documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on April 25, 2002, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on November 9, 2001, the Accusation was made and filed by Patricia F. Harris in her official capacity as Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (hereinafter Board).

2. (A) On or about January 7, 1981, the Board of Pharmacy issued pharmacist's license no. RPH-42372 to Jacob Aynehchi, also known as Yaghoub Aynehchi (hereinafter respondent), to practice pharmacy in the State of California. Said license expires on January 31, 2003, and is in full force and effect.

(B) On or about March 7, 1995, the Board of Pharmacy issued original pharmacy permit no. PHY-39707 to Imperial Century Pharmacy, Inc., a corporation doing business as Imperial Central Pharmacy at 1136 East Imperial Highway in Los Angeles. Since March 7, 1995, respondent Aynehchi has been the president of Imperial Century Pharmacy, Inc., and the pharmacist-in-charge of Imperial Central Pharmacy. Said pharmacy permit expires on March 1, 2003, and is in full force and effect.

3. (A) Effective on December 6, 1994, and pursuant to a Stipulation in Settlement in the Matter of the Accusation Against Imperial Central Pharmacy and Yaghoub Aynehchi, Case No. 1675, the Board revoked the pharmacist's license of respondent Aynehchi and the pharmacy permit of Imperial Central Pharmacy for unprofessional conduct, stayed the orders of revocation, and placed said license and permit on probation for three years under certain terms and conditions.

(B) The general facts and circumstances for the stayed revocations of respondents' pharmacist's license and pharmacy permit were that respondent Aynehchi as a pharmacist-in-charge of Imperial Central Pharmacy engaged in the unlicensed practice of medicine. From in or about 1990 until continuing until April 1992, respondent Aynehchi treated a woman for weight control by furnishing her with diuretics, thyroid medications, and diet pills without lawful prescriptions. The woman administered said medications to herself and was required to be hospitalized on an emergency basis after suffering a seizure caused by her use of said medications. Respondent Aynehchi furnished dangerous drugs and controlled substances without prescriptions and treated or prescribed for the woman's physical condition without a valid medical certificate.

(C) About two years later, on or about February 6, 1997, the Board of Pharmacy granted respondent Aynehchi's petition for early termination of probation and terminated the probation imposed upon the pharmacist's license of respondent Aynehchi and the pharmacy permit of respondent Imperial Century Pharmacy, Inc., on condition that respondents pay the Board's costs of investigation and prosecution in the amount of \$9,362.

4. For the past five years or so since the early termination of his probation, respondent Aynehchi has practiced pharmacy and acted as the pharmacist-in-charge of

Imperial Central Pharmacy located in the southern central area of Los Angeles. Aynehchi remains the president and sole shareholder of the corporate permittee Imperial Century Pharmacy, Inc. However, in 1999, respondent Aynehchi suffered the conviction described hereinbelow.

5. (A) On or about November 22, 1999, before the United States District Court, Eastern District of California, in United States v. Yaghoub Aynehchi, aka Jacob Aynehchi, Case No. CR-S-99-344 FCD, respondent Aynehchi was convicted on his plea of guilty of violating Title 18, United States Code, Section 1347 (health care fraud), a felony and crime involving moral turpitude.

(B) Following his guilty plea, on April 26, 2000, respondent was sentenced to 48 months of probation on condition that he spend eight months in home detention with electronic monitoring, pay immediately a special assessment of \$100, pay immediately a fine of \$10,000, pay immediately restitution in the amount of \$118,000, submit to search of his person and property, not dispose of any assets until restitution is paid without prior court approval, and provide the probation officer with requested financial information.

(C) The facts and circumstances of the conviction are that, beginning in or about June 1996 and continuing until in or about July 1997, respondent Aynehchi knowingly and willfully executed a scheme to defraud the Medi-Cal health care benefits program. Aynehchi dispensed generic drugs to customers but then billed Medi-Cal as if he had furnished brand name drugs which qualified for higher reimbursement rates. In addition, Aynehchi provided Medi-Cal recipients with medications that they desired but not covered by the Medi-Cal reimbursement program. He then billed Medi-Cal as if he had furnished qualifying medications to those patients. As such, respondent Aynehchi submitted said false claims to Medi-Cal; he and Imperial Central Pharmacy then received reimbursements and thereby wrongfully defrauded the Medi-Cal program of \$118,000.

(D) Respondent Aynehchi's conviction for health care fraud was for a crime substantially related to the qualifications, functions, or duties of a licensed pharmacist. Honesty and integrity are qualities expected of a Board of Pharmacy licensee.

6. Respondent Aynehchi remains on probation for his federal health care fraud conviction. He has paid the special assessment of \$100, the fine of \$10,000, and restitution of \$118,000. He served the eight months of home detention. Respondent has complied with the conditions of his criminal probation. In addition, respondent has satisfied the concurrent civil judgment by paying \$290,000 in civil recovery to the U.S. Department of Justice. His payment of the \$290,000 civil judgment satisfied the criminal fine and restitution. [Exh. D]

7. Respondent Aynehchi expresses remorse and apologizes for his offense. He explains he did not realize the seriousness of his conduct. He actually dispensed certain drugs but billed for other types of drugs. Respondent indicates he did so because his customers were often poor and needed medications which were not always covered by Medi-

Cal insurance. He states that the customers did have prescriptions but not necessarily for the medications that he dispensed to them.

8. Respondent Aynehchi seeks forgiveness for his offense. He is 67 years old and has practiced pharmacy for 30 years. He knows of no way other than working as a pharmacist to support his wife and family.

9. Respondent Aynehchi was born and attended college in Iran. He attained his master's degree and doctorate from the University of Wisconsin at Madison. In or about 1968, he returned to Iran and taught pharmacology as a professor at the University of Teheran for approximately 20 years. He later became head of the department of pharmacology at said university. When the fundamentalist revolution arose in Iran, respondent fled to the United States to escape persecution and protect his Jewish-Persian family. He has been married now for 35 years. His wife had to retire from teaching due to a medical disability and recently obtained a degree in rehabilitation counseling. Their older son is a resident in neurology in New York, the younger son attends college at UC Berkeley, and their daughter is a graphic designer in Los Angeles.

10. The reasonable costs of investigation and enforcement of this matter total \$3,218.25, as established by the certification of costs [Exh. 3].

11. Respondent has submitted numerous letters of reference from friends, colleagues, and customers who attest to his courage and diligence as well as his kind and caring nature as a pharmacist. He has overcome much adversity to own and to continue to operate his pharmacy.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke respondent Aynehchi's pharmacist's license of respondent Aynehchi and pharmacy permit of respondent Imperial Century Pharmacy, Inc., pursuant to Business and Professions Code Section 4301(f), 4301(l), and 4301(o) in conjunction with Title 16, California Code of Regulations, Section 1770, in that respondent Aynehchi has been convicted of a crime substantially related to the qualifications, functions, or duties of a

licensed pharmacist and, in committing the offense, respondent Aynehchi engaged in acts involving moral turpitude, dishonesty, fraud, or deceit in the course of his relations as a licensed pharmacist, based on Finding 5 above.

2. Rehabilitation--Based on Findings 6 - 9 and 11 above, respondent Aynehchi did not fully establish that he is rehabilitated from his conviction for health care fraud. Respondent committed a serious crime in the course of his duties and functions as a licensed pharmacist; he filed false and fraudulent Medi-Cal claims to receive \$118,000 to which he was not legally entitled under the Medi-Cal program. This is his second instance of unprofessional conduct. He was terminated from probation around the time he was committing his offense.

His offense and conviction are still recent and he remains on probation for his conviction for another two years. He did pay the federal government for all criminal fines, penalties, and restitution. However, respondent did not show that he is involved in any community, church, or volunteer activities. While he is apparently barred from participating in the Medi-Cal pharmacy program due to his conviction, respondent did not demonstrate that he has changed his professional practices or pharmacy business operations to avoid further violations of law or unprofessional conduct. Respondent's contentions that he served the community by operating a pharmacy in a poorer area and providing patients with needed medications do not necessarily mitigate his offense or show he is rehabilitated from his unprofessional conduct.

3. Grounds exist to direct respondents to pay the reasonable costs of investigation and enforcement pursuant to Business and Professions Code Section 125.3 in that respondents violated the Pharmacy Law, based on Conclusions of Law no. 1 and Finding 10 above.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. Pharmacist's license no. RPH-42372 and licensing rights previously issued by the Board of Pharmacy to respondent Jacob Aynehchi, also known as Yaghoub Aynehchi, 204 South Oakhurst Drive, Beverly Hills, are revoked, based on Conclusions of Law nos. 1 - 2, jointly and for all.

2. Pharmacy permit no. PHY-39707 and permitting rights previously issued to Imperial Century Pharmacy, Inc., doing business as Imperial Central Pharmacy, 1136 East Imperial Highway, Los Angeles, are revoked, based on Conclusions of Law nos. 1 - 2 above, jointly and for all.

3. Respondents Jacob Aynehchi and Imperial Century Pharmacy, Inc., will not be ordered to pay the Board of Pharmacy for its reasonable costs of investigation and enforcement at this time. In the event, however, that respondents, or each of them, applies for the reinstatement of license, the Board of Pharmacy in its discretion may order the payment of said costs as condition of reinstatement of the license or permit.

Dated:

May 17, 2012



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:)

JACOB AYNEHCHI)
aka YAGHOUB AYNEHCHI)
204 South Oakhurst Drive)
Beverly Hills, California 90212)
Pharmacist's License No. RPH-42372,)

Case No. 2430

OAH No. L-2002010100

and)

IMPERIAL CENTURY PHARMACY, INC.)
dba IMPERIAL CENTRAL PHARMACY)
1136 East Imperial Highway)
Los Angeles, California 90059)
Pharmacy Permit No. PHY-39707,)

Respondent.)

DECISION

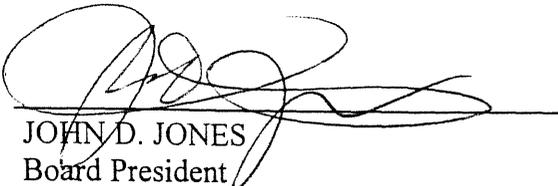
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on July 27, 2002 .

IT IS SO ORDERED June 27, 2002 .

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


JOHN D. JONES
Board President

rfm

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

10

11 In the Matter of the Accusation Against:

Case No. 2430

12 JACOB AYNEHCHI
aka YAGHOUB AYNEHCHI
13 204 S. Oakhurst Drive
Beverly Hills, CA 90212
14 Original Pharmacist License No. RPH 42372

ACCUSATION

15 and

16 IMPERIAL CENTRAL PHARMACY
1136 E. Imperial Highway
17 Los Angeles, CA 90059
JACOB AYNEHCHI, President
18 HAIDEH AYNEHCHI, Vice-President
SHAHRAD AYNEHCHI, Secretary

19 Original Permit License No. PHY 39707

20

Respondents.

21

22 Complainant alleges:

23

PARTIES

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

27 2. On or about March 9, 1989, the Board of Pharmacy issued Original
28 Pharmacist License Number RPH 42372 to Jacob Aynehchi aka Yaghoub Aynehchi

1 ("Respondent Aynehchi"). The Original Pharmacist License was in full force and effect at all
2 times relevant to the charges brought herein and will expire on January 31, 2003, unless renewed.

3 3. On or about March 7, 1995, the Board of Pharmacy issued Original Permit
4 License Number PHY 39707 to Imperial Century Pharmacy, Inc., a corporation dba Imperial
5 Central Pharmacy ("Respondent Pharmacy"). Jacob Aynehchi has been the pharmacist-in-charge
6 and President since March 7, 1995, Haideh Aynehchi has been the Vice-President since March 7,
7 1995, and Shahrad Aynehchi has been the Secretary from March 7, 1995. Disciplinary action
8 was taken against said license in administrative case number 1675. The Original Permit License
9 was in full force and effect at all times relevant to the charges brought herein and will expire on
10 March 1, 2002, unless renewed.

11 JURISDICTION

12 4. This Accusation is brought before the Board of Pharmacy ("Board"),
13 under the authority of the following sections of the Business and Professions Code ("Code").

14 5. Section 4301 of the Code states:

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

19 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
20 deceit, or corruption, whether the act is committed in the course of relations as a licensee
21 or otherwise, and whether the act is a felony or misdemeanor or not.

22 (l) The conviction of a crime substantially related to the qualifications, functions,
23 and duties of a licensee under Chapter 9 (commencing with Section 4000) of the Business
24 and Professions Code. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating
26 controlled substances or of a violation of the statutes of this state regulating controlled
27 substances or dangerous drugs shall be conclusive evidence of unprofessional conduct.
28 In all other cases, the record of conviction shall be conclusive evidence only of the fact

1 that the conviction occurred. The board may inquire into the circumstances surrounding
2 the commission of the crime, in order to fix the degree of discipline or, in the case of a
3 conviction not involving controlled substances or dangerous drugs, to determine if the
4 conviction is of an offense substantially related to the qualifications, functions, and duties
5 of a licensee under Chapter 9 (commencing with Section 4000) of the Business and
6 Professions Code. A plea or verdict of guilty or a conviction following a plea of nolo
7 contendere is deemed to be a conviction within the meaning of this provision. The board
8 may take action when the time for appeal has elapsed, or the judgment of conviction has
9 been affirmed on appeal or when an order granting probation is made suspending the
10 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
11 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
12 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
13 or indictment.

14 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
15 abetting the violation of or conspiring to violate any provision or term of Chapter 9
16 (commencing with Section 4000) of the Business and Professions Code or of the
17 applicable federal and state laws and regulations governing pharmacy, including
18 regulations established by the board.

19 6. Title 16, California Code of Regulations, section 1770 states that for the
20 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division
21 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
22 considered substantially related to the qualifications, functions or duties of a licensee or
23 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
24 registrant to perform the functions authorized by his license or registration in a manner consistent
25 with the public health, safety, or welfare.

26 7. Section 125.3 of the Code states, in pertinent part, that the Board may
27 request the administrative law judge to direct a licentiate found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation

1 and enforcement of the case.

2 CAUSE FOR DISCIPLINE

3 (Substantially Related Conviction)

4 8. Respondents Aynehchi and Pharmacy are subject to disciplinary action
5 under section 4301 (f), (l) and (o) of the Code, in conjunction with Title 16 California Code of
6 Regulation section 1770 in that Respondent Aynehchi was convicted of a crime related to the
7 practice of a pharmacy. The circumstances are as follows:

8 9. On or about November 22, 1999, in the United States District Court for the
9 Eastern District of California, in a case entitled United States v. Yaghoub Aynehchi, case number
10 99-344 FCD, Respondent Aynehchi plead guilty to violating 18 U.S.C. 1347, health care fraud, a
11 felony. Respondent was sentenced to 48 months probation with certain terms and conditions.
12 The circumstances are as follows:

13 a. Beginning on or about June 30, 1996 through July, 1997, Respondent
14 knowingly and willfully executed a scheme to defraud Medi-Cal Program, to wit, Respondent
15 dispensed generic drugs and then billed Medi-Cal as if a brand name drug, which qualified for
16 higher reimbursement, had been dispensed.

17 b. Respondent also provided medication to Medi-Cal recipients not covered
18 by the Medi-Cal formulary. Respondent submitted bills to Medi-Cal, as if a medication covered
19 by the Medi-Cal Program had been dispensed. Respondent wrongfully defrauded the Medi-Cal
20 Program out of approximately \$118,000.

21 DISCIPLINE CONSIDERATIONS

22 10. To determine the degree of discipline, if any, to be imposed on
23 Respondents Aynehchi and Pharmacy, Complainant alleges that commencing in 1990 and
24 continuing through April 1992, Respondent Aynehchi engaged in the unlicensed practice of
25 medicine by treating Ciella W. for weight loss. Further, commencing on January 1, 1991 and
26 continuing through April 1992, Respondent Pharmacy by and through Respondent Aynehchi
27 engaged in the unlicensed practice of medicine by treating Ciella W. for weight loss.
28 Commencing in or about 1990 and continuing through April 1992, Respondents Aynehchi and

1 Pharmacy furnished unknown quantities of Phentermine, thyroid tablets, and
2 Hydrochlorothiazide to Ciella W. for weight loss in the absence of lawful prescriptions. Thus,
3 in a prior disciplinary action entitled In the Matter of the Accusation Against Yaghoub Aynehchi
4 and Imperial Central Pharmacy before the Board of Pharmacy, Case Number AC 92 1675,
5 Respondents Aynehchi and Pharmacy licenses were revoked, however the revocations were
6 stayed and Respondents Aynehchi and Pharmacy were placed on probation for three years with
7 certain terms and conditions, for violating Business and Professions Code sections 4350.5, 4227
8 (a), 2052 and 4363, in conjunction with Health and Safety Code section 11379(a). That
9 stipulation was adopted by the Board as its decision on or about November 7, 1994 and is
10 incorporated by reference as if fully set forth.

11 PRAYER

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

- 14 1. Revoking or suspending Original Pharmacist License Number RPH
15 42372, issued to Jacob Aynehchi ;
- 16 2. Revoking or suspending Original Permit License Number PHY 39707,
17 issued to Imperial Central Pharmacy;
- 18 3. Ordering Jacob Aynehchi and Imperial Central Pharmacy to pay the Board
19 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
20 Business and Professions Code section 125.3;
- 21 4. Taking such other and further action as deemed necessary and proper.

22 DATED: 11/9/01

23
24 P. J. Harris
25 PATRICIA F. HARRIS
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant