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Attorneys for Complainant

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

In the Matter of the Accusation Against: ROBERT WAYNE BLACKBURN 25515 Lone Pine Laguna Hills, CA 92653 Pharmacist License No. RPH 30586 Respondent.	Case No. 2784 OAH No. 2006050922 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Interim Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Thomas L. Rinaldi, Deputy Attorney General.

2. Respondent Robert Wayne Blackburn Robert Wayne Blackburn (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 30, 1990, the Board of Pharmacy issued Pharmacist

License No. RPH 30586 to Respondent. The Pharmacist License is currently active and will expire on April 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2784 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 8, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2784 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 2784. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 2784.

9. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board of Pharmacy (Board) 's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 30586 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

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

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

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

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2784 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in

writing acknowledging the employer has read the decision in case number 2784.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2784 in advance of the Respondent commencing work at each pharmacy.

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

7. **No Preceptorships, Supervision of Interns, or Serving as a Consultant, Limitations on Being Pharmacist-in-Charge (PIC).** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board in a wholesale capacity or for an entity engaging in any activities for which a wholesale permit is required, unless otherwise specified in this order.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution of this matter in the amount of $49,078.00. This amount reflects an offset of $6,744, which represents reimbursement of the costs of investigation and enforcement Respondent previously paid pursuant to Board of Pharmacy Case No. 2421. Respondent shall make said payments in a payment plan approved by the Board.

The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

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

10. **Status of License**. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which

suspension or probation is tolled.

If Respondent's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

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

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

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

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of eighty 80 hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

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

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

15. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: February 12, 2007.

ROBERT WAYNE BLACKBURN
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 2/20/07

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS L. RINALDI
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004601184
60190537.wpd

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

In the Matter of the Accusation Against: ROBERT WAYNE BLACKBURN 25515 Lone Pine Laguna Hills, CA 92653 Pharmacist License No. RPH 30586 Respondent.	Case No. 2784 OAH No. 2006050922

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 25, 2007.

It is so ORDERED March 26, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2784

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

In the Matter of the Accusation and Petition to Revoke Probation Against: ROBERT WAYNE BLACKBURN 25515 Lone Pine Laguna Hills, CA 92653 Pharmacist License No. RPH 30586, Respondent.	Case No. 2784 OAH No. **ACCUSATION** **AND** **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

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

2. On or about April 30, 1990, the Board of Pharmacy issued Pharmacist License No. RPH 30586 to Robert Wayne Blackburn (Respondent). Respondent's Pharmacist License is currently on probationary status until September 10, 2006. The license will expire on April 30, 2007, unless renewed.

JURISDICTION

3. This Accusation and Petition to Revoke Probation 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 4300 permits the board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 states, in pertinent part:

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

. . . .

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

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

6. Section 4059.5 states, in pertinent part:

"(a) Except as otherwise provided in this chapter, dangerous drugs or dangerous devices may only be ordered by an entity licensed by the board and shall be delivered to the licensed premises and signed for and received by a pharmacist. Where a licensee is permitted to operate through an exemptee, the exemptee may sign for and receive the delivery.

7. Section 4160 states, in pertinent part:

"(a) No person shall act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board. Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

. . . .

"(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable. . . ."

8. Section 4043, subdivision (a), states, in pertinent part:

""Wholesaler" means and includes every person who acts as a wholesale merchant, broker, jobber, customs broker, reverse distributor, agent, or out-of-state distributor, who sells for resale, or negotiates for distribution, or takes possession of, any drug or device included in Section 4022. . . ."

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

10. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to 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.

INTEGRATED HEALTH CARE ASSETS

11. Integrated Health Assets, Inc. ("IHA") is a California for-profit corporation with Robert Wayne Blackburn as its sole officer and director. On or about January 25, 2000, Robert Wayne Blackburn was issued 100% of the corporation's common stock. The corporation's agent for service of process is Robert Wayne Blackburn, 28241 Crown Valley Pkwy., #616, Laguna Niguel, CA 92677. IHA has not been issued a permit of any kind by the Board and is not authorized to purchase, sell or transfer dangerous drugs.

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12. On or around February 24, 2002, IHA entered into a contract with Quantum Health, Inc., which owns and operates VillaView Community Hospital (hospital)[1] to manage the hospital pharmacy located on site. Pursuant to the contract, IHA assumed responsibility for ordering and maintaining an inventory of dangerous drugs using the hospital's pharmacy permit. The quantity of the orders was to be consistent with the hospital's reasonable needs.

13. At the time of the agreement, the hospital's reasonable needs required monthly purchases from pharmaceutical wholesalers of approximately $80,000-$100,000 worth of dangerous drugs. Shortly after IHA assumed control of the pharmacy, purchases from drug wholesalers increased dramatically with no corresponding increase in the reasonable needs of the hospital. Respondent purposely ordered more drugs than were needed for hospital use in order to sell the excess to third parties including wholesalers such as Jam Pharmaceutical, Inc.

FIRST CAUSE FOR DISCIPLINE

(Obtaining Drugs without a Permit)

14. Respondent Blackburn is subject to disciplinary action under sections 4300 and 4301(j) and (o) on the grounds of unprofessional conduct for violating either directly or indirectly section 4059.5(a) by obtaining dangerous drugs without a proper permit issued by the Board as further described in paragraphs 11-13 above.

SECOND CAUSE FOR DISCIPLINE

(Acting as a Wholesaler Without a License)

15. Respondent Blackburn is subject to disciplinary action under sections 4300 and 4301(j) and (o) on the grounds of unprofessional conduct for violating either directly or indirectly sections 4160(a) and 4160(c), in that Respondent acted as wholesaler without a proper wholesale permit issued by the Board as further described in paragraphs 11-13 above.

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1. On or around 4/23/02, VillaView Community Hospital became University Community Medical Center.

PETITION TO REVOKE STAY OF REVOCATION ORDER

(Violation of Administrative Decision and Order)

16. The allegations of paragraphs 1 through 15 are incorporated herein by reference as though fully set forth herein.

17. On or about January 31, 2002, a prior disciplinary action was filed by the Board of Pharmacy against respondent (Case No. 2421). On August 11, 2003, the Board issued a decision revoking respondent's pharmacist license. The revocation was stayed and respondent placed on probation for a three year period subject to the Board's standard terms and conditions.[2] The Board's decision is incorporated herein by reference.

18. Respondent is subject to having his probation and stay of revocation revoked in that he violated terms and conditions of his probation as follows:

a. At all times after the effective date of Respondent's probation, Conditions 1, 6, and 12 of the Board's Decision stated:

CONDITION NO. 1

"(1). **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy."

CONDITION NO. 6

"(6). **Notification to Employers**. Respondent shall notify all present and prospective employers of the decision in this case. Within 30 days of the effective date of this decision, respondent shall cause his direct supervisor, pharmacist in charge, or employing pharmacy owner to write to the board acknowledging receipt of a copy of the decision in this case. Before beginning any new employment in any position that requires licensure by the board, respondent shall cause his prospective employer to write to the board acknowledging receipt of a copy of the decision in this case.

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2. Respondent filed a petition for writ of mandate in the Superior Court for the County of Orange that was granted in part and denied in part. Causes for discipline nos. 1-3 and 5 were set aside and the matter remanded to the Board for reconsideration of the discipline imposed. After reconsideration, the Board ordered that the original discipline remain undisturbed.

CONDITION NO. 12

"(12). **Change of Employment.** Respondent shall notify the board in writing within 10 days of any change of employment. The notice shall include the reasons for leaving. If respondent is beginning a new employment, the notice shall also include the address of the new employer, supervisor, or owner and respondent's new work schedule, if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

GROUNDS FOR REVOKING PROBATION AND STAY OF REVOCATION

19. Grounds exist to revoke Respondent Robert Wayne Blackburn's probation and reimpose the order of revocation in that he failed to comply with the following terms and conditions of probation:

a. Condition 1: Respondent failed to comply with probation condition No. 1 by failing to comply with all federal, state, and local laws governing the practice of pharmacy in California as further described in paragraphs 11-13 above.

b. Condition 6: Respondent failed to comply with condition No. 6 by failing to provide his employer (Vista Specialty Hospital in Baldwin Park, California) with a copy of the Board's decision (Case No. 2421) imposing discipline upon his license.

c. Condition 12: Respondent failed to comply with condition No. 6 by failing to inform the Board of his employment with Vista Specialty Hospital in Baldwin Park, California.

PRAYER

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

1. Revoking or suspending Pharmacist License No. RPH 30586, issued to Robert Wayne Blackburn.

2. Revoking the probation that was granted by the Board in Case No. 2421 and imposing the disciplinary order that was stayed, thereby revoking Pharmacist License No. RPH 30586, issued to Robert Wayne Blackburn;

3. Ordering Robert Wayne Blackburn to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/22/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

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