

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

In the Matter of:

Robert Wayne Blackburn,

Petitioner.

OAH No. 2010100433

DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in La Jolla, California on October 21, 2010.

Joshua A. Room, Deputy Attorney General, represented the People of the State of California.

Petitioner was present and represented himself.

The matter was submitted on October 21, 2010.

FACTUAL FINDINGS

1. On April 30, 1990, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 30586 to Robert Wayne Blackburn (Petitioner). At all times relevant herein, said license was in full force and effect and will expire on April 30, 2011, unless renewed.

Petitioner reported that he has been licensed in the State of Nevada since 1978.

2. On January 31, 2002, Accusation Case No. 2421 was filed against Petitioner; it resulted in a Decision and Order, effective September 10, 2003, placing him on a three-year probation.

On February 22, 2006, the Board filed Accusation and Petition to Revoke Probation, Case No. 2784, alleging two causes for discipline and three grounds to revoke probation arising out of allegations that: Integrated Health Assets (IHA), a corporation owned and operated by Petitioner, contracted to direct the pharmacy services for a community hospital,

purchased drugs on behalf of that hospital that exceeded the needs of the hospital and sold the surplus drugs to another entity; IHA did not hold a permit issued by the Board; and IHA (1) purchased and obtained drugs without a permit, and (2) acted as a wholesaler without a permit. The Board alleged that the grounds to revoke probation were based on an underlying probation ordered in Case No. 2421; the Decision and Order (Case No. 2421) that imposed probation was subsequently overturned by the Court of Appeal. The Board did not appeal so probation was terminated in Case No. 2421.

In February 2007, representing himself, Petitioner agreed to and signed a Stipulated Settlement and Disciplinary Order; he admitted the truth of the allegations in Accusation Case No. 2784, stipulated to a Disciplinary Order of revocation, stayed, three years probation on terms and conditions that included payment of costs of investigation and prosecution in the amount of \$49,078.00. In its Decision and Order, the Board adopted the Stipulated Settlement and Disciplinary Order, effective April 25, 2007.

3. Business and Professions Code section 4309, subdivision (a)(2) requires that two years lapse before a petition for early termination of probation of three or more years may be filed. Business and Professions Code section 4309, subdivision (a)(3) requires that one year lapse before a petition for modification of condition may be filed.

In this case, a petition for early termination of probation could be heard after April 25, 2009; a petition for reduction of penalty could be heard any time after April 25, 2008.

On February 10, 2010, Petitioner filed Petition for Early Termination of Probation (Petition) more than two years after the effective date of discipline of his license, requesting that the Board waive the balance of the Board's costs of investigation and enforcement. The Petition included, among other things, (1) letters of recommendation from two Board licensees and two private citizens, and (2) documentation of completion of 38 hours of Board-approved continuing education (CE) within the last two years.

The Petition is properly before the Board and satisfies the requirements of Business and Professions Code section 4309.

4. Pursuant to Business and Professions Code section 4309, the Board may consider factors such as evidence of activities since the disciplinary action was taken, activities during the time his license was in good standing, his rehabilitation efforts and his general reputation for truth and professional ability.

5. Petitioner seeks forgiveness of the Board's costs of investigation and prosecution. He asserts that he cannot afford to pay these costs, and they were unjustly imposed. No evidence was offered to establish the amount owed. The Attorney General alleges that the Board authorized Petitioner to make payments of \$1,000.00 per month, that he made five payments of \$500 and one payment of \$250 and that he has an outstanding balance of \$46,328. Had Petitioner paid these costs in a timely manner, probation would have ended on April 25, 2010.

6. Petitioner contends that he should not be compelled to pay the Board's costs. He testified that he was unjustly accused, innocent of the charges from the beginning and paid \$100,000 in attorney's fees in order to get the "correct decision." He testified that the Board filed the same charges against him but he did not have the money to pay an attorney again, so he entered into the Stipulated Settlement and Disciplinary Order; at the time of the settlement, he believed that he would have the money to pay the Board's costs because he had \$250,000 in receivables outstanding from the hospitals; however, the Board's investigators intimidated hospital administrators and impaired his ability to collect the money from the hospitals. As a result, he was able to collect only \$20,000.

In addition, in Petitioner's opinion, the Board's costs were excessive in that he cooperated with the Board's investigation.

7. Petitioner testified that: he cannot afford to pay the costs of investigation and enforcement; he has not been employed since March 2010; and he and his family have survived on his wife's income and they are "upside down \$2,000 every month." He contends that his ability to obtain employment has been impaired by the Board's report on its website regarding his cases and Condition 7 of the terms and conditions of probation. Among other things, Condition 7 prohibits him from being the "pharmacist-in-charge of any entity engaging in any activities for which a wholesale permit is required..." Considering the foregoing, Petitioner requested modification of the Board's website to properly reflect the status of his cases and his license.

LEGAL CONCLUSIONS

Pursuant to Business and Professions Code section 4309, the Petition for Modification/Early Termination of Probation and supporting documents, the testimonial and documentary evidence have been considered. Petitioner entered into the Stipulated Settlement and Disciplinary Order and therefore waived his right to object to the Board's costs of investigation and prosecution; he did not establish sufficient justification to waive these costs. The Board's website properly reflects the status of his cases and license. It is appropriate to remove/terminate Condition 7 of the terms and conditions of probation to assist with Petitioner obtaining employment.

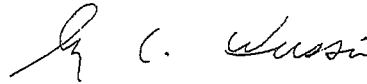
ORDER

WHEREFORE, THE FOLLOWING ORDER IS HEREBY MADE:

1. The petition of Robert Wayne Blackburn to Modify Probation/Reduction Penalty is granted, in part.
2. Condition 7 of the terms and conditions of probation is removed/terminated

DATED: December 22, 2010

EFFECTIVE DATE: January 21, 2011



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS