

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

In the Matter of the Petition to Revoke Probation
Against:

ROBERT WAYNE BLACKBURN,

Pharmacist License No. RPH 30586

Respondent.

Case No. 5211

OAH No. 2014120160

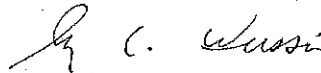
DECISION AND ORDER

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 on June 19, 2015.

It is so ORDERED on May 20, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 16, 2015, in San Diego, California.

Rita M. Lane, Deputy Attorney General, Office of the Attorney General, represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Jeffrey J. Czech, Attorney at Law, represented respondent, who was present throughout the administrative hearing.

The record remained open to permit the parties to file additional documents. The matter was submitted on April 3, 2015.

SUMMARY

Respondent received his pharmacist license in 1990. In 2003, the board revoked his license, stayed the revocation, ordered reimbursement of costs to the board, and placed respondent on probation for three years due to multiple sustained allegations of misconduct.

Complainant filed an accusation and petition to revoke probation in 2006 and again in 2011. Each accusation alleged misconduct that was the same or similar to the misconduct sustained in the 2003 disciplinary matter. The board denied respondent's petition for early

termination of probation in 2010. As a condition of probation in the 2011 matter, respondent agreed to pay the remaining balance of \$49,078 in costs to the board that he previously agreed to pay in the 2006 matter, and \$10,000 in costs to the board for the 2011 matter. Respondent was also required to initiate an ethics course and furnish proof to the board that he completed 50 hours of community service by the end of 2014.

Insufficient evidence established that respondent violated the reporting requirement with respect to his community service obligation. A preponderance of the evidence did establish that respondent failed to initiate an ethics course and failed to pay the remaining balance of \$50,201.63 in costs to the board.

Respondent has demonstrated that he is not a good candidate for probation, and revocation of respondent's license is warranted.

FACTUAL FINDINGS

1. On April 30, 1990, the board issued Pharmacist License No. RPH 30586 to respondent. Respondent's license expires on April 30, 2015, unless renewed, suspended, or revoked.

2. Respondent is currently on probation from a prior disciplinary matter, Case No. 4015, and subject to certain terms and conditions.

3. On July 14, 2014, complainant signed the Petition to Revoke Probation, alleging that respondent failed to reimburse the board costs, in violation of condition no. 8. Complainant amended the petition at the commencement of this administrative hearing to add two new causes to revoke probation. The document amending the petition was admitted as Exhibit 14, and the amendments were read into the record.

The second cause to revoke probation alleged that respondent failed to submit proof to the board that he completed 50 hours of community service by the end of 2014, in violation of condition no. 17.

The third cause to revoke probation alleged that respondent failed to initiate a course in ethics by the end of 2014, in violation of condition no. 22.

4. The record was held open to permit respondent to submit documentary evidence in response to the second and third causes to revoke probation. Respondent submitted a five-page trial brief and two one-paged attachments. The trial brief was marked as Exhibit A. Respondent's proof of community service was marked as Exhibit B. An e-mail regarding respondent's enrollment in ethics school was marked as Exhibit C. Exhibit A was admitted as argument only, and Exhibits B and C were admitted for all purposes. Complainant's response to respondent's trial brief was marked as Exhibit 15 and admitted as argument only.

License History

2003 ACCUSATION

5. On February 12, 2003, Patricia F. Harris, the board's Executive Officer at that time, signed the Third Amended Accusation in Case No. 2421. The accusation alleged that respondent was subject to disciplinary action because he (1) failed to make records available for inspection; (2) failed to maintain a current drug inventory; (3) permitted dangerous drugs and controlled substances to be received by non-licensed personnel; (4) acted as a wholesaler without a license; (5) failed to ensure compliance with all laws; and (6) submitted a false certification of an inventory of dangerous drugs.

6. Following an administrative hearing, the board issued a decision and order revoking respondent's license, staying the revocation, and placing respondent on probation for a period of three years.¹ The order became effective on September 10, 2003. Respondent's probation included terms that required respondent to obey all laws (condition no. 1); notify all present and future employers of the discipline imposed in Case No. 2421 (condition no. 6); notify the board in writing within ten days of a change in employment (condition no. 12); and reimburse the board its costs of investigation and prosecution in the amount of \$6,744.00 (condition no. 9.)

2006 ACCUSATION AND PETITION TO REVOKE PROBATION

7. On February 22, 2006, Patricia F. Harris signed the Accusation and Petition to Revoke Probation in Case No. 2784. The accusation alleged that respondent was subject to disciplinary action because he (1) obtained drugs without a permit and (2) acted as a wholesaler without a license.

The Petition to Revoke Probation alleged that respondent failed to obey all laws, as required by condition no. 1 of his probation; failed to notify his employer of the discipline imposed in Case No. 2421, as required by condition no. 6 of his probation; and failed to notify the board within ten days of obtaining new employment, as required by condition no. 12 of his probation.

8. Respondent signed a Stipulated Settlement and Disciplinary Order to resolve the matter, and the board adopted the settlement on March 26, 2007. The board issued a decision and order, effective April 25, 2007, revoking respondent's license, staying the revocation, and placing respondent on probation for a period of three years. Respondent's probation included a term that prohibited him from supervising interns, serving as a consultant, or acting as a pharmacist-in-charge for any entity engaging in activities for which a wholesaler permit was required (condition no. 7). Respondent's probation also included a

¹ All allegations in the accusation were sustained except the allegation that respondent submitted a false certification of an inventory of dangerous drugs.

requirement that respondent reimburse the board its costs of investigation and prosecution in the amount of \$49,078 (condition no. 8).²

Condition No. 14 of respondent's probation provided that, if respondent failed to comply with any terms and conditions of probation, the board shall have continuing jurisdiction over respondent and probation shall automatically be extended until all terms and conditions have been satisfied.

9. Between March 26, 2007, and October 21, 2010, respondent made five payments of \$500 and one payment of \$250 to the board. As of April 25, 2010, respondent had an outstanding balance of \$46,328. Because the costs were not paid in full by the date respondent's probation would have terminated, his probation automatically extended.

2010 PETITION FOR EARLY TERMINATION OF PROBATION

10. On February 10, 2010, respondent filed a Petition for Early Termination of Probation. Respondent requested that the board waive the balance of \$46,328 in costs remaining from Case No. 2784.

11. Following an administrative hearing, the board issued a decision and order that became effective on January 21, 2011, removing the condition that prohibited respondent from supervising interns, serving as a consultant, or acting as a pharmacist-in-charge for any entity engaging in activities for which a wholesaler permit is required (condition no. 7). The board did not find good cause to waive the remaining balance of \$46,328. The board concluded that respondent waived his right to object to the costs of investigation and prosecution because he agreed to that amount as a condition of his probation to resolve the prior accusation and petition to revoke probation.

12. On December 22, 2010, the board sent respondent a letter ordering respondent to pay the board \$1,000 per month until his payment obligation of \$46,328.00 was met. The board also reminded respondent that he would remain on probation until all conditions of probation were satisfied.

13. Respondent made a payment of \$1,000 on May 6, 2011, and another on July 13, 2011, leaving an unpaid of \$44,328.00.

2011 ACCUSATION AND PETITION TO REVOKE PROBATION – CASE NO. 4015

14. On December 1, 2011, complainant signed an Accusation and Petition to Revoke Probation in Case No. 4015. The Accusation alleged that respondent was subject to disciplinary action because he (1) engaged in unprofessional conduct when he sold dangerous drugs to a wholesaler that was not under common ownership or control while

² This amount reflected a \$6,744.00 offset for costs already paid by respondent in Case No. 2421.

respondent was pharmacist-in-charge, and (2) furnished dangerous drugs without a prescription to a company that was not licensed as a wholesaler.

The Petition to Revoke Probation alleged that respondent violated the terms and conditions of probation imposed in Case No. 2784, in that he failed to: obey all laws (condition no. 1); notify his employer of the discipline imposed in Case No. 2784 (condition no. 6); submit quarterly reports after July, 2010 (condition no. 2); pay probation monitoring costs (condition no. 9); pay the costs of investigation (condition no. 8); and comply with probation (condition no. 14).

15. An administrative hearing was set for May 21, 2013. Respondent appeared with counsel.³ The parties reached a settlement and placed it on the record. After the written stipulation was prepared, respondent refused to sign the stipulation. Complainant brought a Motion to Enforce the Settlement.

16. The board issued a decision and order, effective December 6, 2013, granting complainant's motion. The board based its order on the transcript of the hearing, which contained the terms of the settlement agreement. The board revoked respondent's license, stayed the revocation, and placed respondent on probation for a period of four years.

17. The terms and conditions of respondent's probation required him to: reimburse the board its costs of investigation and prosecution in the amount of \$44,328 remaining from case no. 2784 within 30 days of the effective date of the decision, and an additional \$10,000 for the costs incurred in prosecuting Case No. 4015 under a payment plan approved by the board (condition no. 8); submit to the board for prior approval within sixty days of the effective date of the decision and order, a community service program in which respondent shall provide free-health care related services for a total of 200 hours, or 50 hours per year, for each year of probation (condition no. 17); enroll in a course in ethics approved in advance by the board within 60 days of the effective date of the decision and order, and initiate the course during his first year of probation (condition no. 22).

Violations of Probation

PAYMENT OF COSTS – CONDITION NO. 8

18. Enforcement analyst, Jane Russell, testified at the hearing. Ms. Russell was assigned to monitor respondent's probation in Case No. 4015.

19. The board sent respondent a letter on November 25, 2013, ordering him to report in person to the enforcement office on December 9, 2013. At that meeting, board personnel discussed all the terms and conditions of respondent's probation with him. Respondent signed a declaration indicating that he understood the terms and conditions.

³ Jeffrey Czech was also respondent's counsel at the August 23, 2013, hearing.

20. On December 17, 2013, a series of e-mail exchanges began between Ms. Russell and respondent. Ms. Russell reminded respondent that the remaining balance in Case No. 4015 had to be paid in full by January 6, 2014. On January 8, 2014, respondent requested a 30-day extension to submit payment. The board granted him a 30-day extension. Respondent did make two payments in 2014. The remaining balance of the costs from case no. 2784 is \$42,328.00.

21. Ms. Russell also advised respondent that he could enter into a payment plan with respect to the remaining balance owed. Respondent asked for a payment plan of \$100 per-month, with a balloon payment at the end of his probation. On January 8, 2014, the board denied respondent's request to make payments of \$100 per month in Case No. 2784, and ordered him to pay \$212.77 per month, with a final payment of \$212.58. Respondent made multiple payments between January, 2014, and February, 2015 in various amounts. The remaining balance of the \$10,000 in costs ordered in case no. 4015 is \$7,873.63.

22. According to Ms. Russell, the total amount of respondent's unpaid balance for both cases is \$50,201.63. Respondent does not dispute that amount. Respondent testified, however, that he cannot afford to pay the costs because he has been unable to find work in his field because of his probationary status.

23. Joan Coyne is a supervising inspector for the board of pharmacy, and testified at the hearing as a rebuttal witness for complainant. She is the supervisor for the unit that investigates probation violations and monitors probationers to ensure compliance. Ms. Coyne estimated that 90 percent of licensees on probation are employed in pharmacies.

24. Complainant established by a preponderance of the evidence that respondent violated condition no. 8.

COMMUNITY SERVICE – CONDITION NO. 17

25. Respondent sent an e-mail to Ms. Russell on January 6, 2014, asking for prior approval to complete his community service at a non-profit organization. A subsequent e-mail from Ms. Russell to respondent confirmed that he did receive approval to complete community service at a non-profit organization.

26. In an e-mail from Ms. Russell to respondent dated March 4, 2014, she applauded respondent for complying with several terms of his probation. One of those terms was quarterly reporting.

27. Respondent's Exhibit B, which shows respondent's completed community service hours, bears the signature of Bruce Henderson, President of Telehealth Medical Group. The printout reflects that respondent exceeded the required 50 hours of community service for calendar year 2014. After receiving Exhibit B, complainant accepted Exhibit B as proof of completion of respondent's community service, but noted that it was not provided to the board in a timely manner, as required by condition no. 17.

28. Respondent testified that he sent proof of compliance to the board. Ms. Russell testified that the board did not receive proof that respondent completed 50 hours of community service for the calendar year 2014. Both positions are equally plausible.

29. It seems unlikely that respondent would gain approval for community service and report his community service in quarterly reports, but then not provide proof to the board that his community service was actually completed.

30. Complainant did not establish by a preponderance of the evidence that respondent violated condition no. 17.

ETHICS COURSE – CONDITION NO. 22

31. Ms. Russell confirmed that respondent did provide proof of enrollment in an approved ethics course, but never initiated the course. The first portion of the course is 22 hours, taken on weekends. Initiating the course meant that respondent must have taken the first portion of the course by December 6, 2014.

32. Respondent admitted that, although he enrolled in an ethics course within sixty days of December 6, 2014, he did not initiate the course as required by condition no. 22. Respondent said he does not have the money to pay the \$2,000 course cost.

33. Complainant established by a preponderance of the evidence that respondent violated condition no. 22.

Respondent's Testimony and Other Evidence

34. Respondent has been unable to find full-time work since 2009, despite filling out over 300 job applications. Respondent attributed his inability to find work to his probationary status.

35. The resume respondent submitted with his Petition for Early Termination of Probation contained his work history prior to 2010. Respondent confirmed in his testimony that his resume was accurate. The resume, in conjunction with respondent's testimony, reflects that from 2007 to 2010, respondent worked at Community and Mission Hospitals in Huntington Park as Director of Pharmacy Services. Respondent earned \$16,000 per month. From 2005 to 2010, respondent worked at Advocate Rx as a Pharmacy Consultant. He earned approximately \$80 an hour for the days that he performed services. Between 2005 and 2010, respondent earned a total of \$30,000 from Advocate Rx.

36. Respondent testified that, since 2010, he has held some part-time and consulting positions. From 2012 to 2013, respondent worked at Marsh International. Marsh International provides various services to health care facilities. Respondent performed analysis for the company by going to hospitals and developing action plans to help Marsh Implement their action plans. Respondent performed several jobs for Marsh, and earned a

total of about \$10,000.00. He still works for Marsh, but has not been called to perform any services since 2013.

At the end of 2013, respondent was hired at First Health Care Management Group as a supervisor for ancillary services. First Health manages surgery centers, and assists with purchasing materials. Respondent worked there for approximately four months and earned \$2,500.00 per month.

37. Respondent currently volunteers at Telehealth Medical Group under the supervision of Dr. Brian Henderson. Telehealth Medical Group is a telemedicine consulting company. Respondent is the coordinator for pharmacy services. He volunteers 20 to 40 hours per week.

38. Respondent also currently works as the Vice President of Pharmacy Operations at Rady Children's Hospital, an unpaid position.

39. Respondent's wife is a principal with the Orange County Department of Education. Her income is between \$120,000 and \$130,000 a year. Respondent lives with his wife, and the house is in her name.

40. Respondent asserts that he cannot pay the costs previously ordered by the board because he cannot find work, and believes that his probation should be terminated. Respondent only agreed to pay the costs in the earlier disciplinary matter because he thought he would be able to work.

LEGAL CONCLUSIONS

Cause Exists to Revoke Respondent's Probation

1. The burden of proof for all of the allegations made in the Petition to Revoke Probation rests upon the Board and requires the Board to prove the allegations in the Amended Petition by a preponderance of the evidence.

2. Business and Professions Code, section 4300, subdivision (a)(1), provides that every license issued may be suspended or revoked. The suspension or revocation of a license to engage in a profession is not penal; its purpose is to protect the public from incompetence and lack of integrity in those practicing the profession. The business of compounding prescriptions and selling drugs is intimately connected with, and has a vital relationship to, the health, safety, and welfare of the public. Public safety must be regarded as superior to private rights. (*Brodsky v. California State Board of Pharmacy* (1959) 173 Cal.App.2d 680, 688-689.)

3. The board also has the authority, under condition no. 14 of respondent's probation in Case No. 4015, to revoke probation and carry out the disciplinary order that was stayed in the earlier disciplinary proceeding.

4. Cause exists to suspend or revoke respondent's license based on a violation of condition no. 8 of respondent's probation, and to reimpose the order of revocation of respondent's license that was stayed in Case No. 4015.

5. Cause does not exist to suspend or revoke respondent's probation based on a violation of condition no. 17.

6. Cause exists to suspend or revoke respondent's license based on a violation of condition no. 22 of respondent's probation, and to reimpose the order of revocation of respondent's license that was stayed in Case No. 4015.

Respondent's Statutory and Constitutional Arguments Regarding Cost Recovery

7. Respondent argued that all penalties and costs from prior disciplinary matters should be waived. Respondent made several statutory and constitutional arguments in support of his argument.

Respondent argued that an award of costs "must" be enforced as set forth in the Business and Professions Code, section 125.3, subdivision (e), and that section 125.3 bars an administrative agency from "using its own licensing statutes as a collection device" because a licensing agency is "not a court of competent jurisdiction." (Exhibit A, at p. 2.) Respondent is incorrect.

Business and Professions Code, section 125.3, subdivision (e), provides:

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board *may* enforce the order for repayment in any appropriate court. This right of enforcement *shall be in addition* to any other rights the board may have as to any licentiate to pay costs.

(Bus. & Prof. Code, § 125.3, subdivision (e) [emphasis added].) The board has the right pursuant to Business and Professions Code, section 4300, subdivision (a)(1), and under condition no. 14 of respondent's probation, to revoke probation and carry out the disciplinary order that was stayed in the earlier disciplinary proceeding. This right is *in addition to* the board's right to enforce the order for repayment of costs in any appropriate court. The instant matter is not a "collections device." It is a petition to revoke probation properly before the board. Nothing in section 125.3 limits the board's authority to bring a petition to revoke probation based, in part or in whole, on respondent's failure to comply with an order to pay costs as a condition of probation.

Furthermore, respondent argues that the board must consider hardship in determining whether respondent can pay previously ordered costs, and revocation should not follow from “the mere non-payment” of those costs. (Exhibit A, at p.3.) Again, this position is incorrect. This matter is not about the “mere non-payment” of costs. It is about professional misconduct in 2011 that resulted in a disciplinary order subjecting respondent to various terms and conditions of probation, and respondent’s failure to comply with three of those terms and conditions. Complainant is not asking for costs in connection with *this* proceeding, so the hardship provision contained in section 125.3 does not require a new determination of whether previously ordered costs were reasonable.

Moreover, as the board noted in its decision and order denying respondent’s petition for early termination of probation, respondent waived any ability to challenge the reasonableness of the costs in connection with the 2006 disciplinary matter because he agreed to the amount by stipulation. In the 2011 matter, respondent – with the same attorney that represents him in the current matter – placed settlement terms on the record agreeing again to pay the costs for the 2006 matter, in addition to \$10,000 in costs for the 2011 matter.

Respondent blamed his failure to comply with the terms and conditions of probation on his inability to find work in his profession because of his probationary license status. Respondent argued that because he cannot find work in order to pay the ordered costs, the board’s probationary terms and conditions exceed the powers of the agency and violate both the federal and state constitution.

Respondent’s arguments are without merit. The board has a duty to investigate allegations of professional misconduct and monitor probationary licensees in order to protect the public. Holding a license is a privilege, not a fundamental right. No person can acquire a vested right to continue, when once licensed, in a business, trade or occupation which is subject to legislative control under the police powers of the state. (*Kenneally v. Medical Board* (1994) 27 Cal.App.4th 489, 497.)

Evaluation

8. Respondent contends that the “present allegations and proceedings can be boiled down to money.” This contention is not supported by the record.

Respondent is not on probation today because of the misconduct underlying the 2003 matter. Respondent paid the costs ordered by the board in connection with the 2003 matter. But, respondent violated several *non-monetary* probationary terms specifically put in place so the board could monitor him and protect the public. Respondent’s violation of those terms resulted in the 2006 petition to revoke probation. In addition to the non-monetary probation violations alleged in the 2006 matter, an accusation alleged *new* instances of misconduct that were the same or similar to the type of misconduct alleged in the 2003 matter. Respondent signed a Stipulated Settlement and Disciplinary Order admitting the truth of all allegations in both the petition to revoke probation and the accusation, and agreed to pay the board

reasonable costs of \$49,078 for the investigation and costs associated with the *new* allegations of misconduct.

In 2011, new allegations of misconduct were alleged in an accusation that were the same or similar to the allegations in the 2003 and 2006 matters, along with several *non-monetary* probation violations *in addition to* the failure to pay the previously ordered costs. Respondent found himself on probation again, and as a result, was ordered to pay additional costs in connection with the *new* allegations of misconduct.

In the present matter, there are no new allegations of misconduct. But, there is one non-monetary violation of probation, the failure to initiate an ethics course, and one violation for the failure to pay previously ordered costs. Respondent's position that he cannot pay the board's costs or pay for an ethics course is belied by the record.

Between 2007 and 2010, three years subsequent to the time respondent agreed to pay the board \$49,078 in costs, respondent's testimony and resume established that he earned approximately \$606,000 working for Advocate Rx and for Community and Mission Hospitals. From 2010 to present, he made approximately \$20,000. He currently lives in a home with his wife, that is in her name, and she has an income of approximately \$120,000 to \$130,000 a year. No evidence was presented to demonstrate that any portion of respondent's income was unavailable for him to pay the board costs he agreed to pay in 2006 and was re-ordered to pay in 2011.

Moreover, respondent's position that he cannot obtain full-time work because of his probationary status is not credible. Respondent obtained lucrative consulting jobs, as well as full-time positions between 2005 and 2010, during which time he was on probation. While he may have difficulty at the present time finding a job, his history demonstrates that finding gainful employment while on probation is quite possible.

9. The purpose of probation is so the board can monitor probationers in order to protect the public from further misconduct. Respondent has demonstrated an inability to comply with terms and conditions of probation in multiple cases over a twelve-year period. He also engaged in new misconduct in 2006 and 2011. Consequently, respondent is no longer a viable candidate for probation.

10. The only result that comports with the board's obligation to protect the public is the revocation of respondent's license.

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ORDER

1. The stay of revocation previously imposed in Case No. 4015 is vacated and the order of revocation is reinstated.
2. Pharmacist License No. RPH 30586, issued to respondent, is revoked.
3. If respondent petitions to have his license reinstated, and if the board grants his petition, the board may order him to pay the \$50,201.63 costs as a condition of reinstatement. If the board does that, the board, as is required by *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, must determine whether a payment schedule is necessary so that respondent can pay the costs.

DATED: April 22, 2015

DocuSigned by:
Kimberly Belvedere
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KIMBERLY J. BELVEDERE
Administrative Law Judge
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. 5211

13 **ROBERT WAYNE BLACKBURN**
25515 Lone Pine Circle
14 Laguna Hills, CA 92653

PETITION TO REVOKE PROBATION

15 **Pharmacist License No. RPH 30586**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
21 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
22 Affairs.

23 2. On or about April 30, 1990, the Board of Pharmacy issued Pharmacist License
24 Number RPH 30586 to Robert Wayne Blackburn (Respondent). The Pharmacist License was in
25 effect at all times relevant to the charges brought herein and will expire on April 30, 2015, unless
26 renewed.

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1 3. In a disciplinary action entitled "*In the Matter of Accusation and Petition to Revoke*
2 *Probation Against Robert Wayne Blackburn*," Case No. 4015, the Board of Pharmacy issued a
3 decision effective December 6, 2013, in which Respondent's Pharmacist License was revoked.
4 However, the revocation was stayed and Respondent's Pharmacist License was placed on
5 probation for a period of four (4) years with certain terms and conditions. A copy of that decision
6 is attached as Exhibit A and is incorporated by reference.

7 **JURISDICTION**

8 4. Section 4300, subdivision (a) of the Business and Professions Code (Code) states
9 "Every license issued may be suspended or revoked."

10 5. Section 4300.1 of the Code states:

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

15 6. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
16 Department of Consumer Affairs under Probation Term and Condition Number 14 of the
17 Decision and Order. That term and condition states:

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

22 If Respondent violates probation in any respect, the Board, after giving
23 Respondent notice and an opportunity to be heard, may revoke probation and carry
24 out the disciplinary order that was stayed. Notice and opportunity to be heard are not
25 required for those provisions stating that a violation thereof may lead to automatic
26 termination of the stay and/or revocation of the license. If a petition to revoke
27 probation or an accusation is filed against Respondent during probation, the Board
28 shall have continuing jurisdiction and the period of probation shall be automatically
extended until the petition to revoke probation or accusation is heard and decided.

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27 ///

28 ///

1 CAUSE TO REVOKE PROBATION

2 (Reimbursement of Board Costs)

3 7. At all times after the effective date of Respondent's probation, Condition 8 stated:

4 As a condition precedent to successful completion of probation, Respondent
5 shall pay to the Board its costs of investigation and prosecution in the amount of
6 \$44,328, pursuant to Case No. 2784, within thirty days of the effective date of this
7 decision. Respondent shall also pay to the Board its costs of investigation and
8 enforcement of the current matter in the amount of \$10,000. Respondent shall make
9 monthly payments according to a schedule approved by the Board. There shall be no
10 deviation from that schedule absent prior written approval by the Board or its
11 designee. Failure to pay costs by the deadline(s) as directed shall be considered a
12 violation of probation.

13 Whether the filing of bankruptcy by Respondent relieves Respondent of her
14 (*sic*) responsibility to reimburse the Board its costs of investigation and prosecution is
15 a legal matter to be decided by a court of competent jurisdiction.

16 8. Respondent's probation is subject to revocation because he failed to comply with
17 Probation Condition 8, referenced above. The facts and circumstances regarding this violation
18 are as follows:

19 a. In a prior disciplinary matter in case number 2784, as described in paragraph
20 10, below, Respondent was ordered to reimburse the Board its costs of investigation and
21 prosecution in the amount of \$49,078.00, which included a credit for the \$6,744.00 in costs
22 already paid in case number 2421, which is described in paragraph 9, below. During the course
23 of probation in case number 2784, Respondent paid a total of \$2,750.00 towards costs, leaving a
24 balance of \$46,328.00.

25 b. On or about February 10, 2010, Respondent filed a Petition for Early
26 Termination of Probation. The petition requested that the Board waive the balance of its costs of
27 investigation and enforcement in case number 2784. In a decision effective January 21, 2011, the
28 Board concluded that because Respondent entered into the stipulated settlement, he waived his
right to object to the Board's costs of investigation and prosecution, and that Respondent did not
establish sufficient justification to waive the costs.

c. On May 6, 2011 and July 13, 2011, Respondent made two payments of
\$1,000.00 each, bringing his cost reimbursement balance in case number 2784 to \$44,328.00.

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1 d. On December 1, 2011, the Board filed an "Accusation and Petition to Revoke
2 Probation," in case number 4015, alleging Respondent committed new violations, and was
3 noncompliant with his probation. In its Decision effective December 6, 2013, Respondent was
4 ordered to reimburse the Board its past due costs of investigation and prosecution in case number
5 2784 the amount of \$44,328.00, as well as \$10,000.00 for the costs associated with the new
6 Accusation matter, for a total of \$54,328.00. The \$44,328.00 in cost reimbursement for case
7 number 2784 was due within 30 days of the effective date of the Decision (January 6, 2014). The
8 Board provided Respondent with a separate payment plan for the reimbursement of the
9 \$10,000.00 in costs in case number 4015.

10 e. On December 17, 2013, Respondent proposed to the Board that on case number
11 2784, he be permitted to make monthly payments of \$300 each, with a balloon payment of
12 \$39,928.00 by December 6, 2017. Respondent was told that his proposed payment plan was not
13 acceptable. On January 8, 2014, Respondent sent an e-mail to the Board requesting an extension
14 of time to pay the \$44,328.00 in case number 2784. The Board approved a 30-day extension of
15 time, but denied his second request to restructure the payment plan.

16 f. On February 12, 2014, a non-compliance letter was mailed to Respondent
17 regarding his failure to submit payment of the \$44,328.00 by February 6, 2014, and directed him
18 to remit payment for the full amount within 10 days of receipt of the letter. Respondent failed to
19 comply. On March 7, 2014, Respondent submitted a third plan to restructure his payments; the
20 plan was denied. Respondent owes an unpaid balance of \$44,328.00 in case number 2784, and an
21 unpaid balance of \$8,149.11 in case number 4051.

22 DISCIPLINARY CONSIDERATIONS

23 9. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges that on February 12, 2003, in a prior disciplinary action entitled *In the*
25 *Matter of the Accusation Against Robert Wayne Blackburn*, before the Board of Pharmacy in
26 Case No. 2421, the Board alleged that Respondent subjected his pharmacist license to discipline
27 in that he failed to make his records available for inspection (Bus. & Prof. Code, §§ 4300 and
28 4301(o)), that he failed to maintain a current inventory for dangerous drugs (§ 4301(o)), that he

1 permitted dangerous drugs and controlled substances to be received by non-licensed personnel
2 (§§ 4300, 4301(j), and 4301(o)), that he acted as a wholesaler without a license (§§ 4300, 4301(j),
3 and 4301(o)), that he failed to ensure compliance with all laws (§§ 4300, 4301(j), and 4301(o)),
4 and that he submitted a false certification of an inventory of dangerous drugs (§§ 4300, 4301(g)).
5 In a decision effective September 10, 2003, the Board found that Respondent did not submit a
6 false inventory certification, however, all other allegations were sustained. Respondent's
7 Pharmacist License was revoked, the revocation was stayed and Respondent's Pharmacist
8 License was placed on probation for a period of three (3) years with certain terms and conditions.
9 That decision is now final and is incorporated by reference as if fully set forth.

10 10. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that on February 22, 2006, in a prior disciplinary action entitled *In the*
12 *Matter of the Accusation and Petition to Revoke Probation Against Robert Wayne Blackburn*,
13 before the Board of Pharmacy in Case No. 2784, the Board alleged that Respondent subjected his
14 pharmacist license to discipline in that he obtained drugs without a permit (§§ 4300, 4301(j), and
15 4301(o)), and acted as a wholesaler without a license (§§ 4300 and 4301(j)). The Petition to
16 Revoke Probation alleged that Respondent violated the following Conditions of his probation:
17 (1) Obey all Laws; (6) Notification to Employers; and (12) Change of Employment. In a decision
18 effective April 25, 2007, Respondent's Pharmacist License was revoked, the revocation was
19 stayed and Respondent's Pharmacist License was placed on probation for a period of three (3)
20 years with certain terms and conditions. That decision is now final and is incorporated by
21 reference as if fully set forth.

22 PRAYER

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

25 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4015
26 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
27 RPH 30586 issued to Robert Wayne Blackburn;

28 ///

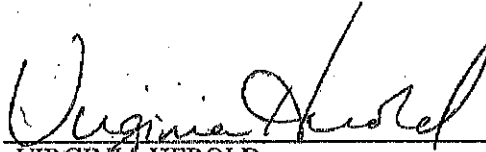
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2. Revoking or suspending Pharmacist License No. RPH 30586, issued to Robert Wayne Blackburn;

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

DATED:

7/14/14



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2014707317

Exhibit A

Decision and Order

Board of Pharmacy Case No. 4015

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

In the Matter of the Accusation/Petition to
Revoke Probation Against:

ROBERT WAYNE BLACKBURN
25515 Lone Pine Circle
Laguna Hills, CA 92653

Pharmacist License No. RPH 30586

Respondent.

Case No. 4015

OAH No. 2012020421

DECISION AND ORDER

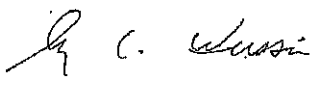
The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 6, 2013.

It is so ORDERED on November 6, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation/Petition to
Revoke Probation Against:

ROBERT WAYNE BLACKBURN,

Respondent.

Case No. 4015

OAH No. 2012020421

PROPOSED DECISION

ORDER ON MOTION TO ENFORCE SETTLEMENT

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on August 23, 2013, in Los Angeles, California.

Thomas L. Rinaldi, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Jeffrey J. Czech, Attorney at Law, represented Respondent Robert Wayne Blackburn. Respondent was present at the motion hearing.

The matter was submitted on August 23, 2013.

FACTUAL FINDINGS

1. Complainant brought the Accusation in her official capacity as Executive Officer of the Board.
2. At a hearing on the Accusation on May 21, 2013, the parties reached a settlement and placed it on the record. Included in the record are the terms of settlement, Respondent's agreement with those terms, and that the terms of settlement would be placed in a written stipulation to be signed and submitted to the Board.
3. After the written stipulation was prepared, Respondent failed to sign and return the stipulation. Complainant brought the Motion to Enforce the Settlement. The motion papers included, among other things, correspondence between counsel for the parties,

the written stipulation, and a transcript of the settlement terms from May 21, 2013. Oral argument was held on the motion on August 23, 2013.

4. After consideration of the points and authorities and argument submitted in support of the Motion, and the arguments presented during oral argument, the Motion is granted. This Proposed Decision is, therefore, issued without a trial, and is based upon the transcript of the settlement agreement, a copy of which is found at Exhibit 3 within Complainant's motion.

CONCLUSIONS OF LAW

1. Pursuant to the agreement of the parties, good cause exists to enter the Order set forth below, including terms and conditions of probation and the payment of costs of investigation and prosecution, as set forth in Factual Findings 1 through 4.

2. Under Government Code section 11415.60, subdivision (a), an agency can issue a decision by settlement "pursuant to an agreement of the parties, without conducting an administrative hearing." Pursuant to California Code of Regulations, title 1, section 1028, subdivision (i), a settlement may be in the form of an oral agreement placed on the record.

ORDER

Original Pharmacist License No. RPH 30586, issued to Respondent Robert Wayne Blackburn, is revoked. However, revocation is stayed and Respondent is placed on probation for four years upon 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; or

- * 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 of any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report 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, or failure to appear for two or more scheduled interviews with the Board or its designee during the period of probation, 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 or its designee.

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4015 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment, Respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4015, and terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure

that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify his or her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in case number 4015 in advance of the Respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 4015 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the Respondent is an employee, independent contractor or volunteer.

7. Supervision of Interns, Serving as PIC, Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, Respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$44,328, pursuant to Case No. 2784, within thirty days of the effective date of this decision. Respondent shall also pay to the Board its costs of investigation and enforcement of the current matter in the amount of \$10,000. Respondent shall make monthly payments according to a schedule approved by the Board. There shall be no deviation from that schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

Whether the filing of bankruptcy by Respondent relieves Respondent of her responsibility to reimburse the Board its costs of investigation and prosecution is a legal matter to be decided by a court of competent jurisdiction.

9. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed 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. Failure to maintain an active, current license shall be considered a violation of probation.

If Respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling 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 or its designee 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. This surrender constitutes a record of discipline and shall become a part of Respondent's license history with the Board.

Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three (3) 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, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 40 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of practice" means any calendar month during which Respondent is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which Respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

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 that was stayed.

17. Community Services Program

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for a total of 200 hours or at least 50 hours per year of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board demonstrating commencement of the community service program. A record of this notification must be provided to the Board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

18. Supervised Practice

During the period of probation, Respondent shall practice only under the supervision of a licensed pharmacist not on probation with the Board. Upon and after the effective date of this decision, Respondent shall not practice pharmacy and his license shall be automatically suspended until a supervisor is approved by the Board or its designee. The supervision shall be, as required by the Board or its designee, either:

Continuous - At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, Respondent shall have his supervisor submit notification to the board in writing stating that the supervisor has read the decision in case number 4015 and is familiar with the required level of supervision as determined by the Board or its designee. It shall be the Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered a violation of probation.

If Respondent changes employment, it shall be the Respondent's responsibility to ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15) days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 4015 and is familiar with the level of supervision as determined by the Board. Respondent shall not practice pharmacy and his or her license shall be automatically suspended until the Board

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 that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the Board or its designee indicating successful completion of probation, Respondent's license will be fully restored.

16. Actual Suspension

As part of probation, Respondent is suspended from the practice of pharmacy for 15 days beginning the effective date of this decision.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered a violation of probation.

Within ten (10) days of leaving employment, Respondent shall notify the Board in writing.

19. Board Pre-Approval of Employment

Respondent shall request approval from the Board prior to accepting any employment. The request should be made in writing, indicating that Respondent intends to return to work, and must include the name of the pharmacy or work location, and a list of duties. Respondent's written request to the Board may be sent via electronic mail.

20. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

21. Tolling of Suspension

During the period of suspension, Respondent shall not leave California for any period exceeding ten (10) days; regardless of purpose (including vacation). Any such absence in excess of the (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days Respondent is absent from California. During any such period of tolling of suspension, Respondent must nonetheless comply with all terms and conditions of probation.

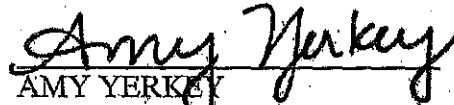
Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, Respondent shall not resume the practice of pharmacy until notified by the board that the period of suspension has been satisfactorily completed.

22. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the Board or its designee within five days after completing the course.

DATED: September 19, 2013


AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation/Petition to
11 Revoke Probation Against,

Case No. 4015

12 **ROBERT WAYNE BLACKBURN**
25515 Lone Pine Circle
13 Laguna Hills, CA 92653
14 **Original Pharmacist License No. RPH 30586**

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold ("Complainant") brings this Accusation and Petition to Revoke
19 Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy,
20 Department of Consumer Affairs ("Board".)

21 2. On or about April 30, 1990, the Board issued Original Pharmacist License Number
22 RPH 30586 to Robert Wayne Blackburn ("Respondent"). The Original Pharmacist License was
23 in effect at all times relevant to the charges brought herein and will expire on April 30, 2013,
24 unless renewed.

25 **JURISDICTION**

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

1 STATUTORY PROVISIONS

2 4. Section 4059.5 of the Code states, in pertinent part, that:

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

8 "(b) A dangerous drug or dangerous device transferred, sold, or delivered to a person
9 within this state shall be transferred, sold, or delivered only to an entity licensed by the board, to a
10 manufacturer, or to an ultimate end user or the ultimate user's agent."

11 5. Section 4113 of the Code states, in pertinent part:

12 "(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
13 state and federal laws and regulations pertaining to the practice of pharmacy."

14 6. Section 4126.5(a) of the Code states that:

15 "(a) A pharmacy may furnish dangerous drugs only to the following:

16 (1) A wholesaler owned or under common control by the wholesaler from whom the
17 dangerous drug was acquired.

18 (2) The pharmaceutical manufacturer from whom the dangerous drug was acquired.

19 (3) A licensed wholesaler acting as a reverse distributor.

20 (4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug
21 that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to
22 this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

23 (5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized
24 by law.

25 (6) A health care provider that is not a pharmacy but that is authorized to purchase
26 dangerous drugs.

27 (7) To another pharmacy under common control."

28 7. Section 4300 of the Code states, in pertinent part, that:

1 “(a) Every license issued [by the Board of Pharmacy] may be suspended or revoked.

2 (d) The board may initiate disciplinary proceedings to revoke or suspend any probationary
3 certificate of licensure for any violation of the terms and conditions of probation. Upon
4 satisfactory completion of probation, the board shall convert the probationary certificate to a
5 regular certificate, free of conditions.”

6 8. Section 4301 of the Code states, in pertinent part, that:

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

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

12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
13 violation of or conspiring to violate any provision or term of [the Pharmacy Law] or of the
14 applicable federal and state laws and regulations governing pharmacy, including regulations
15 established by the board or by any other state or federal regulatory agency.”

16 9. Section 639.233 of the Nevada Revised Statutes states that:

17 “1. Any person, including a wholesaler or manufacturer, who engages in the business of
18 wholesale distribution or furnishing controlled substances, poisons, drugs, devices or appliances
19 that are restricted by federal law to sale by or on the order of a physician to any person located
20 within this State shall obtain a license pursuant to the provisions of this chapter.

21 2. For the purpose of this section, a person is ‘engaged in the business of furnishing’ if the
22 person:

23 (a) Solicits or accepts orders for drugs or devices whose sale in this State is restricted by
24 this chapter or chapter 453 or 454 of [Nevada Revised Statutes]; or

25 (b) Receives, stores or ships such drugs or devices.”
26
27
28

1 REGULATORY PROVISIONS

2 10. Title 16, section 1773(a) of the California Code of Regulations states, in pertinent
3 part, that:

4 "(a) Unless otherwise directed by the Board in its sole discretion, any pharmacist who is
5 serving a period of probation shall comply with the following conditions:

6 (1) Obey all laws and regulations substantially related to the practice of Pharmacy;

7 (2) Report to the Board or its designee quarterly either in person or in writing as directed;
8 the report shall include the name and address of the probationer's employer. If the final probation
9 report is not made as directed, the period of probation shall be extended until such time as the
10 final report is made;

11 (4) Provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed
12 by the Board;

13 (5) Inform all present and prospective employers of license restrictions and terms of
14 probation. Probationers employed by placement agencies must inform all permittees in whose
15 premises they work of license restrictions and terms of probation.

16 (6) Not supervise any registered interns nor perform any of the duties of a preceptor;

17 (c) When the circumstances of the case so require, the Board may impose conditions of
18 probation in addition to those enumerated herein by the terms of its decision in an administrative
19 case or by stipulation of the parties."

20 11. Title 21, section 1307.11(a)(1) of the Code of Federal Regulations states, in pertinent
21 part, that:

22 "A practitioner who is registered to dispense a controlled substance may distribute (without
23 being registered to distribute) a quantity of such substance to another practitioner for the purpose
24 of general dispensing by the practitioner to patients, provided that —

25 (i) The practitioner to whom the controlled substance is to be distributed is registered under
26 the Act to dispense that controlled substance;

27
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1 (ii) The distribution is recorded by the distributing practitioner in accordance with
2 §1304.22(c) of this chapter and by the receiving practitioner in accordance with §1304.22(c) of
3 this chapter.”

4 **COST RECOVERY PROVISION**

5 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **ACCUSATION**

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 13. Respondent is subject to discipline pursuant to sections 4301, subdivision (j), and
13 4126.5, subdivision (a)(1), in that University Specialty Pharmacy sold dangerous drugs to another
14 wholesaler that was not under common ownership or control while Respondent was pharmacist-
15 in-charge.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Furnishing of Dangerous Drugs Without Prescription)**

18 14. Respondent is subject to discipline pursuant to section 4301, subdivision (j) in
19 conjunction with section 4059.5, subdivisions (a) and (b), Code of Federal Regulations section
20 1307.11, subdivision (a)(1)(i)(ii), and Nevada Revised Statute section 639.233 in that while
21 Respondent was pharmacist-in-charge, University Specialty Pharmacy sold and/or transferred
22 dangerous drugs to GreenValleyMed, located at 1850 Whitney Mesa in Henderson, NV 89014,
23 which is not licensed as a pharmacy or wholesaler by the Nevada State Board of Pharmacy.

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1 PETITION TO REVOKE PROBATION

2 FIRST CAUSE TO REVOKE PROBATION

3 (Failure to Obey all Laws)

4 15. At all times after the effective date of Respondent's probation, Condition 1 stated, in
5 pertinent part:

6 "Respondent shall obey all state and federal laws and regulations substantially related or
7 governing the practice of pharmacy."

8 16. Respondent's probation is subject to revocation in that while he was the pharmacist-
9 in-charge of University Specialty Pharmacy, it failed to comply with state and federal laws
10 substantially related to the practice of pharmacy as further described in paragraphs 13-14 above.

11 SECOND CAUSE TO REVOKE PROBATION

12 (Employment Limitations)

13 17. At all times after the effective date of Respondent's probation, Condition 6 stated:

14 "Respondent shall notify all present and prospective employers of the decision in case
15 number 2784 and the terms, conditions and restrictions imposed on Respondent by the decision.
16 Within 30 days of the effective date of this decision, and within 15 days of Respondent
17 undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge
18 and/or owner to report to the Board in writing acknowledging the employer has read the decision
19 in case number 2784.

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

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

27 18. Respondent's probation is subject to revocation in that he failed to comply with
28 Condition No. 6 as follows:

1 a. Respondent failed to notify Quality Infusion Pharmacy of his probationary
2 status prior to beginning employment, failed to notify the Board that he had begun employment
3 with Quality Infusion Pharmacy within fifteen days of accepting employment, and failed to cause
4 his direct supervisor, pharmacist-in-charge, and/or owner to report to the Board in writing
5 acknowledging that he or she had read the decision in case no. 2784.

6 b. Respondent failed to notify the Accreditation Commission for Health Care
7 (ACHC) of his probationary status prior to beginning employment, failed to notify the Board that
8 he had begun employment with ACHC within fifteen days of accepting employment, and failed to
9 cause his direct supervisor, pharmacist-in-charge, and/or owner to report to the Board in writing
10 acknowledging that he or she had read the decision in case no. 2784.

11 **SECOND CAUSE TO REVOKE PROBATION**

12 **(Reporting Requirements)**

13 19. At all times after the effective date of Respondent's probation, Condition 2 stated:

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

19 20. Respondent's probation is subject to revocation in that he has not submitted any
20 required quarterly reports since July, 2010.

21 **THIRD CAUSE TO REVOKE PROBATION**

22 **(Probation Monitoring Costs)**

23 21. At all times after the effective date of Respondent's probation, Condition 9 stated:

24 "Respondent shall pay the costs associated with probation monitoring as determined by the
25 Board each and every year of probation. Such costs shall be payable to the Board at the end of
26 each year of probation. Failure to pay such costs shall be considered a violation of probation."

27 22. Respondent's probation is subject to revocation in that he has failed to pay probation
28 monitoring costs as required.

1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Costs of Investigation and Enforcement)**

3 23. At all times after the effective date of Respondent's probation, Condition 8 stated, in
4 pertinent part:

5 "Respondent shall pay to the Board its costs of investigation and prosecution of this matter
6 in the amount of \$49,078.00....Respondent shall make said payments in a payment plan approved
7 by the Board. The filing of bankruptcy by Respondent shall not relieve Respondent of his
8 responsibility to reimburse the Board its costs of investigation and prosecution."

9 24. Respondent's probation is subject to revocation in that he has failed to pay costs of
10 investigation and prosecution as required.

11 **FIFTH CAUSE TO REVOKE PROBATION**

12 **(Non-Compliance with Probation Program)**

13 25. At all times after the effective date of Respondent's probation, Condition 14 stated, in
14 pertinent part:

15 "If Respondent violates probation in any respect, the Board, after giving Respondent notice
16 and an opportunity to be heard, may revoke probation and carry out the disciplinary order which
17 was stayed..."

18 26. Respondent's probation is subject to revocation because he failed to comply with
19 probation conditions 1, 2, 6, 8, 9, and 14.

20 **PRAYER FOR RELIEF**

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

23 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2784
24 and imposing the disciplinary order that was stayed thereby revoking Original Pharmacist License
25 No. RPH 30586 issued to Robert Wayne Blackburn;

26 2. Revoking or suspending Original Pharmacist License No. RPH 30586, issued to
27 Robert Wayne Blackburn;

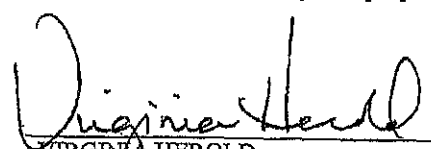
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3. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code;

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

DATED: 12/1/11



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

LA2011600406
acc and ptr prob.doc

Exhibit A

Decision and Order

Board of Pharmacy Case No. 2784

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JENNIFER S. CADY
Supervising Deputy Attorney General
3 THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 2784

12 ROBERT WAYNE BLACKBURN
25515 Lone Pine
13 Laguna Hills, CA 92653

OAH No. 2006050922

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Pharmacist License No. RPH 30586

15 Respondent.

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17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

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

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

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

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

3 JURISDICTION

4 4. Accusation No. 2784 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on March 8,
7 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2784 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

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

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

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

22 CULPABILITY

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

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

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 suspension or probation is tolled.

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

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

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

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

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

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

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

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

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

17 ACCEPTANCE

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

22 DATED: FEBRUARY 12, 2007.

23
 24 
 25 ROBERT WAYNE BLACKBURN
 Respondent

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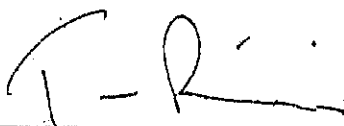
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ENDORSEMENT

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: LA2004501184
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
Board President

Exhibit A
Accusation No. 2784

1 BILL LOCKYER, Attorney General
of the State of California
2 THOMAS L. RINALDI, State Bar No. 206911
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2541
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

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

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 2784

12

OAH No.

13 ROBERT WAYNE BLACKBURN
25515 Lone Pine
14 Laguna Hills, CA 92653

ACCUSATION

AND

15 Pharmacist License No. RPH 30586,

**PETITION TO REVOKE
PROBATION**

16

17

Respondent.

18

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20 Complainant alleges:

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PARTIES

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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).

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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.

1 JURISDICTION

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

5 4. Section 4300 permits the board to take disciplinary action to suspend or
6 revoke a license issued by the Board.

7 5. Section 4301 states, in pertinent part:

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

12
13 "(j) The violation of any of the statutes of this state or of the United States
14 regulating controlled substances and dangerous drugs.

15
16 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
17 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
18 applicable federal and state laws and regulations governing pharmacy, including regulations
19 established by the board.

20 6. Section 4059.5 states, in pertinent part:

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

25 7. Section 4160 states, in pertinent part:

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

1
2 "(c) A separate license shall be required for each place of business owned or
3 operated by a wholesaler. Each license shall be renewed annually and shall not be
4 transferable. . . ."

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

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

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

14 10. Section 125.3 provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations
16 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 INTEGRATED HEALTH CARE ASSETS

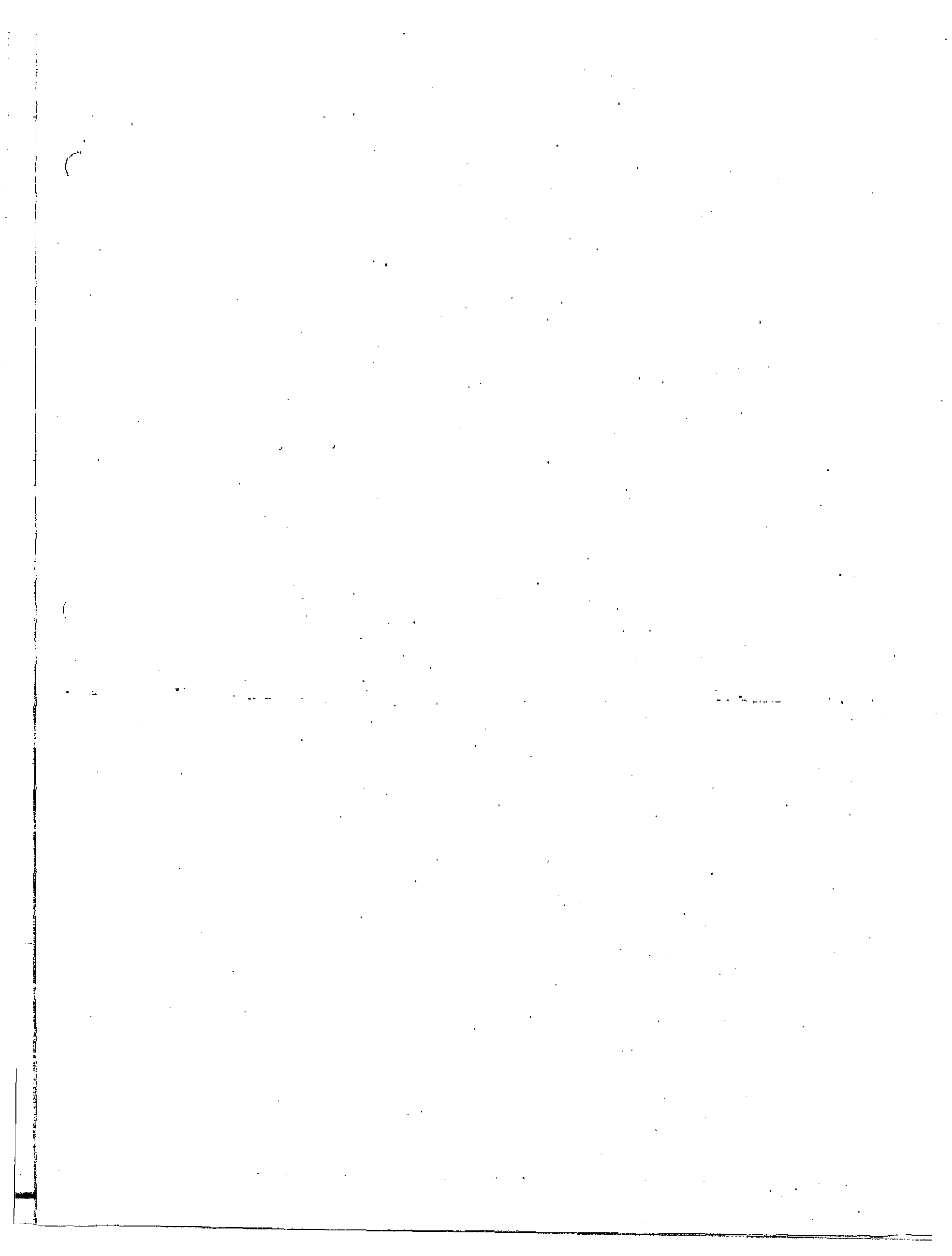
19 11. Integrated Health Assets, Inc. ("IHA") is a California for-profit corporation
20 with Robert Wayne Blackburn as its sole officer and director. On or about January 25, 2000,
21 Robert Wayne Blackburn was issued 100% of the corporation's common stock. The
22 corporation's agent for service of process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

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

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

13 FIRST CAUSE FOR DISCIPLINE

14 (Obtaining Drugs without a Permit)

15 14. Respondent Blackburn is subject to disciplinary action under sections
16 4300 and 4301(j) and (o) on the grounds of unprofessional conduct for violating either directly or
17 indirectly section 4059.5(a) by obtaining dangerous drugs without a proper permit issued by the
18 Board as further described in paragraphs 11-13 above.

19 SECOND CAUSE FOR DISCIPLINE

20 (Acting as a Wholesaler Without a License)

21 15. Respondent Blackburn is subject to disciplinary action under sections
22 4300 and 4301(j) and (o) on the grounds of unprofessional conduct for violating either directly or
23 indirectly sections 4160(a) and 4160(c), in that Respondent acted as wholesaler without a proper
24 wholesale permit issued by the Board as further described in paragraphs 11-13 above.

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

1 PETITION TO REVOKE STAY OF REVOCATION ORDER

2 (Violation of Administrative Decision and Order)

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

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

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

12 a. At all times after the effective date of Respondent's probation, Conditions
13 1, 6, and 12 of the Board's Decision stated:

14 CONDITION NO. 1

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

17 CONDITION NO. 6

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

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27 2. Respondent filed a petition for writ of mandate in the Superior Court for the County of
28 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.

1 CONDITION NO. 12

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

8 GROUND FOR REVOKING PROBATION AND STAY OF REVOCATION

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

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

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

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

21 PRAYER

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

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

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

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

Complainant

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