

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

In the Matter of Petition for Reinstatement
of:

MICHAEL FLORES

Petitioner,

Case No. 1538

OAH No. L2007070548

DECISION

This matter was heard by a quorum of the California Board of Pharmacy on July 25, 2007, in El Segundo, California. Administrative Law Judge Humberto Flores from the Office of Administrative Hearings presided.

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

Petitioner Michael Flores appeared personally and was represented by Ronald Marks, Attorney at Law.

Evidence was received and the matter was submitted for decision. The California Board of Pharmacy finds as follows:

FACTUAL FINDINGS

1. On June 18, 2007, Michael Flores (Petitioner) filed a Petition for Reinstatement with the California Board of Pharmacy (Board), Department of Consumer Affairs.
2. On June 9, 1971, the Board issued Pharmacy Certificate No. RPH 27129 to Petitioner.

3. In a Decision effective April 10, 1992, in Case No. 1538, pursuant to a Stipulation, Decision and Order, the Board revoked Petitioner's Pharmacy Certificate No. RPH 27129. The factual bases for the revocation were as follows:

(1) Petitioner was convicted on his plea of guilty to two counts charging violations of Welfare and Institutions Code section 14107. The facts and circumstances underlying the convictions were that Petitioner willfully defrauded the Medi-Cal Insurance Program by submitting false or fraudulent claims for 42 patients and collecting \$220,558 for submitting those fraudulent claims. Petitioner was placed on probation for three years on conditions, including payment of restitution and fines, serving a jail term of one year, and completing a drug diversion program. Petitioner's probation was extended to ten years to allow Petitioner to pay restitution in monthly installments.

(2) In 1989 and 1989, Petitioner diverted for his own use and consumption two controlled substances containing codeine (novahistine and elixir of terpin hydrate) without valid prescriptions. On at least two occasions in 1989, Petitioner consumed these drugs while performing duties as a pharmacist.

4. Petitioner expressed remorse and accepted responsibility for his crimes. He explained that years of drinking alcohol and his use of controlled substances during a two year period affected his judgment, and were contributing factors in his misconduct.

5. Petitioner presented substantial evidence of rehabilitation as follows:

(1) He paid \$1,500 per month toward the court ordered restitution during the ten years he was on probation. He completed his restitution payments in 2003. Petitioner completed all other terms and conditions of his probation, which was terminated in 2004.

(2) On May 8, 2007, the superior court granted Petitioner's motion to reduce the charge to a misdemeanor, set aside his guilty plea and dismissed the charge pursuant to Penal Code section 1203.4.

(3) Petitioner has been clean and sober for 17 years. He has maintained steady employment as an auto detailer since losing his pharmacy license. Despite paying \$1,500 per month in restitution, he also earned enough to help provide financial support for his family.

(4) Petitioner submitted numerous letters of reference, including letters from pharmacists attesting to his efforts at rehabilitation and reinstatement. One professional reference offered to employ Petitioner upon reinstatement.

6. Petitioner has attempted to stay current with advances in pharmacy by reading pharmacy magazines such as Drug Topics, Pharmacy Times and U.S. Pharmacist. Over the past two years, Petitioner completed 40 hours of continuing education, including 32 hours that were approved by the Board. He has also been studying the Morris Cody pharmacy courses 30 hours per week.

LEGAL CONCLUSION

Cause exists, pursuant to Business and Professions Code Section 4309, to grant the Petition for Reinstatement of a Revoked License. Petitioner's evidence of rehabilitation was sufficient to grant his petition. However, the Board is concerned with the time that has elapsed since Petitioner's license was revoked. The Board must insure that Petitioner is competent to engage in the practice of pharmacy. Therefore, the following order of reinstatement shall include a term of probation and appropriate conditions that address competency concerns.

ORDER

The Petition for Reinstatement of Revoked Certificate No. RPH 27129, submitted by Michael Flores, is granted. The Certificate shall be immediately revoked. The order of revocation is stayed and Petitioner is placed on probation for a period of three years on the following terms and conditions:

1. Examination

Petitioner shall take and pass the NABPLEX section of the pharmacist licensure examination as scheduled by the Board after the effective date of this decision at Petitioner's own expense. If Petitioner fails to take and pass the examination within six months after the effective of this decision, Petitioner shall be suspended from practice upon written notice. Petitioner shall not resume the practice of pharmacy until he takes and passes the same section(s) at a subsequent examination and is notified, in writing, that he has passed the examination.

During suspension, Petitioner 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. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall Petitioner 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 controlled substances.

Petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. Petitioner shall not direct or control any aspect of the practice of pharmacy. Petitioner shall not perform the duties of a pharmacy technician or an exemptee for any

entity licensed by the board. Subject to the above restrictions, Petitioner may continue to own or hold an interest in any pharmacy in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until Petitioner passes the examination and is notified in writing.

2. Rehabilitation Program - Pharmacists Recovery Program (PRP)

Within 30 days of the effective date of this decision, Petitioner shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the board. The costs for PRP participation shall be borne by the Petitioner.

If Petitioner is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Petitioner shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Petitioner successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the board. Petitioner may not resume the practice of pharmacy until notified by the board in writing. The board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

3. Supervised Practice

Petitioner shall practice only under the supervision of a pharmacist not on probation with the board. Petitioner shall not practice until the supervisor is approved by the board. The supervision shall be, as required by the board, either:

Continuous - 75% to 100% 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 30 days of the effective date of this decision, Petitioner shall have his supervisor submit notification to the board in writing stating the supervisor has read the decision in case number 1538 (OAH No. L2007070548) and is familiar with the level of supervision as determined by the board. If Petitioner changes employment, Petitioner shall have his new supervisor, within 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 1538 (OAH No. L2007070548) and is familiar with the level of supervision as determined by the board.

Within 10, days of leaving employment, Petitioner shall notify the board in writing.

4. Obey All Laws

Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

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

- ♦ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- ♦ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ♦ a conviction of any crime
- ♦ discipline, citation, or other administrative action filed by any state and federal agency which involves Petitioner's pharmacist 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.

5. Reporting to the Board

Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Petitioner 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.

6. Interview with the Board

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

7. Cooperation with Board Staff

Petitioner shall cooperate with the board's inspectional program and in the board's monitoring and investigation of Petitioner's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

8. Continuing Education

Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.

9. Notice to Employers

Petitioner shall notify all present and prospective employers of the decision in case number 1538 (OAH No. L2007070548) and the terms, conditions and restrictions imposed on Petitioner by the decision. Within 30 days of the effective date of this decision, and within 15 days of Petitioner undertaking new employment, Petitioner shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the board in writing acknowledging the employer has read the decision in case number 1538 (OAH No.L2007070548).

If Petitioner works for or is employed by or through a pharmacy employment service, Petitioner must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of the decision in case number 1538 (OAH No. L2007070548) in advance of the Petitioner commencing work at each pharmacy.

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

10. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant

Petitioner shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Petitioner be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.

11. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

12. Status of License

Petitioner shall, at all times while on probation, maintain an active current license with the board, including any period during which suspension or probation is tolled. If Petitioner's license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.

13. License Surrender while on Probation/Suspension

Following the effective date of this decision, should Petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Petitioner may tender his license to the board for surrender. The board shall have the

discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Petitioner will no longer be subject to the terms and conditions of probation.

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

14. Notification of Employment/Mailing Address Change

Petitioner shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Petitioner shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

15. Tolling of Probation

Should Petitioner, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 hours per calendar month in California, Petitioner must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Petitioner's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

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

16. Violation of Probation

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

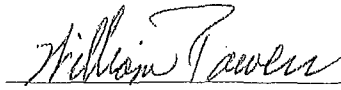
If a Petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over Petitioner, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the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

17. Completion of Probation

Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: August 30, 2007

EFFECTIVE DATE: August 30, 2007



William Powers
President
California Board of Pharmacy