

**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

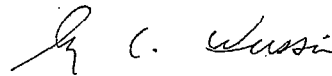
DECISION AND ORDER

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

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In the Matter of the Accusation/Petition to
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ROBERT WAYNE BLACKBURN,

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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.

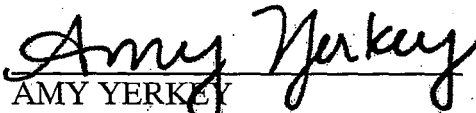
Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, Respondent shall not resume 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

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8 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
9 **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
Original Pharmacist License No. RPH 30586

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

14 Respondent.
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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.”
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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;

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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 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.

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FOURTH CAUSE TO REVOKE PROBATION

(Costs of Investigation and Enforcement)

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

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

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

FIFTH CAUSE TO REVOKE PROBATION

(Non-Compliance with Probation Program)

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

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

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

PRAYER FOR RELIEF

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

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

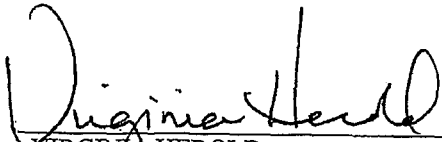
2. Revoking or suspending Original Pharmacist License No. RPH 30586, issued to Robert Wayne Blackburn;

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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

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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**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 ROBERT WAYNE BLACKBURN
25515 Lone Pine
13 Laguna Hills, CA 92653
14
15 Pharmacist License No. RPH 30586
16 Respondent.

Case No. 2784
OAH No. 2006050922
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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.

28

- 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.

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 24 
 25 ROBERT WAYNE BLACKBURN
 Respondent

26 ///
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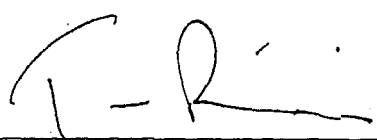
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ENDORSEMENT

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: LA2004601184
60190537.wpd

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

In the Matter of the Accusation Against:

ROBERT WAYNE BLACKBURN
25515 Lone Pine
Laguna Hills, CA 92653

Pharmacist License No. RPH 30586

Respondent.

Case No. 2784

OAH No. 2006050922

DECISION AND ORDER

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

This Decision shall become effective on April 25, 2007.

It is so ORDERED March 26, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

Exhibit A
Accusation No. 2784

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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

7
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
12 Revoke Probation Against:

Case No. 2784

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

OAH No.

ACCUSATION

15 Pharmacist License No. RPH 30586,

AND

**PETITION TO REVOKE
PROBATION**

16
17 Respondent.

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19
20 Complainant alleges:

21 PARTIES

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

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

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

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

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

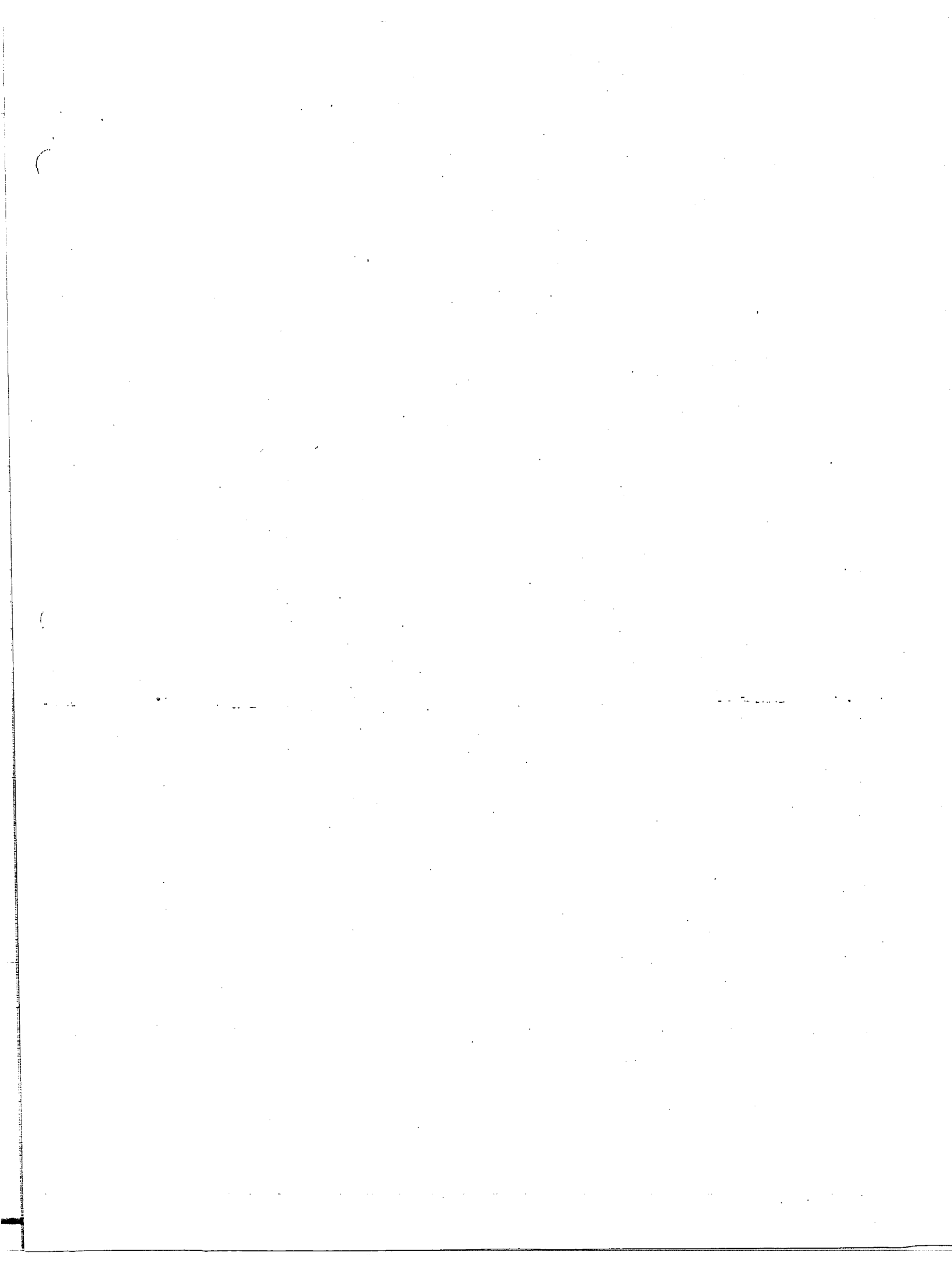
9. Section 118, subdivision (b), provides that the suspension / expiration / surrender / cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

INTEGRATED HEALTH CARE ASSETS

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

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CONDITION NO. 12

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

GROUNDS FOR REVOKING PROBATION AND STAY OF REVOCATION

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

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

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

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

PRAYER

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

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

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

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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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