

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

In the Matter of the Petition for Reinstatement  
of:

DAVID J. OFSTEDAHL  
Rancho Mirage, CA 92270

Petitioner.

Case No. 2960

OAH No. 2010070999

**CORRECTED DECISION**

"CORRECTION to decision issued September 23, 2010 made pursuant to Government Code section 11518.5 on the Board's own motion: Page 4, last sentence of first paragraph under "ORDER" - change "The license shall be immediately reinstated . . ." to "The license shall be immediately revoked . . ."

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

In the Matter of the Petition for Reinstatement  
of:

DAVID J. OFSTEDAHL  
Rancho Mirage, CA 92270

Petitioner.

Case No. 2960

OAH No. 2010070999

**CORRECTED DECISION**

This matter was heard before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on July 29, 2010. Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, presided at the hearing.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Robert W. Stewart, Attorney at Law, represented David J. Ofstedahl (petitioner), who was present.

Evidence was received, the record was closed, and the matter was submitted for decision on July 29, 2010.

**FACTUAL FINDINGS**

1. On April 30, 1969, the Board issued Pharmacist License No. RPH 26029 (license) to petitioner. On October 8, 1996, the Board issued Pharmacy Permit No PHY 33827 (permit) to Fireside Pharmacy (Fireside), with petitioner as the pharmacist in charge.

2. On May 25, 2006, the Board's Executive Officer issued an Accusation against petitioner and Fireside. The Accusation sought to revoke petitioner's license and Fireside's permit for: (1) having expired drugs on the shelves; (2) failing to produce records within a reasonable time; (3) failing to produce prescriptions and maintain required records on premises; (4) dispensing prescriptions without the correct name of the prescriber on the container; (5) furnishing dangerous drugs without a prescription; (6) falsely making, altering or forging prescriptions; (7) failing to have a quality assurance program; (8) failing to

or forging prescriptions; (7) failing to have a quality assurance program; (8) failing to maintain records of sale, acquisition or disposition of dangerous drugs; and (9) attempting to subvert the Board's investigation.

3. On April 17, 2007, petitioner signed a Stipulated Revocation of Licenses and Order (Stipulated Revocation), pursuant to which he admitted the truth of all the allegations in the Accusation, and agreed to the revocation of his license and Fireside's permit. On June 11, 2007, the Board adopted the Stipulated Revocation as its decision and order (Decision), effective July 11, 2007.

4. At the hearing, petitioner admitted that he was an alcoholic and that he self-medicated with drugs from his pharmacy to alleviate the pain he was suffering from health-related issues including cancer and back surgery. Upon the recommendation of his internist, petitioner voluntarily enrolled in the Pharmacists Recovery Program (PRP). He successfully completed the PRP in 2007. His sobriety date is September 3, 2003. He has had no relapses since then. He attends two to four Alcoholics Anonymous (AA) meetings a week. He attempts to apply the 12 steps in his daily life. His social life involves mostly people in AA. He described his enrollment in the PRP as a "life-saving event."

5. Petitioner admitted that he engaged in "illegal and unethical" actions when he owned his own pharmacy. According to petitioner, because the reimbursement he received from Medical Matrix was so low, in order to increase his income, he added fraudulent prescriptions to his billings. Petitioner received an additional \$12,000 through these fraudulent billings. He has reimbursed this money to Medical Matrix.

6. Petitioner is 67 years old. He has not worked since his license was revoked in 2007. He receives social security and disability benefits. He also has some savings and has refinanced his home. He would like to return to work two days a week in a relief position to earn some extra money and to repair his image as a reputable pharmacist. He testified that his reputation with his family and friends was important to him, and that he wanted to regain his reputation by having his license reinstated.

7. Petitioner submitted certificates showing that he engaged in 192.5 hours of continuing education between June 2007 and February 2010. Of these hours, 153 were Board-approved.

8. Pursuant to Business and Professions Code section 4309, subdivision (b),<sup>1</sup> petitioner submitted two letters of recommendation from licensed pharmacists and six letters of recommendation from private citizens, as follows:

---

<sup>1</sup> Business and Professions Code section 4309, subdivision (b), provides:

a. James Thomas McCoy is a licensed pharmacist. He has known petitioner since 2004 through a professional support group. Mr. McCoy praised petitioner's active participation in AA. Mr. McCoy believes that if petitioner's license is reinstated, petitioner would "serve the community with expertise and compassion."

b. David Goldberg is a licensed pharmacist. He met petitioner in the 1970's when petitioner owned Fireside. Mr. Goldberg believes that petitioner "ran a well established and reputable independent pharmacy." Mr. Goldberg employed petitioner for a few months in early 2007 before petitioner's license was revoked. According to Mr. Goldberg, petitioner has "worked diligently during this period of revocation to maintain his pharmaceutical expertise by completing a substantial amount of continuing education." Mr. Goldberg is also aware that petitioner has maintained his sobriety. Mr. Goldberg believes that petitioner has "been sufficiently rehabilitated" to return to the active practice of pharmacy.

c. The six other letters of recommendation submitted by petitioner are from people who are recovering alcoholics, including petitioner's sister. These letters attest to petitioner's commitment to sobriety and the work he has done for AA.

9. Petitioner was candid and forthcoming about his prior abuse of alcohol and controlled substances. He expressed remorse and took responsibility for his fraudulent billing practices. He demonstrated insight into his addictions. He has engaged in rehabilitation and has remained clean and sober for almost seven years. He is actively involved in AA. Given petitioner's positive recommendations, his rehabilitation, and his record of sobriety, it would not be contrary to the public interest, safety or welfare to issue him a probationary license on the terms and conditions set forth below.

10. Pursuant to the Stipulated Revocation, petitioner agreed to pay the Board its costs of investigation and enforcement in the amount of \$12,000 before his license is reinstated. Petitioner shall be permitted to reimburse the Board for these costs over the term of his probation according to a payment plan established by the Board or its designee.

11. Because petitioner has not practiced as a pharmacist since 2007, before his license will be reinstated on a probationary basis, he must first take and pass the California Pharmacist Jurisprudence Examination.

---

The petition shall state any facts required by the Board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the Board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the Board and the activities of the petitioner since the disciplinary penalty was imposed.

## ORDER

The petition for reinstatement of David J. Ofstedahl is GRANTED, conditioned upon petitioner taking and passing the California Pharmacist Jurisprudence Examination (CPJE), as set forth in paragraph 16 below. Upon passing the CPJE, and if petitioner satisfies all statutory and regulatory requirements for issuance of a license, petitioner's license shall be reinstated. The license shall be immediately revoked, the revocation stayed, and petitioner's license placed on probation for a period of five (5) years on the following terms and conditions:

1. **Obey All Laws.** Petitioner shall obey all state and federal laws and regulations. Petitioner shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (a) 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; (b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (c) a conviction of any crime; or (d) discipline, citation, or other administrative action filed by any state or federal agency which involves petitioner's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance. Failure to timely report such occurrence shall be considered a violation of probation.

2. **Report to the Board.** Petitioner shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, petitioner shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. **Interview with the Board.** Upon receipt of reasonable prior notice, petitioner shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff.** Petitioner shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

(2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff.** Petitioner shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. **Continuing Education.** Petitioner 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, petitioner shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment, petitioner shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during petitioner'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 this case, and terms and conditions imposed hereby. It shall be petitioner's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify his direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the Board of the terms and conditions of the decision in this case in advance of the petitioner 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 petitioner undertaking any new employment by or through a pharmacy employment service; petitioner shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in this case and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that his 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 petitioner is an employee, independent contractor or volunteer.

7. **No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), or Serving as Designated Representative-in-Charge.** During the period of probation, petitioner shall not supervise any intern pharmacist, or be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the Board 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, petitioner shall pay to the Board its costs of investigation and prosecution in the amount of \$12,000. Petitioner shall make payments over the probationary term in accordance with a payment schedule established by the Board or its designee.

There shall be no deviation from this 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.

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

9. **Probation Monitoring Costs.** Petitioner 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.** 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. Failure to maintain an active, current license shall be considered a violation of probation.

If petitioner'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 petitioner'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 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 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, petitioner 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 petitioner's license history with the Board.

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

**12. Notification of a Change in Name, Residence Address, Mailing Address or Employment.** Petitioner 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. Petitioner 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, petitioner shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 20 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, petitioner must nonetheless comply with all terms and conditions of probation.

Should petitioner, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 20 hours per calendar month in California, petitioner 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 petitioner'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 petitioner is not practicing as a pharmacist for at least 20 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which petitioner is practicing as a pharmacist for at least 20 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.



14. **Violation of Probation.** If 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 that was stayed.

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 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 petitioner 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, petitioner's license will be fully restored.

16. **Pharmacist Examination.** Petitioner shall take and pass the CPJE within one (1) year of the effective date of this decision. Petitioner shall not practice pharmacy until he takes and passes the CPJE and is notified, in writing, that he has passed the examination(s) and may resume practice. Petitioner shall bear all costs of the examination(s) required by the Board.

Until petitioner passes the CPJE, he 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 resume practice until notified by the Board.

Until petitioner passes the CPJE, he 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 a designated representative for any entity licensed by the Board.

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

17. **Random Drug Screening.** Petitioner, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Petitioner may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times, petitioner shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

Upon request of the Board or its designee, petitioner shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by petitioner. Petitioner may not resume the practice of pharmacy until notified by the Board in writing.

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 resume practice until notified by the Board.

During suspension, 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 a designated representative for any entity licensed by the Board.

Subject to the above restrictions, petitioner 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.


18. **Abstain from Drugs and Alcohol Use.** Petitioner shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its

designee, petitioner shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the petitioner. Failure to timely provide such documentation shall be considered a violation of probation. Petitioner shall ensure that he is not in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

19. **No Ownership of Licensed Premises.** Petitioner 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. Petitioner 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.

DATED: September 23, 2010

EFFECTIVE: October 23, 2010

  
STANLEY C. WEISSNER, R.Ph.  
President  
Board of Pharmacy