

BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANIEL G. PLATT
PO Box 11332
Olympia, WA 98508-1332

Licentiate Certificate No. RPH 29516

Respondent.

Case No. 2412

OAH No. N2002030137

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on May 30, 2002.

Jana L. Tuton, Deputy Attorney General, Department of Justice, State of California, represented the Board of Pharmacy.

Daniel C. Platt appeared in person and represented himself.

Evidence was received, oral argument was made. Mr. Platt requested that the record remain open for a period of 30 days to permit him an opportunity to offer in evidence a copy of a psychiatric evaluation performed by Dr. Clark and copies of any psychiatric reports filed with the Washington State Board of Pharmacy by or for Mr. Platt. Leave was granted and the record remained open until June 30, 2002 to permit receipt of the materials. The documents were not submitted during the period of time permitted, and no request was made to extend the period. No contact from Mr. Platt was received by the Administrative Law Judge regarding the documents at all. The record was closed and the matter was submitted for Decision on July 1, 2002.

FACTUAL FINDINGS

1. Patricia F. Harris, acting in her official capacity only as Executive Officer, Board of Pharmacy (hereafter "the Board"), Department of Consumer Affairs, State of California, made the charges and allegations contained in the Accusation and caused it to be filed on November 9, 2001. The Board has jurisdiction to revoke, suspend or impose other disciplinary action upon any Licentiate or Certificate holder authorizing the holder to practice pharmacy in the State of California, provided cause for the disciplinary action is

proved by clear and convincing evidence.¹ Daniel G. Platt timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing upon the allegations of the Accusation before an Administrative Law Judge of the Office of Administrative Hearings.

2. The Board issued Original Pharmacist License number RPH 29516 to Daniel G. Platt to practice as a pharmacist in the State of California on June 3, 1975. The license is in full force ad effect and is due to expire on September 30, 2003. There is no record of previous disciplinary action against Mr. Platt.

3. Mr. Platt was issued a license by the Washington State Board of Pharmacy (hereafter "the Washington Board") to practice pharmacy in the State of Washington in June 1975. The license expired in February 1997. Mr. Platt voluntarily surrendered his Washington pharmacist license to an investigator employed by the Washington Board on December 18, 1996. However, Mr. Platt later rescinded the surrender of his license.

4. The Washington State Board of Pharmacy took disciplinary action against Mr. Platt when it issued its Order on August 27, 1998, following a contested evidentiary hearing in which Mr. Platt appeared by telephone. The Washington Board indefinitely suspended Mr. Platt's license to practice pharmacy in Washington, with the suspension to remain in place until such time as Mr. Platt submitted himself to a psychiatric examination before a Board-approved psychiatrist, with the examination to determine whether Mr. Platt is mentally and psychologically fit to safely practice pharmacy. The Order provided Mr. Platt could petition for a lifting of the stay upon successful completion of the psychiatric examination and a favorable report from the psychiatrist regarding Mr. Platt's fitness to practice safely.

5. Mr. Platt underwent an investigative psychiatric examination performed by Dr. Roy Clark on March 16 and 19, 1999. Dr. Clark reported to the Washington Board that Mr. Platt was fit to practice with reasonable skill and safety pharmacy as long as Mr. Platt continued with active psychiatric treatment, with recommended bi-monthly reports from the psychiatrist to the Board regarding continuing appraisal of Mr. Platt's fitness to practice with reasonable skill and safety. Dr. Clark further recommended to the Washington Board that Mr. Platt remain in active psychiatric treatment for a period of at least 2 years, and at the end of the two year period, Mr. Platt should be reexamined to determine whether continuing treatment should be required. Mr. Platt commented that Dr. Clark is "an astute fellow" and that the evaluation was useful to him because Dr. Clark pointed out some valuable things to him in the process.

6. The Washington Board adopted Dr. Clark's recommendations and on July 6, 1999, it issued its Findings, Legal Conclusions and its Order following a contested hearing at which Mr. Platt appeared in person. The Washington Board lifted the indefinite suspension of Mr. Platt's license, stayed the indefinite suspension and conditioned the stay upon

¹ Business and Professions Code Section 4300.

compliance with a number of terms and conditions. Chief among the terms and conditions of the stay were the following,

“4.2 The Respondent shall remain in active psychiatric treatment with Dr. Hummel, or with another Board-approved psychiatrist. The Respondent shall see the psychiatrist at least once per month. The psychiatrist shall submit a monthly report to the Board, describing the Respondent’s progress in treatment and any problems affecting his ability to practice as a pharmacist with reasonable skill and safety. If the psychiatrist concludes the Respondent has become unable to practice as a pharmacist with reasonable skill and safety due to a mental or physical condition, the psychiatrist shall immediately notify the Board in writing.”

4.3 The Respondent shall notify the Board of any employment as a pharmacist, including any change in employment or practice status. The Respondent shall provide each employer and each site of employment with a copy of this Order, and shall ensure that each employer and each site of employment notify the Board in writing that they have received a copy of this Order.”

4.4 The Respondent shall practice as a pharmacist only in settings where he is supervised at least fifty (50) per cent of the time by a registered pharmacist who is (a) in good standing with the Board, (b) not an employee of the Respondent, (c) is not related by blood or marriage to the Respondent, and (d) does not have any fiduciary obligation to the Respondent.

4.5 The Respondent shall cause each of his employers to submit monthly performance reports directly to the Board on forms provided by the Board...”

7. Mr. Platt was rather frank in his testimony regarding his lack of compliance with the Order of the Washington Board. He has not complied with the Order and considers it unenforceable. He testified the Order is unenforceable in his opinion because he has not practiced pharmacy in Washington State since 1998, and sees no need to comply with the Order unless he practices in that State.

8. Mr. Platt obtained a job with the U.S. Department of Defense as a civilian pharmacist serving the military at the Madigan Army Medical Center at the Washington State military complex at Fort Lewis and McCord Air Force Bases in Lakewood, Washington. It was not entirely clear when Mr. Platt started this job, but Mr. Platt was employed in that position “for most of 1999”. Mr. Platt did not consider his practice of pharmacy with the Department of Defense during 1999-2000 to be practice in Washington State, or a violation of the Washington Board’s Order forbidding him to practice pharmacy in Washington absent compliance with its Order. He used his unrestricted California license to obtain the Department of Defense position and did not disclose to his Department of Defense employers the disciplinary action against him by his home state.

9. Mr. Platt became involved in a diversion program through his employment Madigan Army Medical when he was discovered to have alcohol on his breath at work. He

attended a 2-week alcohol education classes and program designed to help employees maintain sobriety. Mr. Platt resigned from the position on April 3, 2000 when faced with a termination action.

10. Mr. Platt obtained a job as a staff pharmacist at Fallbrook Hospital in Fallbrook, California on April 4, 2000. Mr. Platt was detected to have an odor of alcohol on his breath at work on April 6, 2000. He was confronted by hospital and nursing administration management. Mr. Platt denied having had anything to drink. However, he permitted a blood sample to be taken, which resulted in a blood alcohol level detected of .09% by volume. Mr. Platt resigned in lieu of termination on April 6, 2000 after the results of the blood alcohol test were made available to hospital administration.

11. Mr. Platt traveled to Peru and spent the following several months performing herbal medicine research. He then joined Barefoot Doctors, an overseas medical organization. He practiced pharmacy in China with Barefoot Doctors for a period of time not clear from the record. He became the Director of Quality Assurance for the pharmacies of five large Chinese hospitals as part of this position.

12. Mr. Platt lived and practiced pharmacy in Jedda, Saudi Arabia for approximately three months in 2001. Mr. Platt testified that while he was in Saudi Arabia, he received counseling from Dr. Al Turque during his stay in Saudi Arabia, but it was not clear how many times he saw Dr. Al Turque or for what reasons. Dr. Platt commented he was alcohol free in Saudi Arabia, and commented that alcohol is not available there.

13. At various times in 1999 through 2001, and in various places in California, Mr. Platt practiced pharmacy in California in fill-in or locum tenens positions. He occasionally served as pharmacist-in-charge. Most of the work was filling in for friends or when a pharmacist was on vacation. Mr. Platt testified in response to a question regarding whether serving as a pharmacist-in-charge in California was a violation of his Washington probation that the Washington Board has no jurisdiction over what he does in California.

14. Mr. Platt is recently remarried to a Pharmacist Technician. Mr. Platt is not currently working anywhere as a pharmacist. He and his wife live in Shelton, Washington, a suburb of Olympia. He and his wife are considering a move to California, perhaps somewhere in Northern California, where they would both practice pharmacy.

15. Mr. Platt is suffering from peripheral vascular neuropathy that causes him to suffer a Parkinson's-like tremor in his hands. The symptoms are "transient" but were very much evident and significant during the evidentiary hearing. Mr. Platt is under the care of a neurologist for the condition. Mr. Platt testified that there is no medication known that can control the condition, so he is not taking any.

16. Mr. Platt contends he is alcohol free and sober. There is no evidence other than Mr. Platt's testimony in support of the contention. Other than the brief education program he completed at Madigan Army Medical Center in 1999 or 2000, Mr. Platt has not

participated in any formal rehabilitation or treatment program for substance abuse. He testified he has attended many Alcoholics Anonymous meetings, but he does not acknowledge being an alcoholic and has no evidence of participation.

17. Mr. Platt's responses to the Washington Board's probationary Order and his attitude toward the need to comply with that Order demonstrate he is a poor candidate for probation in California. Mr. Platt was ordered to participate in a psychiatric evaluation and counseling. He reluctantly attended the psychiatric evaluation, but failed to produce a copy of Dr. Clark's report for consideration here. He claimed at one point to have participated in monthly psychological counseling, and at another point testified he did not or quit soon after starting, because the Washington Board's Order that he do so was unenforceable. He failed to produce any evidence of attendance at psychological counseling as ordered by the Washington Board, despite being afforded an extended opportunity to do so. He has an unresolved problem with alcohol and produced no extrinsic evidence of participation in rehabilitation, treatment or externally monitored sobriety programs. He has a physical problem with peripheral vascular neuropathy that may or may not adversely effect his ability to practice pharmacy safely and competently. Mr. Platt's testimony was confused in places, disorganized in others, and directly inconsistent with itself in yet other respects. He has made it clear that he will not comply with probationary obligations and restrictions if he decides there is no jurisdiction for those restrictions or obligations. He used his California license in at least one instance to defeat the legitimate inquiry of a pharmacist employer regarding his license status in his home state, and to avoid his probationary obligations to his home state. He has almost no record of stable and consistent employment in the most recent five years. There is no way to know the level of his current skills as a pharmacist. With outstanding issues regarding sobriety, the physical and mental ability to practice safely and Mr. Platt's attitude toward his Washington probation, there is no option but to revoke his license in California.

18. Costs of investigation and prosecution of this matter were presented by the Deputy Attorney General in the form of a Declaration in compliance with Business and Professions Code Section 125.3. The Deputy Attorney General has billed the Board of Pharmacy the sum of \$2,072.00 for her work in investigating, preparing and prosecuting this matter. The costs are presumed reasonable. There was no evidence presented that the costs were not reasonable or should not be awarded as presented in the Declaration.

LEGAL CONCLUSIONS

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

"..."

“(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.”²

2. Legal cause exists to revoke or suspend Mr. Platt’s license to practice as a pharmacist in the State of California because his pharmacist license in the State of Washington was disciplined by the Washington Board, as set forth in detail in the Factual Findings. Mr. Platt thus violated Section 4701(n), constituting unprofessional conduct in the State of California.

3. As set forth in detail in the Factual Findings, Mr. Platt has proved himself unsuitable for probation in California. His dealings with the Washington Board militate against probation being offered here. The unresolved issues regarding sobriety, physical and mental fitness to practice may all be insignificant, as Mr. Platt contends. But on this record, the burden has now shifted to Mr. Platt to prove those concerns are insignificant and do not have an adverse impact upon his ability to practice pharmacy safely and competently before he may practice in California. He may well be able to do so, but he did not do so in this matter, and he may not now do so from the privileged position of a licensee.

4. “(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in

² Business and Professions Code Section 4701(n).

the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.”³

5. Mr. Platt is subject to the provisions of law set forth just above, as a result of the action taken here. Mr. Platt may not serve in any of the named capacities set forth above absent reinstatement or reissuance of his license.

6. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

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

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

³ Business and Professions Code Section 4307.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

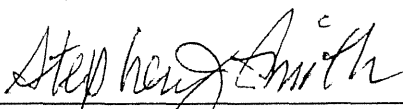
(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.⁴

7. Costs of investigation and prosecution in the amount of \$2027.00 were proved by the Deputy Attorney General. The costs are reasonable and may be recovered.

ORDER

Pharmacist License Number RPH 29516, issued to Daniel G. Platt, is REVOKED. Costs in the amount of \$2027.00 may be recovered by the Board of Pharmacy from Mr. Platt. Mr. Platt is prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee, permittee, or registrant.

DATED: July 29, 2002



STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

⁴ Business and Professions Code Section 125.3.

BEFORE THE
BOARD OF PHARMACY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DANIEL G. PLATT
P. O. Box 11332
Olympia, WA 98508-1332

Respondent.

File No. 2412

OAH No. N-2002030137

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on October 4, 2002.

IT IS SO ORDERED September 4, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: 

JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 JANA L. TUTON, State Bar No. 78206
Deputy Attorney General
3 California Department of Justice
1300 I Street, Suite 125
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 324-5342
Facsimile: (916) 324-5567

6 Attorneys for Complainant
7

8 BEFORE THE
BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS
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10

11 In the Matter of the Accusation Against:

Case No. 2412

12 DANIEL G. PLATT
P.O. Box 11332
13 Olympia, WA 98508-1332

A C C U S A T I O N

14 Licentiate Certificate No. RPH 29516

15 Respondent.
16

17
18 Patricia F. Harris, for causes of discipline, alleges:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") makes and files this accusation in her
21 official capacity as the Executive Officer of the California State Board of Pharmacy, Department
22 of Consumer Affairs ("Board").

23 2. On June 3, 1975, the Board issued Pharmacy License Number RPH 29516
24 to Daniel G. Platt ("Respondent"). The permit was in full force and effect at all times pertinent
25 herein and has been renewed through August 30, 2001.

26 **JURISDICTION**

27 3. Business and Professions Code section 4301 provides, in part, that the
28 Board shall take action against any holder of a license who is guilty of unprofessional conduct.

1 Section 4301(n) provides that the revocation, suspension or other discipline by another state of a
2 license to practice pharmacy is unprofessional conduct.

3 4. Business and Professions Code section 4307 (formerly section 4367)
4 provides, in part, that any person who has been denied a license, permit, or registration, or whose
5 license, permit or registration has been revoked or is under suspension, or who has failed to
6 renew his or her license, permit, or registration or is under suspension or who has failed to renew
7 his or her license, permit, or registration while it was under suspension or who has been a
8 manager, administrator, owner, member, officer, director, associate, or partner of any partnership,
9 corporation, firm, or association whose application for a license, permit, or registration has been
10 denied or revoked, is under suspension or has been placed on probation, and while acting as such
11 manager, administrator, owner, member officer, director, associate or partner has knowledge of
12 or knowingly participated in any conduct for which the license, permit, or registration was
13 denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a
14 manager, administrator, owner, member, officer, director, associate or partner of a licensee,
15 permittee, or registrant. Where a probationary license, permit, or registration is issued or where
16 an existing license, permit, or registration is placed on probation, this probation shall remain in
17 effect for a period not to exceed five years. Where the license, permit, or registration is denied or
18 revoked, the probation shall continue until the license, permit, or registration is issued or
19 reinstated.

20 5. Section 125.3 of the Business and Professions Code provides, in part, that
21 the Board may request the administrative law judge to direct any licentiate found to have
22 committed a violation or violations of the Licensing Act to pay the Board a sum not to exceed the
23 reasonable costs of the investigation and enforcement of the case.

24 COUNT I

25 6. Respondent's license is subject to disciplinary action under Business and
26 Professions Code section 4301(n) on the grounds of unprofessional conduct in that on or about
27 August 27, 1998, in Case No. 97-A-1144PH, the Washington State Board of Pharmacy issued an
28 order in which it indefinitely suspended Respondent's license to practice as a pharmacist in the

1 State of Washington. On July 6, 1999, the Washington Board issued an order on Respondent's
2 Petition for Modification in which it affirmed the indefinite suspension of Respondent's license,
3 but stayed the suspension subject to terms and conditions.

4 **PRAYER**

5 WHEREFORE, Complainant prays that the Board hold a hearing on the matters
6 alleged herein and following said hearing issue a decision:

- 7 1. Revoking or suspending Pharmacy License Number RPH 29516, issued to
8 Daniel G. Platt;
- 9 2. Prohibiting Daniel G. Platt from serving as a manager, administrator,
10 owner, member, officer, director, associate, or partner of a licensee, permittee, or registrant;
- 11 3. Ordering Daniel G. Platt to pay to the Board its costs of investigation and
12 enforcement of the case according to proof at the hearing pursuant to Business and Professions
13 Code section 125.3; and
- 14 4. Taking such other and further action as the Board deems necessary and
15 proper.

16 DATED: 11/9/01

17
18
19 *P. F. Harris*
20 PATRICIA F. HARRIS
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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