

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for)
Reinstatement of:)
)
RICHARD RAY CICINELLI)
Physician's and Surgeon's)
Certificate No. A25427)
)
)
_____ Petitioner.)

File No. 20-2006-172225

OAH No. N2006060302

DECISION

The Proposed Decision of Ruth S. Astle, Administrative Law Judge, dated August 17, 2006, in Oakland, is attached hereto. Said decision is hereby amended, pursuant to Government Code Section 11517 (c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

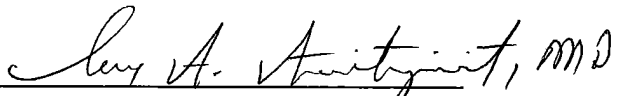
1. Page 1 - the heading of "Case No. 20-2006-172225" is corrected to read, "Case No. 20-2006-172225."
3. Page 2, line 1 - the apostrophe at the end of the word "years" is stricken.

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on October 11, 2006.

DATED September 11, 2006

MEDICAL BOARD OF CALIFORNIA


Cesar A. Aristeiguieta, M.D., Chair
Consolidated Panel
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Reinstatement
of:

RICHARD RAY CICINELLI,

Petitioner.

Case No. 20-2006-17225

OAH No. N2006060302

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on August 9, 2006.

Susan K. Meadows, Deputy Attorney General, represented the California Department of Justice.

Kenneth L. Freeman, Attorney at Law, represented petitioner Richard Ray Cicinelli, who was present.

The matter was submitted on August 9, 2006.

FACTUAL FINDINGS

1. Richard R. Cicinelli (petitioner) filed a Petition for Penalty Relief, Reinstatement of Revoked/Surrendered Certificate, on June 9, 2006. Petitioner's license was revoked pursuant to a default decision dated September 17, 1999 to become effective October 18, 1999. That decision was based on disciplinary action taken by the State of Louisiana, Louisiana Board of Medical Examiners. The Louisiana Board entered into a consent order with petitioner on September 22, 1998 and petitioner surrendered his license to practice medicine in Louisiana. The Louisiana Board found that on May 20, 1998, petitioner entered a plea of guilty to two counts set forth in a federal indictment. These counts set forth that on September 22, 1995, petitioner did knowingly and intentionally dispense controlled substances, Dexedrine and Percodan (Schedule II controlled substances) outside the usual course of medical practice.

2. Petitioner was sentenced to 24 months of incarceration and fined \$25,000. He spent 15 months incarcerated in federal prison at Lompoc, California. Petitioner was placed

on three years' supervised release after he left confinement. He was released from custody in December 1999. He spent time in a half-way house and then on supervised probation. He was released from federal probation on March 24, 2003. He met all the terms and conditions of his probation.

3. Petitioner realized that he had a serious drug and alcohol addiction problem. He stopped all drugs and alcohol on October 22, 1997 and has been drug and alcohol free for almost nine years. He has participated in various recovery programs over the years including both in-patient and out-patient settings. He has also participated in individual and group therapy. He has had been subject to random blood and urine monitoring off and on over the last eight (8) years. He has never tested positive for any drugs or alcohol. He remains committed to a 12-step program and participates weekly in a recovery group for professionals.

4. Petitioner decided to become a substance abuse counselor in Louisiana. He became a counselor-in-training and then became fully certified on October 26, 2002 and received a reciprocal certification from California. He is presently employed by Sequoia Center in San Mateo doing utilization review, and training and supervision of counselors. He was previously employed at Center Point in San Rafael as a counselor and at BAART as a counselor in a methadone maintenance program. His work performance has been evaluated as excellent.

5. Petitioner has a stable and supportive family life. He has a committed relationship with a liturgical musician. His partner is also committed to recovery and has been clean and sober for over 25 years. They participate in spiritual activities at All Saints Episcopal Parish in San Leandro, where petitioner has joined the choir. He is also pursuing a life-long passion for playing the piano and, now, is learning to play the pipe organ.

6. Petitioner participated in 47 hours of continuing medical education from October 2003 through March 2006. This included over 12.5 hours in ethics.

7. Petitioner was candid about his past inappropriate behavior with patients. His judgment was significantly impaired by his abuse of drugs and alcohol. He did not try to minimize the significance of his behavior, but instead, is trying to develop insight into how he got into trouble, make changes and make a commitment that it will never happen again. He has discovered that he has some problems with depression. He also experienced a significant medical problem when he was diagnosed with Hepatitis C. He was successfully treated with Interferon.

8. Petitioner went to medical school at UCLA and received his M.D. degree in 1972. He did a pediatric internship at Oakland Children's Hospital from 1972 to 1973. Petitioner decided to go into psychiatry at the end of his internship. He did his residency at UCSF, Langley Porter Institute, finishing in 1976. He became board-certified in psychiatry in 1981.

9. Petitioner has demonstrated that he is rehabilitated. He has made a lasting commitment to his recovery. It is extremely unlikely that he will ever engage in unacceptable behavior in the future. While his license should be reinstated on a probationary basis, the terms of probation should reflect terms and conditions that are necessary to assure the public interest is protected. Petitioner's medical skills must be evaluated to make sure that he can practice medicine safely.

LEGAL CONCLUSIONS

1. A revoked medical certificate can be reinstated upon a significant showing by the petitioner that he is rehabilitated. Petitioner filed a petition for reinstatement pursuant to Business and Professions Code section 2307. The Board may "consider all activities of the petitioner since the disciplinary action was taken ... the petitioner's rehabilitative efforts ... and professional ability." He demonstrated by clear and convincing evidence that he is rehabilitated.

2. Petitioner has not demonstrated that his skills as a physician/psychiatrist are current and up to the standards required since he has not practiced medicine for about nine years. While he has taken continuing medical education, there is no assurance based on his CME that he is safe to practice medicine. Petitioner must demonstrate his knowledge and skill before he can return to the practice of medicine.

ORDER

Revoked Physician and Surgeon's Certificate No. A 25427 originally issued to Richard Ray Cicinelli is hereby reinstated. That reinstated Certificate is immediately revoked and the revocation is stayed for a period of seven (7) years upon the following terms and conditions.

1. **Clinical Training Program**

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's specialty or sub-specialty, and at minimum, a 40 hour program of clinical

education in the area of practice in which petitioner was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. The Program's determination whether or not petitioner passed the examination or successfully completed the Program shall be binding.

Petitioner shall complete the Program not later than six months after petitioner's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

Petitioner shall not practice medicine until he has successfully completed the Program and has been so notified by the Division or its designee in writing, except that petitioner may practice in a clinical training program approved by the Division or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

2. Controlled Substances - Partial Restriction

Petitioner shall not order, prescribe, dispense, administer, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules IV and V of the Act.

Petitioner shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If petitioner forms the medical opinion, after a good faith prior examination, that a patient's medical condition may benefit from the use of marijuana, petitioner shall so inform the patient and shall refer the patient to another physician who, following a good faith examination, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, petitioner shall inform the patient or the patient's primary caregiver that petitioner is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on petitioner's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Petitioner shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits petitioner from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

3. Controlled Substances- Maintain Records and Access to Records and Inventories

Petitioner shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by petitioner, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Petitioner shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Division or its

designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

4. **Controlled Substances - Abstain From Use**

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, petitioner shall notify the Division or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

5. **Alcohol - Abstain From Use**

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

6. **Biological Fluid Testing**

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the petitioner. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

7. **Education Course**

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Division or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I

certified, limited to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Division or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

8. Prescribing Practices Course

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a course in prescribing practices, at petitioner's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first six (6) months of probation is a violation of probation.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Petitioner shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

9. Ethics Course

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a course in ethics, at petitioner's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its

designee had the course been taken after the effective date of this Decision.

Petitioner shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

10. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, petitioner shall enroll in a professional boundaries program, at petitioner's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Petitioner, at the Program's discretion, shall undergo and complete the Program's assessment of petitioner's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Division or its designee deems relevant. The Program shall evaluate petitioner at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Division or its designee.

Failure to complete the entire Program not later than six months after petitioner's initial enrollment shall constitute a violation of probation unless the Division or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the Program shall advise the Division or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with Program recommendations. At the completion of the Program, petitioner shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Division or its designee.

The Program's determination whether or not petitioner successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

11. Solo Practice

Petitioner is prohibited from engaging in the solo practice of medicine.

12. Notification

Prior to engaging in the practice of medicine the petitioner shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

13. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

14. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

15. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

16. Probation Unit Compliance

Petitioner shall comply with the Division's probation unit. Petitioner shall, at all times, keep the Division informed of petitioner's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Petitioner shall not engage in the practice of medicine in petitioner's place of residence. Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Petitioner shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

17. Interview with the Division or its Designee

Petitioner shall be available in person for interviews either at petitioner's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

18. Residing or Practicing Out-of-State

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve petitioner of the responsibility to

comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Petitioner's license shall be automatically cancelled if petitioner's periods of temporary or permanent residence or practice outside California total two years. However, petitioner's license shall not be cancelled as long as petitioner is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

19. Failure to Practice Medicine - California Resident

In the event petitioner resides in the State of California and for any reason petitioner stops practicing medicine in California, petitioner shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve petitioner of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Petitioner's license shall be automatically cancelled if petitioner resides in California and for a total of two years, and fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

20. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

21. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Division, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

22. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request the voluntary surrender of petitioner's license. The Division reserves the right to evaluate petitioner's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Division or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation and the surrender of petitioner's license shall be deemed disciplinary action.

If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

23. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: 8/17/06

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings