

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

In the Matter of the Petition for)
Termination of Probation:)

JAMES LLOYD RICE, MD)

Case No. 26-2010-212923

Physician's and Surgeon's)
Certificate No. C 32074)

Respondent)
_____)

DECISION

The attached Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 14, 2011.

IT IS SO ORDERED November 14, 2011.

MEDICAL BOARD OF CALIFORNIA

By: _____

Hedy Chang, Chair
Panel B

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

In the Matter of the Petition for the Early
Termination of Probation of:

JAMES LLOYD RICE, M.D.,

Physician's and Surgeon's Certificate No. C 32074,

Petitioner.

Case No. 26-2011-212923

OAH No. 2011050769

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this petition on August 26, 2011, in San Diego, California.

Petitioner, James Lloyd Rice, M.D., represented himself and was present throughout the hearing on the petition.

Tessa L. Heunis, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General, State of California.

The matter was submitted on August 26, 2011.

PRELIMINARY STATEMENT

On January 5, 2010, the Medical Board placed Dr. Rice on two years probation for prescribing an antidepressant medication to a colleague in the name of "Mark Matthews" rather than using the colleague's true name. Dr. Rice was required to complete at least 20 hours of targeted education in addition to the continuing medical education required to renew his license, and to complete a prescribing practice course and an ethics course. Dr. Rice was also obliged to have a practice monitor.

Dr. Rice complied with all terms and conditions of probation. He seeks to terminate probation in this proceeding.

The clear and convincing evidence established that Dr. Rice is a better practitioner now than he was before he was placed on probation. He has accomplished all that could reasonably be expected by reason of his being on probation. It would not be contrary to the public interest to terminate Dr. Rice's probation at this time.

FACTUAL FINDINGS

Background and License History

1. Dr. Rice is 73 years old. He received a bachelor's degree in Chemistry and Biology from Carroll College in 1972. He received a medical degree from the University of Wisconsin in 1963. He completed a rotating internship in 1964. After serving two years active duty in the United States Air Force, Dr. Rice began a residency in Psychiatry at the Menninger School of Psychiatry in 1966. He completed the residency in 1969.

Dr. Rice moved to San Diego in October 1969. He served as a staff psychiatrist at the VA Hospital for several years, after which he served as the Medical Director of the Douglas Young Clinic in San Diego County. Dr. Rice entered private practice in 1972, and he has continually practiced general psychiatry in San Diego since then. Dr. Rice was on the staff at Mesa Vista Hospital and was Chief of Staff there. He was on the Board of Trustees of the Vista Psychiatric Physician Associates. Dr. Rice was the Medical Director of Hillcrest Manor Sanitarium. He was Editor of *San Diego Psychiatry* and *San Diego Physician*, publications serving the San Diego medical community. Dr. Rice is a member of numerous professional organizations, and has held positions of substantial responsibility in those organizations. He continues to serve as an Adjunct Professor of Psychiatry at the University of California, San Diego, School of Medicine, providing instruction to residents. Dr. Rice was elected a Fellow of the American Psychiatric Association in 1982, and he was elected a Distinguished Life Fellow of that organization in 2000.

Other than the disciplinary action giving rise to this petition, Dr. Rice's medical certificate has not been subjected to any other formal discipline.

The Accusation, Decision and Order

2. The accusation alleged that Dr. Rice was convicted on his plea of guilty of violating Business and Professions Code section 4324, a misdemeanor, on September 18, 2008, in the Superior Court of California, County of San Diego. The conviction was the result of Dr. Rice writing a prescription for Lexipro, an antidepressant, for a colleague who sought Dr. Rice's professional services and asked Dr. Rice not to write a prescription in his true name. Dr. Rice wrote the prescription for "Mark Matthews" rather than writing the prescription in the patient's true name. Following Dr. Rice's conviction, the Superior Court deferred entry of judgment under Penal Code section 1000.¹

¹ The Superior Court required Dr. Rice to complete an 18-month drug diversion program because he was convicted of a drug-related offense even though no substance abuse

In addition to the criminal conviction, the accusation alleged that Dr. Rice's conduct involved a violation of drug laws, the signing a false document, dishonesty, the failure to maintain accurate and adequate records, and unprofessional conduct.

On December 1, 2009, Dr. Rice signed a Stipulated Settlement and Disciplinary Order in which he admitted that "at an administrative hearing, complainant could establish a prima face case with respect to the charges and allegations contained in Accusation No. 10-2008-191270 and that he has thereby subjected his Physician's and Surgeon's Certificate No. C32074 to disciplinary action." Dr. Rice was represented by counsel.

3. On January 5, 2010, the Medical Board adopted the Stipulated Settlement and Disciplinary Order as its Decision in the matter. On February 4, 2010, the Decision and Order became effective.

The Order revoked Dr. Rice's certificate, stayed the order of revocation, and placed Dr. Rice on probation for two years. In addition to standard terms and conditions of probation, Dr. Rice was required to complete at least 20 hours of education courses in addition to the continuing medical education required for license renewal, to complete a prescribing practice course, and to complete an ethics course. Dr. Rice was also required to have a practice monitor.

The Petition for Penalty Relief

4. On February 7, 2011, Dr. Rice filed a Petition for Penalty Relief (Termination of Probation). Dr. Rice represented that he was not on criminal probation; that he was not charged with any crimes; that he had not been convicted of any criminal offenses since discipline was imposed; that he had not been disciplined by any other medical board; that his staff privileges had not been disciplined by any hospital; that no civil action had been filed against him for malpractice; that he was not addicted to alcohol or drugs; and that he had not been hospitalized for substance abuse problems or mental illness.

In his narrative statement, Dr. Rice represented that he sought the early termination of probation because he had complied with all terms and conditions of probation, because he had continued to engage in the practice of medicine without further violations, and because he maintained all requirements for holding licensure. Dr. Rice accurately described the misconduct giving rise to discipline. He set forth the targeted education courses that he completed above those required to renew his license. He provided documentation to confirm his completion of the 18-month diversion program, his completion of the coursework, a curriculum vitae, and letters of reference from Dolph J. Arnica, M.D., and Christine Saroian, M.D.

issues were involved. Dr. Rice completed the 18-month program through the McAllister Institute in San Diego in September 2010. Upon Dr. Rice's successful completion of that program, the Superior Court dismissed the criminal charges that had been filed against Dr. Rice. Complainant was authorized to use the misdemeanor conviction, based upon Dr. Rice's plea of guilty, for disciplinary purposes despite the subsequent dismissal of charges.

Petitioner's Evidence

5. Dr. Arnicar's letter supported Dr. Rice's petition for early termination of probation. Dr. Arnicar, a psychiatrist, had known and worked with Dr. Rice for 28 years, had referred patients to Dr. Rice, and sought consultation with Dr. Rice on numerous occasions. Dr. Arnicar served as Dr. Rice's practice monitor.

Dr. Arnicar was familiar with the events resulting in the discipline of Dr. Rice's certificate. He believed that the imposition of discipline had a significant impact on Dr. Rice, who comfortably discussed his mistakes with colleagues and shared with them the information he gained. According to Dr. Arnicar, Dr. Rice thoroughly examined his error in judgment (and its ramifications), and accepted the penalties imposed with humility, integrity and honor. Dr. Arnicar believed that Dr. Rice had learned all that could be learned from the experiences that resulted in the imposition of license discipline, and that no justice would be served by unnecessarily continuing probation.

Dr. Arnicar had personal knowledge of Dr. Rice's compliance with the terms and conditions of probation, including Dr. Rice's attending the ethics and prescribing practices workshops.

6. Dr. Saroian's letter supported Dr. Rice's petition for early termination of probation. Dr. Saroian, a psychiatrist, had known Dr. Rice for more than a decade. They are members of the same four-member call group. Dr. Saroian and Dr. Rice meet several times a month to discuss cases and personal matters. Dr. Saroian was familiar with the facts and circumstances of the error in judgment that led to the imposition of discipline.

Dr. Saroian continues to refer patients to Dr. Rice and takes comfort and peace of mind in knowing that Dr. Saroian will cover his patients' needs when she is on vacation. Dr. Saroian believes that Dr. Rice represents excellence in the field of psychiatry.

Dr. Saroian had knowledge that Dr. Rice attended workshops in prescribing practices and ethics, met with his Medical Board practice monitor, and completed additional educational activities. She was aware that Dr. Rice "settled matters with the District Attorney as all pending legal charges were dismissed, having met the terms of his plea bargain." According to Dr. Saroian, Dr. Rice learned much from the mandated coursework and workshops, admitted his error in judgment, and fulfilled the terms of his probation with grace and aplomb.

7. Dr. Rice submitted certificates of completion that established his fulfillment of the targeted coursework required by probation, as well as his completion of the PACE prescribing practices course and the ethics/professionalism course which was taken through the Institute of Medical Quality. The ethics/professionalism course, involved pre-course requirements, 20 hours of coursework held over two-day sessions, and longitudinal follow-ups at six and 12 months.

8. The Petition for Penalty Relief Report that was prepared by the Medical Board's enforcement program verified the information that was set forth in the letters of recommendation from Dr. Arnicar and Dr. Saroian and confirmed the information that was contained in Dr. Rice's petition for termination of probation. No violations of probation were reported.

Dr. Rice's Testimony

9. Dr. Rice provided much of the background information set forth herein, and he candidly discussed the facts and circumstances giving rise to the filing of the criminal and disciplinary actions. He was, at the time, unaware that prescribing a controlled substance to a patient under an alias was unlawful. He was, nevertheless, remorseful concerning his misconduct. Dr. Rice described how the filing of criminal and administrative charges came as a shock, how those charges were humbling since he considered himself to be a highly competent and ethical practitioner, and how he learned the importance of knowing the law. Dr. Rice now appreciates that writing a prescription for a patient without using the patient's true name is unlawful and he understands the reasons underlying that law. He testified that treatment cannot be commenced or continued on a false basis, as it was in the unique circumstance giving rise to the administrative discipline.

Dr. Rice found the disciplinary action to be very stressful: "It was always hanging over my head." He wanted to file a petition for termination of probation much earlier, but he was unable to do so because he had to await the conclusion of the IMQ's one year longitudinal follow-up.

Dr. Rice testified that he learned a great deal as a result of attending the PACE prescribing practices course and the IMQ ethics/professionalism course. During the PACE course, he learned of the CURES program, CURES, which provides healthcare prescribers, pharmacists, and law enforcement, and regulatory boards real-time access to patient controlled substance history information. During the ethics/professionalism course, he was exposed to an analytical model known as the competing interest framework. Dr. Rice uses what he learned in the ethics/professionals course on a regular basis, had he has shared the analytical model with his colleagues.

Dr. Rice testified that he learned great personal and professional lessons that he would rather not have been required to learn as a result of the disciplinary action, but he gained much and the lessons have great value. Dr. Rice testified that he "loves my work and I want to do it as long as I can."

The Attorney General's Recommendation

10. The Attorney General's Office had no opposition to the granting of Dr. Rice's petition for early termination of probation.

Evaluation

11. The acts giving rise to the discipline in this matter were relatively serious and extended for a period of about two years. Dr. Rice terminated his colleague as a patient before the disciplinary action was filed and he became aware that he was engaged in misconduct. Dr. Rice's conduct did not result in any patient harm. No evidence suggested that Dr. Rice has engaged in any misconduct since he was placed on probation. His evidence of rehabilitation included quarterly probation reports, letters from two colleagues, numerous certificates of completion, his narrative statement, and his very credible testimony. Dr. Rice greatly benefitted from being on probation, a matter that was mentioned in the letters from Dr. Rice's colleagues.

Dr. Rice is a very bright, caring, humble individual who has benefited from all that was required of him on probation. He does not hold any resentment as a result of being placed on probation. Dr. Rice is a skilled, competent and ethical psychiatrist.

The clear and convincing evidence established that terminating Dr. Rice's probation at this time would not be contrary to the public interest, and that he is deserving of the early termination of probation.

LEGAL CONCLUSIONS

The Purpose of License Discipline

1. Administrative disciplinary proceedings are not conducted for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) The main purpose of license discipline is to protect the public, but other purposes include prevention of future harm and the improvement and rehabilitation of the physician. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The Burden and Standard of Proof

2. In a proceeding for the restoration of a revoked license, the burden at all times rests on the physician to prove that he has rehabilitated himself and that he is entitled to have his license restored; the burden is not on the agency to prove the contrary. The most clear and convincing proof of reform must be shown by a physician seeking reinstatement to the medical profession. A physician's actions since the misconduct are the essential criterion to judge whether that physician has so rehabilitated himself as to compel his readmission to the medical profession. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-317.)

Statutory Authority

3. Business and Professions Code section 2307 provides in part:

(a) A person whose . . . certificate has been revoked . . . or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

. . .

(3) At least one year for . . . termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board . . . which shall be acted upon in accordance with Section 2335.

(e) The . . . administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

Regulatory Authority

4. Title 16, California Code of Regulations, section 1359 provides:
 - (a) A petition for modification or termination of probation . . . shall be filed on a form provided by the division.
 - (b) Consideration shall be given to a petition for . . . termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.
5. Title 16, California Code of Regulations, section 1360.2 provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

 - (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.
 - (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).
 - (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
 - (e) Evidence, if any, of rehabilitation submitted by the applicant.

Relevant Factors in Determining Rehabilitation

6. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The more serious the misconduct, the stronger the applicant's showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) The expression of remorse and the taking of responsibility for past misconduct are relevant in assessing rehabilitation, just as the absence of remorse and the failure to take responsibility are aggravating factors. (*Kapelus v. State Bar* (1987) 44 Cal.3d 179, 197.)

Cause Exists to Terminate Probation

7. Cause exists under Business and Professions Code section 2307 and under Title 16, California Code of Regulations, section 1360.2, to grant the petition and to terminate probation. The clear and convincing evidence established that probation is no longer necessary to protect the public.

ORDER

Dr. James Rice's petition for the early termination of his probation is granted.

DATED: September 2, 2011


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings