

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

In the Matter of the Petition for) Early Termination of Probation of:)))
)))
Douglas Peter Murphy, M.D.))	Case No. 26-2010-206251
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Physician's and Surgeon's))	OAH No. 2010120230
Certificate No. A-65282)))
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Petitioner.)))
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DECISION

The attached Proposed 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 March 18, 2011.

IT IS SO ORDERED February 16, 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 Early
Termination of Probation by:

DOUGLAS PETER MURPHY, M.D.,

Physician's and Surgeon's Certificate
Number A 65282

Petitioner.

Case No. 26-2010-206251

OAH No. 2010120230

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 3, 2011, in Sacramento, California.

W. David Corrick, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Mark B. Connely, Attorney at Law, represented Douglas Peter Murphy, M.D. (petitioner).

Evidence was received, the record was closed, and the matter was submitted for decision on January 3, 2011.

FACTUAL FINDINGS

1. On May 22, 1998, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 65282 (license) to petitioner. Effective November 5, 2007, petitioner's license was placed on probation for five years. Petitioner filed a petition dated March 31, 2010, requesting early termination of his probation, which is currently scheduled to end on November 5, 2012.

2. Petitioner is a psychiatrist.

3. On October 25, 2006, an Accusation was served on petitioner. On August 23, 2007, a First Amended Accusation (Amended Accusation) was filed against petitioner. On August 27, 2007, petitioner executed a Stipulated Settlement and Disciplinary Order (Stipulated Settlement), which revoked petitioner's license, stayed the revocation, and placed petitioner's license on probation for five years subject to various terms and conditions. On October 5, 2007, the Board adopted the Stipulated Settlement as its decision and order, effective November 5, 2007.

4. In the Stipulated Settlement, petitioner agreed that, if he ever filed a petition for early termination of probation, all the allegations set forth in the Amended Accusation would be deemed true and correct, and fully admitted by petitioner. The Amended Accusation included allegations against petitioner relating to two patients: (1) Patient B, a female patient diagnosed with Dissociative Identity Disorder (DID), Borderline Personality Disorder, Post-Traumatic Stress Disorder, Somatization Disorder, Somatoform Disorder, Major Depression, Dysthymic Disorder, Panic Disorder with Agoraphobia, Obsessive-Compulsive Disorder, Avoidant Personality Disorder, and Anorexia Nervosa; and (2) Patient TB, a 17-year-old boy diagnosed with Major Depressive Disorder, who committed suicide on September 25, 2003.

With regard to Patient B, the Amended Accusation alleged that petitioner failed to maintain appropriate boundaries by: (1) conducting therapy in "romantic secluded places"; (2) having lunch with, playing his guitar for, going shopping with, and buying gifts for Patient B; and (3) becoming overly intrusive and controlling in Patient B's daily and religious life by constantly communicating with Patient B by email, telephone and pager. The Amended Accusation also alleged that petitioner failed to: (1) consolidate and integrate Patient B's multiple personalities or "alters"; (2) maintain patient confidentiality and trust; and (3) respect Patient B's repeated statements that she wanted petitioner to stop communicating with her and to terminate therapy.

With regard to Patient TB, the Amended Accusation alleged that petitioner failed to: (1) maintain adequate and accurate medical records documenting ongoing communications, instructions, assessments, and consents for medication; (2) properly communicate with Patient TB's parents regarding Patient TB's treatment, and address and mediate conflicts about Patient TB's treatment; and (3) intervene and/or timely document when informed of Patient TB's suicidal ideation on September 20, 2003.

5. Pursuant to the Stipulated Settlement, petitioner agreed that he would comply with the standard terms and conditions of probation, and optional terms and conditions, which required petitioner to complete: (1) 25 hours of Board-approved education courses for each year of probation, at least 16 hours of which had to be in the area of boundaries and/or patient relations; (2) a Board-approved medical record keeping course; (3) a Board-approved ethics course; (4) a professional boundaries program equivalent to the Physician Assessment and Clinical Education (PACE) program at the University of California, San Diego (UCSD) School of Medicine; and (5) a clinical training or education program equivalent to the PACE program.

6. Petitioner has complied with the terms and conditions of his probation. He has taken all the educational courses required by the Stipulated Settlement, together with the regularly required continuing education. He has successfully completed the medical record keeping and ethics courses, and the PACE professional boundaries and clinical training programs.

7. Petitioner graduated from the UCSD School of Medicine. He did a residency and fellowship in psychiatry at the University of Colorado. He transferred from there to the UCLA School of Medicine for further training in child psychiatry. Thereafter, he did a fellowship in forensic psychiatry at the USC School of Medicine.

8. In 2000, respondent began working as a psychiatrist in a private practice in San Luis Obispo with Dugald Chisholm, M.D., a board-certified psychiatrist. In the middle of 2002, petitioner left Dr. Chisholm's practice to start a solo practice in Morro Bay. Patient B was petitioner's patient from January 2001 to June 2003.

9. In his narrative statement in support of his petition, petitioner described the underlying allegations relating to his treatment of Patient B as involving a "highly complex case of a woman suffering [DID] in which the Board took exception to methods of care and communication over the 2-1/2 years treatment ensued." He stated that his understanding of the allegations "as communicated by [his] attorney as 'over-involvement for the purpose of helping.'" His treatment of Patient B involved his use of "church-based resources as a proxy for institutional services not available to a patient greatly in need, the use of prayer during the [illegible] of and email in communication with this patient, and employing therapeutic modalities outside the office. For this the Board asserted that I had committed a *simple boundary violation*." (Italics and bolding in original.)

Respondent described the underlying allegations relating to his treatment of Patient TB as involving "a tragic case of an adolescent male with recurrent major depressive disorder who committed suicide." He stated that the "Board asserted that a *medical recordkeeping violation* occurred with respect to a contact note pertaining to a telephone contact with the patient's father, and that there was insufficient documentation as to how conflict between the adolescent's desire for independence in his care and the parents desire for control was being managed." (Italics and bolding in original.)

10. In his narrative statement, petitioner apologized for "the events and circumstances which were my professional responsibility that have become the subject of these proceedings." He asserted that "[t]hough it was ever [his] intent to do what was good for the patient whose treatment has been the primary focus of these proceedings, [he] can see now that in seeking to do good, [he] unwittingly stepped over a line that is at least controversial." According to petitioner, the "appropriateness of prayer and church-based resources in psychiatric care has been hotly debated" and he "had formerly been unaware of how controversial this issue was."

Respondent stated that he had made “basic changes” to his private practice. He has “tailored” his psychiatric practice “more towards psychiatric *assessment* and the *medication management* of psychiatric illness, with relatively less emphasis on the practice of *psychotherapy*.” (Bolding and italics in original.) According to petitioner, he has developed a “referral network of competent psychotherapists with whom to collaborate, especially in the care of more complex psychotherapy cases.” He has “elected not to engage in therapy of patient’s [sic] whose past history of severe abuse and neglect make them particularly challenging cases with which to work.” It has become petitioner’s practice to “refer such patients to such resources and to maintain a role in such cases as psychiatrist managing medication treatment only.”

11. Petitioner is the president and founding member of the San Luis Obispo Psychiatric Association. He has given professional presentations and written informational articles on the emerging neuroscience of psychiatry, particularly the molecular neuroscience of mood disorders. He has participated in medical missions in third-world countries. If his probation is terminated early, petitioner hopes to return to the academic setting. Ultimately, he would like to work at UCSD as a member of the clinical/research faculty.

12. Dr. Chisholm wrote a letter in support of petitioner’s petition. In his letter, Dr. Chisholm stated that petitioner “made some mistakes” in his treatment of Patient B. Dr. Chisholm described Patient B as “extremely difficult to treat,” an “extremely needy woman” with DID, and a person who had been subjected to “extreme abuse as a child.” Dr. Chisholm understood that petitioner “used some techniques that are somewhat controversial,” but Dr. Chisholm stated that he has used some of the same techniques in successfully treating DID patients. Dr. Chisholm believes that all the “mistakes” that petitioner made occurred after he left Dr. Chisholm’s office and entered into solo practice. According to Dr. Chisholm, petitioner is a “devoutly religious man” who felt that exposing Patient B to the “positive environment of his church would be good” for her. Dr. Chisholm believes that petitioner now understands that this was a mistake.

According to Dr. Chisholm, petitioner has been “extremely conscientious” in complying with the terms and conditions of his probation. Petitioner has sought support and mentoring from Dr. Chisholm and other senior physicians. Most importantly, Dr. Chisholm believes that petitioner has been able to “separate his own religious beliefs from his psychiatric practice.” While petitioner “remains devoted to his religious faith,” he “recognizes that it must be kept separate from his practice.” In Dr. Chisholm’s opinion, this recognition has “freed him to use his excellent intellect and clinical knowledge more effectively and has allowed him to attain his potential as an excellent psychiatrist.”

13. Petitioner also submitted a letter of support from Rene H. Bravo, M.D., a board-certified pediatrician. Through the years, Dr. Bravo has had the opportunity to refer numerous children and families in need of psychiatric services to petitioner. According to Dr. Bravo, petitioner has “always held and demonstrated the highest standards of professionalism” towards his patients. Petitioner is “considerate and careful in both his diagnoses and therapeutics,” and he “impeccably follows up on his patients.” Dr. Bravo

believes that petitioner is an “excellent physician who both upholds and adheres to the highest standards of ethical medical practice.”

14. Petitioner has engaged in some commendable rehabilitation. At the hearing, petitioner admitted that he made an “error in judgment” in taking on Patient B’s case. As set forth in Finding 10, he has changed his practice in an effort to ensure that the issues that arose in his treatment of Patient B will not occur again. He now refers such complex cases to practitioners who are better trained in intensive psychotherapy, mainly confining his practice to psychiatric assessment and medication management of psychiatric illness. He has moved his practice back to San Luis Obispo to be closer to other practitioners. He is involved in community service activities.

15. But petitioner did not demonstrate that he has gained sufficient insight and judgment to establish that early termination of his probation is appropriate. Petitioner discussed at some length the psychiatric issues involved in the care and treatment of patients with mental health conditions as severe and complex as Patient B. Although he evidenced an in-depth understanding of the scientific and medical literature, he did not demonstrate a clear grasp of the ethical concerns inherent when a psychiatrist crosses boundaries with seriously ill patients. For example, in his narrative statement, he described his wrongdoing as a “simple boundary violation.” (Finding 9.) The allegations relating to Patient B set forth in the Amended Accusation show that petitioner’s boundary violations were not simple. Petitioner attributed his over-involvement in Patient B’s life to a lack of mental health support in their community, and his desire to fill that void with his own resources. Even though petitioner may have been motivated by good intentions, his involvement with Patient B went well beyond the professional bounds that must be maintained between a psychiatrist and a patient. In his care of Patient B, petitioner exhibited a significant lack of prudence and caution. His testimony at the hearing did not demonstrate that he has engaged in sufficient critical self-evaluation to be released from probation at this time.

16. When all the evidence is considered, petitioner did not establish that his probation should be terminated early. Although petitioner has complied with the terms and conditions of his probation, and has made an effort to ensure that his wrongdoing will not recur, he did not acknowledge the significant ethical and professional boundaries that he crossed, or demonstrate that he has gained the judgment and insight necessary to ensure that the public would be adequately protected without continued Board monitoring.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 16, section 1360.2 sets forth the following criteria for evaluating petitioner’s rehabilitation:

- (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).

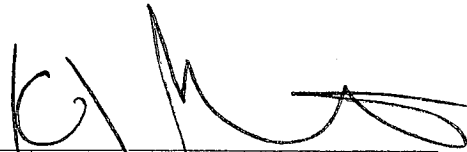
(e) Evidence, if any, of rehabilitation submitted by the applicant.

2. Petitioner bears the burden of establishing that he has been adequately rehabilitated to support the early termination of his probation. As set forth in Findings 15 and 16, while petitioner has complied with the terms and conditions of probation, and has taken positive steps to change his practice in an effort to prevent future boundary violations, he did not demonstrate the insight and judgment necessary to establish that the public would be adequately protected if his probation were terminated early. When all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1360.2, petitioner did not establish that his petition should be granted at this time.

ORDER

The petition for early termination of probation filed by Douglas Peter Murphy, M.D., is DENIED.

DATED: January 10, 2011


KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings