

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

In the Matter of the Petition for)
Reinstatement of:)
)
)
JEFFREY GRAY, M.D.)
)
)
Respondent.)

File No: 27-2009-201609

DECISION

The attached Proposed Decision of Marilyn A. Woollard, Administrative Law Judge, of March 31, 2011, in Sacramento 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. 35-27-2009-201609” is stricken and replaced with “Case No. 27-2009-201609”.

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

This Decision shall become effective at 5:00 p.m. on June 10, 2011.

IT IS SO ORDERED May 11, 2011.

MEDICAL BOARD OF CALIFORNIA

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

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

In the Matter of the Petition for
Reinstatement of:

JEFFREY GRAY, M.D.

Physician's and Surgeon's Certificate
Number G 56251

Petitioner.

Case No. 35-27-2009-201609

OAH Case No. 2010090794

PROPOSED DECISION

Administrative Law Judge (ALJ) Marilyn A. Woollard, Office of Administrative Hearings (OAH), State of California, heard this matter in Sacramento, California, on February 28, 2011.

John L. Fleer, Attorney at Law, represented Jeffrey Gray (petitioner) who was present.

Deputy Attorney General Robert Miller represented the Medical Board of California (Board).

Oral and documentary evidence was presented. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. On October 15, 1985, the Board issued Physician's and Surgeon's Certificate Number G 56251 to petitioner. This certificate has been surrendered.
2. On May 31, 2005, following a hearing, OAH issued an Interim Suspension Order-No Practice (ISO) against petitioner's certificate pending final decision in Board Case Number 122004-156729.¹

¹On May 12, 2004, a Full Suspension Order – No Practice was issued against petitioner as a condition of bail on related pending criminal charges pursuant to Penal

3. On June 13, 2005, the Board filed its original Accusation against petitioner, which was superseded by First Amended Accusation dated July 12, 2006.

4. On November 21, 2006, petitioner signed a Stipulation for Surrender of License.

5. On November 30, 2006, the Board adopted the Stipulation for Surrender of License as its Decision and Order, effective December 7, 2006.

6. On August 28, 2009, petitioner signed the instant Petition for Penalty Relief (Petition). The Petition was accompanied by letters of recommendation signed under penalty of perjury by Edward W. Benton, M.D., Leslie Kalman, M.D., and Raymond Matthew Reyes, M. D.

7. Thereafter, the matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

Circumstances Leading to Voluntary Surrender

8. In the Decision/Stipulation for Surrender of License, petitioner admitted that there was “a factual and legal basis for imposition of discipline” against his license (Par. 8) and “that he committed an act of unprofessional conduct in violation of [Business and Professions Code] section 2234 by commencing a personal relationship with a former patient soon after the professional relationship ended.”² Petitioner expressly admitted that he was grossly negligent in the care and treatment of this same patient. He agreed that these admissions of violation of section 2234 “will be considered and the specific allegations of the Fourth, Eighth, Ninth Causes for Discipline in the First Amended Accusation . . . will be deemed to be true and correct” if and when he petitioned the Board for reinstatement of his certificate. (Par. 12.)

9. The following crucial facts were specifically incorporated into the Fourth, Eighth, Ninth Causes for Discipline in the First Amended Accusation and are deemed true for the purposes of addressing this petition:

a. On approximately April 4, 2004, the Psychiatric Director for Napa County Health and Human Services advised the Board of a complaint that

Code section 23. Following appeal, this order was lifted on November 18, 2004. (see, *Gray v. Superior Court* (2005) 125 Cal.App.4th 629.)

² Unless otherwise indicated, all undesignated statutory references are to the Business and Professions Code.

petitioner had engaged in an improper sexual relationship with a female former patient.

b. Patient M.D. was 17 years old in December 1997 when she first saw Dr. Gray as her treating psychiatrist at the Napa County Mental Health Clinic. Her psychiatric treatment history dated from the age of ten. She had been hospitalized for narcotic abuse/dependency and depression just before her first office visit with Dr. Gray. Dr. Gray's chart entries for patient M.D. on that first visit note "severe emotional trauma at about the age of 10 resulting in extreme acting out behavior, heavy drug use, and promiscuity." Dr. Gray prescribed various medications for M.D. including the stimulant Ritalin. To do so without careful consideration and justification in light of her history of amphetamine abuse was an extreme departure from the standard of care. Dr. Gray continued as M.D.'s treating psychiatrist until January 29, 2001. Patient M.D. informed investigators that on that January 29, 2001 office visit Dr. Gray told her he wanted to have a relationship with her and that she should switch her care to Kaiser so they could do so. Dr. Gray's chart entry for that visit reads:

M--- came in today to request a statement documenting her disability so that she could continue on Disability Insurance. I informed her that she must now have her psychiatric tx at Kaiser also. She is okay with this since she has been out of tx for 6 months now and not in need of medications anymore. She agreed that if she needs help again, she will go to Kaiser psych.

[Dr. Gray] did not refer her to an independent psychiatrist. According to patient M.D. she and Dr. Gray engaged in sexual activity that night. The sexual relationship continued until March or April of that year. M.D. thereafter experienced a serious relapse of her psychiatric illness, becoming homeless for extended periods and requiring extended psychiatric hospitalizations. Psychiatric conservatorship was ultimately necessary.

c. A search of petitioner's home uncovered prescriptions written by Dr. Gray for non-patients and unlabeled bottle with temazepam, as well as pornographic photographs on petitioner's computer, believed to be in violation of child pornography laws.

d. On July 19, 2005, in Napa County Superior Court Case Number CR 117641, petitioner pled no contest to a misdemeanor violation of Health and Safety Code sections 11375, subdivision (b) (unlawful possession of a controlled substance) and a felony violation of Health and Safety Code 11153, subdivision (a) (unlawful prescription of a controlled substance). All other charges, including improper relationship and possession of child pornography, were dismissed. Petitioner was sentenced to three years of criminal probation,

including 45 days in work program and community service, and payment of \$10,000 in restitution to M.D.

10. As set forth in the Fourth Cause of Action in the First Amended Accusation, petitioner admitted facts demonstrating that he had possession of controlled substance, temazepam, without a valid prescription and was subject to discipline under section 2238 and Health and Safety Code section 11375, subdivision (b).

11. As set forth in the Eighth Cause of Action in the First Amended Accusation, petitioner admitted facts demonstrating that he was subject to discipline “in that he provided a controlled substance – dexidrine – to a non-patient in violation of section 2242, an act of unprofessional conduct.”

12. As set forth in the Eighth Cause of Action in the First Amended Accusation, petitioner admitted facts demonstrating that he was subject to discipline for unprofessional conduct under section 2237, based upon his felony and misdemeanor convictions described in Factual Finding 9(b).

Evidence in Support of Petition

13. Petitioner offered the letters described in Factual Finding 6, which were admitted and considered to the extent permitted by Government Code section 11513, subdivision (d).³ In addition, Dr. Benton and Dr. Kalman both appeared and provided direct testimony, consistent with the comments in their letters, in support of the reinstatement of petitioner’s certificate.

14. Drs. Benton and Kalman are psychiatrists. Dr. Benton has had a personal and professional relationship with petitioner for over 25 years that grew out of their association as psychiatrists in the Army. Dr. Kalman’s 14-year association with petitioner arose from their professional encounters as psychiatrists with county mental health facilities. Petitioner is considered highly by both individuals. Significantly, Dr. Benton indicated that the behaviors that led to petitioner’s license surrender resulted from “a singular deviation from his lifelong pattern” of responsible behavior as a doctor and citizen.

Dr. Benton further testified that he supports petitioner’s reinstatement because, from his experience and observation, petitioner “has unusual talent to relieve human suffering” that Dr. Benton would hate to see wasted. Dr. Benton attributed petitioner’s lapse in judgment and standards to “unusual and trying circumstances” at the time

³ Government Code section 11513, subdivision (d), provides in pertinent part that “hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions...”

which he characterized as stressors. These included: the death of petitioner's father, the breakup of his relationship with a former girlfriend; and "dramatic changes in his work environment with the attendant loss of collegial relationships and support..." Dr. Benton conceded that these are potential stressors in everyone's life, but clarified that the conjunction of all three stressors at the same time had a greater effect on petitioner, akin to a "triple whammy." Both doctors expressed their belief that petitioner would not present any public danger if his license was reinstated.

Petitioner informed both Dr. Benton and Dr. Kalman about his relationship with M.D. and the circumstances leading to his license surrender after the Accusation was filed. Petitioner did not discuss his relationship with M.D. with either witness before that time.

15. In his August 2, 2009 letter of recommendation, Dr. Reyes reported that he has attended recent continuing medical education (CME) meetings with petitioner and the annual American Psychiatric Association meeting. Dr. Reyes noted that petitioner non-defensively informs colleagues that he is "working his way back to medical practice" with the Board. Dr. Reyes has observed petitioner to be a much more humble and empathic person since his license surrender. Dr. Reyes gave a guest lecture to petitioner's psychopharmacology students at Brandman (formerly Chapman) University. Dr. Reyes noted that students respected petitioner and appeared to enjoy his instruction.

16. *Petitioner's Testimony:* Petitioner testimony is paraphrased in relevant part as follows:

Petitioner spent approximately nine years as a psychiatrist in the Army, serving in Germany and the United States. He then entered private practice as a psychiatrist in Napa County. At the time of the events described in Finding 9, petitioner was very socially isolated as a single person in Napa County. Petitioner admits that he asked M.D. for her telephone number and called her to establish a personal relationship on January 29, 2004; they then engaged in a sexual relationship for several months. After he ended the relationship, petitioner had no contact with M.D. for several years. M.D. then contacted petitioner, said she needed money, and stated that she would not inform the Board about their relationship. Petitioner paid M.D., and later M.D.'s mother, various amounts of money. After he told M.D. he would no longer pay blackmail, M.D. reported their relationship which ultimately led to petitioner's arrest, conviction, and the filing of the Accusation.

Petitioner has been involved in a positive and supportive relationship for approximately six years. At the time M.D. began asking him for money, petitioner was engaged to his future wife and they have since married. Petitioner and his wife moved to Sacramento to be closer to her family. As part of the community service obligation of his criminal probation, petitioner began volunteering at the Arden Manor Recreation and Park District in Sacramento. Petitioner held various unpaid and then paid positions at the Park District and he is currently employed as its District Manager.

In addition to these employment responsibilities, since January 2007, petitioner has taught psychopharmacology, substance abuse, and marriage and family therapy to masters level students at Brandman University.

In compliance with his criminal probation, petitioner completed 240 hours of community service and paid \$11,000 to the Napa Victim Restitution. He separately paid \$10,000 to M.D. in a civil settlement. In August 2007, the Napa County Superior Court reduced petitioner's felony drug charge to a misdemeanor. On May 11, 2009, the charge was dismissed pursuant to Penal Code section 1203.4.

Petitioner has continued his involvement in CME and has completed numerous units.

Petitioner understands that his medical license is "truly a privilege and not a right," and that, as a physician, he must hold himself "to a much higher standard in society." Petitioner testified credibly and his remorse was patent. He has "grieved" the loss of his profession and longed to return to it. Petitioner has a strong belief that his life's calling "is to help alleviate the sufferings of [his] fellow human beings." Petitioner is mindful of the suffering he has caused to his patients and his wife. Petitioner ascribes his conduct with M.D. to his depression, feelings of isolation and lack of personal and professional support at that time. Regarding risks of recurrence, petitioner indicated: "I can only say that the devastating psychological pain and suffering of both my wife and myself, losing our home, living for years in anxiety and fear about our future, and watching my wife's health deteriorate, have all been very strong motivators to be a well behaved physician."

Since his arrest, petitioner engaged in psychotherapy for several years with a therapist who was later killed in a motorcycle accident. Consequently, no reports of petitioner's therapy were available from this individual. In July 2006, petitioner provided the Board with a copy of a psychiatric evaluation from Kenneth Gottlieb, M.D. Since September 2010, petitioner has engaged in weekly therapy with clinical psychologist Paul Turner, Ph.D., whose February 11, 2011 letter is considered as allowed by Government Code section 11513, subdivision (d). In his verified letter to the Board, Dr. Turner opined that petitioner has "worked diligently and responsibly to learn from his past mistakes," and "has grown as a person and professional practitioner." In Dr. Turner's opinion, petitioner would be an asset to the community and to his patients if relicensed.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307, *inter alia*, authorizes a person whose license has been surrendered to petition the board for reinstatement. Where the license surrender was based upon unprofessional conduct, the petition may not be filed until three years after the disciplinary action, absent a showing of good

cause to file within two years. (§ 2307, subd. (b)(1).) The petition shall not be considered while the petitioner is under sentence for any criminal offense, including any period of court-imposed probation or parole, or while there is an accusation or petition to revoke probation pending against the person. (§ 2307, subd. (g).) The petition must be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed. (§ 2307, subd. (c).)

As set forth in Factual Finding 6, the petition satisfies the procedural requirements of section 2307.

2. Petitioner bears the burden of establishing his fitness for reinstatement of his surrendered license. (Evid. Code, § 500.)

3. In reviewing the petition, consideration may be given to “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.” These considerations are equally applicable to a person who has surrendered his license while under investigation or while charges are pending. (§ 2307, subs. (a), (e).)

4. As set forth in Factual Findings 8 through 12, petitioner has engaged in admitted unprofessional conduct that resulted in a Decision authorizing the surrender of his license to resolve the First Amended Accusation filed in that matter. Pursuant to section 2307, subdivision (f), if a license is reinstated as requested in the petition, the administrative law judge may recommend the imposition of any terms and conditions deemed necessary.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, petitioner has met his burden of establishing fitness for reinstatement of his license. As set forth particularly in Factual Findings 13 through 16, petitioner has demonstrated significant rehabilitative efforts since the December 2006 Decision authorizing his license surrender. Petitioner has the strong support of his wife and extended family; he has engaged in responsible employments; he has completed the terms of his criminal probation and had his conviction expunged; he is viewed by peers as a gifted psychiatrist who has grown in responsible ways since the Decision; and he has consistently engaged in ongoing medical education.

The very serious nature of the petitioner’s boundary violation with M.D., as described in Factual Finding 9, remains an ongoing concern. There is little in the record to provide the Board with any understanding why petitioner engaged in this apparently aberrant behavior, and there is little professional analysis of the risk of recurrence of such behavior. In addition, it has been over four years since petitioner

has practiced medicine. In light of these concerns, as conditions precedent to his return to medical practice, petitioner must complete a psychiatric evaluation and a clinical training program. Upon successful completion of these conditions, petitioner may engage in medical practice under a probationary license.

ORDER

Physician's and Surgeon's Certificate Number G 56251 issued to petitioner Jeffrey Gray is hereby reinstated. Pursuant to Legal Conclusion 4, the reinstated certificate is immediately revoked; however, revocation is stayed. Petitioner is placed on probation for six (6) years subject to compliance with the following terms and conditions:

1. **Psychiatric Evaluation - Condition Precedent:** Within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that petitioner is mentally fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation.

Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

2. **Clinical Training Program - Condition Precedent:** 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 Board 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 Board 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.

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 petitioner has successfully completed the Program and has been so notified by the Board or its designee in writing, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

3. **Practice Monitoring:** Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the

monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, or other time as approved by the Board, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine, and whether petitioner is practicing medicine safely. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, petitioner shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Petitioner shall cease the practice of medicine within 3 calendar days after being so notified by the Board or designee.

In lieu of a monitor, petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at petitioner's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

4. **Notification:** Prior to engaging in the practice of medicine, the petitioner shall provide a true copy of this Decision and of the 2006 Decision and First Amended Accusation 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 Board or its designee within 15 calendar days.

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

5. **Supervision of Physician Assistants:** During probation, petitioner is prohibited from supervising physician assistants.

6. **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.

7. **Quarterly Declarations:** Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, 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.

8. **Probation Unit Compliance:** Petitioner shall comply with the Board's probation unit. Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board 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 Board 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.

9. **Interview with the Board 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 Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

10. **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 Board 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 Board 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 totals 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.

11. 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 Board 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 Board 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, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

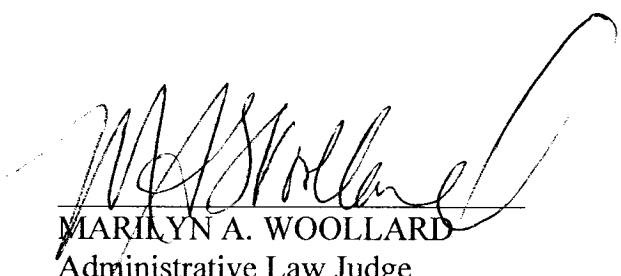
12. **Violation of Probation:** Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary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

13. **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 Board 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 Board 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.

14. **Probation Monitoring Costs:** Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board 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.

15. **Completion of Probation:** Petitioner shall comply with all financial obligations (e.g., cost recovery, 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.

DATED: March 31, 2011


MARILYN A. WOOLLARD
Administrative Law Judge
Office of Administrative Hearings