

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

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

ELIZABETH JENKINS, M.D.

**Physician and Surgeon's
Certificate No. A 95751,**

Petitioner.

OAH No. 2010100371

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on December 30, 2010, in Los Angeles, California. Elizabeth Jenkins, M.D. (Petitioner) appeared and represented herself. Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Vladimir Shalkevich, Deputy Attorney General.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on December 30, 2010.

FACTUAL FINDINGS

1. On June 1, 2006, the Medical Board of California (Board) issued Physician and Surgeon's Certificate Number A 95751 to Petitioner. That certificate is current and will expire on June 30, 2010, unless renewed.

2. In a Decision and Order effective March 23, 2009, adopting a Stipulated Settlement and Disciplinary Order (2009 Decision and Order), the Board revoked Petitioner's certificate, stayed the revocation and placed Petitioner on probation for 35 months on specified terms and conditions, including completion of an ethics course and treatment by a psychotherapist.

3. Petitioner graduated from medical school in 2001. She completed a four-year residency in New York in April 2006.

4. In July 2006, the Massachusetts Board of Registration in Medicine (Massachusetts Board) granted her a limited license to practice medicine in Massachusetts, and she began a Pediatric Endocrinology fellowship at Baystate Medical Center (BMC).

5. In August 2006, she stole a credit card from a BMC co-worker and used it to make \$1,219.65 in unauthorized purchases. As a result of her theft, Petitioner was terminated from her employment at BMC.

6. On August 22, 2007, in a Consent Order signed by Petitioner on June 21, 2007, the Massachusetts Board revoked Petitioner's limited license to practice medicine.

7. The Board was notified of the Massachusetts Consent Order, and the 2009 Decision and Order arose from that out-of-state discipline.

8. Petitioner has suffered from Type 1 Diabetes since 1992. In 2002, she began to experience complications from her diabetes, for which she received a great deal of support from family and friends in New York. However, when she moved to Massachusetts in 2006 and her diabetic complications continued, she lost her support system and began to feel isolated and "hopeless." In her Petition, she noted that her situational anxiety "does not excuse the crime [she] committed[,] but does offer an explanation."

9. In 2008, Petitioner became a candidate for a clinical research trial for islet cell transplants to treat her diabetes complications. As a condition of her enrollment in that clinical research trial, she was subjected to testing, including a psychological evaluation, which she passed. The psychologist who conducted that evaluation, David W. Brokaw, Ph.D., took into consideration the circumstances surrounding her theft. In 2009, he became her psychotherapist for purposes of compliance with her Board-ordered psychotherapy, and he continues to see her regularly.

10. Dr. Brokaw submitted a March 9, 2010 letter in support of the Petition, stating:

[The issue of Petitioner's theft] came up and we had an open discussion about it when I conducted my psychological assessment of her for the clinical trial for the transplant. As I explored this event with her at that time, it appeared to be an uncharacteristic event that was not consistent with her life history or current psychological functioning, but did occur in the context of multiple, overwhelming stressors at a time that she was transitioning between support systems. . . .

In the psychotherapy, we have explored the circumstances of her theft, and completed a relapse prevention treatment approach. This is an empirically supported approach that has been successfully applied to a variety of unwanted behaviors, including such difficult challenges as alcohol or drug abuse. In her case, it involved identifying triggering

events and chains of emotional, behavioral and cognitive sequences associated with the credit card theft. Potentially risky circumstances have been identified, and appropriate, alternative choices under those circumstances have been delineated. In comparison to August 2006, [Petitioner] now has greater awareness and insight into the circumstances relating to her theft, her risk factors, and has developed alternative strategies to deal with any similar circumstances that might occur in the future. In addition, she has benefitted from a remarkable transplant that has significantly reduced diabetes-related complications and stressors, and has placed herself within a strong social support network.

[Petitioner] has sincerely and genuinely invested herself in a meaningful clinical process of self-exploration to constructively address the issues involved in the credit card theft. In my clinical judgment, she has greatly increased her self-understanding and is genuinely committed to the highest level of ethics and professionalism both in the medical field and in her personal dealings with others. As her psychologist, I believe that she has completed the necessary work to practice independently and ethically and that she does not represent a risk to the public. For that reason, I support her petition for termination of her probation.

11. As a result of her islet cell transplants, Petitioner no longer requires exogenous insulin for the first time in over 17 years. She believes that the treatment she received will slow the progression of her diabetes-related complications and hopefully even reverse some of them.

12. Petitioner has complied with all of the terms and conditions of her probation, including completion of an ethics course in April 2009, and ongoing psychotherapy.

13. After she was terminated from BMC, Petitioner moved back to California to live with her parents. From December 2006 until the present, Petitioner has been working part time (two half-days per week) at a pediatrics practice in Tarzana, California. She also works part time as a certified product trainer for Medtronic, training diabetic patients in the use of insulin pumps and continuous glucose monitors.

14. Petitioner volunteers her time giving lectures about diabetes at churches and schools in her community.

15. Respondent's employer, Norman Lavin, M.D., submitted a March 8, 2010 letter in support of the Petition. He described Petitioner as "an exemplary pediatrician who works with a high degree of intelligence, integrity, and compassion."

16. Mohamed El-Shahway, M.D., an attending physician in the Islet Transplantation Program, also submitted a letter in support of the Petition. Dr. El-Shahway's March 17, 2010 letter noted that he was aware of the circumstances leading to Petitioner's probation. According to Dr. El-Shahway, Petitioner is "trustworthy, honest, and truthful in all the interactions [he has] had with her." He believes that Petitioner "is truly remorseful of her prior actions and that she has learned her lesson the hard way."

17. At the administrative hearing, Petitioner admitted that, in 2006, she made a "terrible mistake" and that she acted unprofessionally. She is ashamed of what she did, and now strives every day to prove her integrity. She sought to assure the Board that she will never engage in such activity in the future.

LEGAL CONCLUSIONS

1. Petitioner has made the necessary showing that it would be consistent with the public interest to permit early termination of her probation, by reason of Findings 1 through 17.

2. Petitioner bore the burden of proving both her rehabilitation and her fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden required a showing that she is no longer deserving of the adverse character judgment associated with the discipline imposed against her certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained her burden of proof.

3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the division or 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. . .

4. California Code of Regulations, title 16, section 1360.2 states:

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:

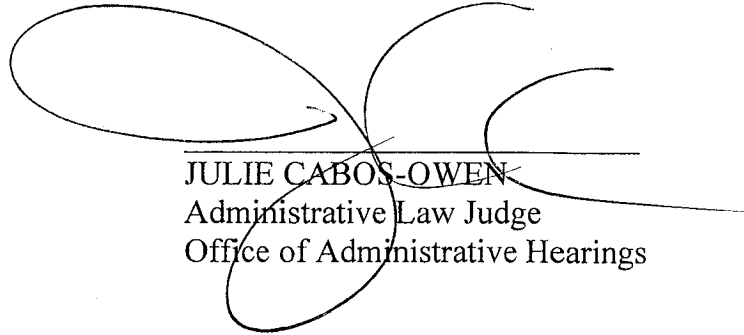
(a) The nature and severity of the act(s) or crime(s) under consideration

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Elizabeth A. Jenkins, M.D., for termination of probation is granted.

Dated: February 10, 2010



~~JULIE CABOS-OWEN~~
Administrative Law Judge
Office of Administrative Hearings