

Reginald Low, M.D., Chair
Panel B

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

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

RAND RITCHIE, M.D.,

Physician's and Surgeon's
Certificate No. G41327,

Petitioner.

Case No. 26-2011-216797

OAH No. 2012040699

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 9, 2012, in Los Angeles, California. Rand Ritchie, M.D. (Petitioner) appeared and represented himself. Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Tan Tran, 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 July 9, 2012.

FACTUAL FINDINGS

1. On December 17, 1979, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G41327 to Petitioner. That certificate is current and will expire on August 31, 2013, unless renewed.

2(a). In a Decision and Order, effective July 13, 2009, adopting a Stipulated Settlement and Disciplinary Order (2009 Probation Order), the Board ordered that Petitioner be placed on probation for five years, on specified terms and conditions, including undergoing medical and psychiatric evaluations; abstaining from use of alcohol and controlled substances except with a lawful prescription; submitting to biological fluid testing; employment of a practice monitor; and completion of an ethics course.

2(b). The 2006 Probation Order was based on Petitioner's 2007 conviction for driving under the influence (DUI) of alcohol, when considered in light of his 1986, 1987 and 1991 DUI convictions and his prior Board-imposed probation in 1994 (all discussed below).

3. On July 20, 2011, Petitioner filed a Petition for Termination of Probation with the Board.

4. Petitioner's area of practice is psychiatry, for which he had previously been certified by the American Board of Psychiatry and Neurology. This certification was invalidated due to Petitioner's 2009 Probation Order.

5. Petitioner's history of alcohol abuse, rehabilitation, relapse, and related convictions span at least 27 years, apparently beginning in 1985.

6(a). On December 16, 1985, Petitioner was arrested for driving under the influence of alcohol while driving home from a Christmas party.

6(b). On February 25, 1986, in the Superior Court for the County of Los Angeles, Petitioner was convicted of driving under the influence of alcohol. He was placed on probation for three years and ordered to complete an alcohol education program.

7(a). Despite being on court-ordered probation, on July 22, 1986, Petitioner was arrested for driving under the influence of alcohol and for driving a motor vehicle with a blood alcohol content in excess of .10 percent.

7(b). On June 8, 1987, in the Justice Court for the County of Mendocino, Petitioner was convicted for driving under the influence of alcohol and for driving a motor vehicle with a blood alcohol content in excess of .10 percent. He was placed on three years probation and ordered to serve 48 hours in county jail and to complete an alcohol program.

8(a). Following his 1986 arrest, Petitioner decided that needed to enter an alcohol rehabilitation program. He entered an in-patient program for several weeks, and then began attending Alcoholics Anonymous (AA) meetings, 100 meetings in 100 days. He had a sponsor and continued attending AA meetings for several years. However, he became complacent over time.

8(b). Petitioner married his first wife, Pauline, in 1989. However, on April 29, 1991, Pauline committed suicide. Petitioner relapsed and began drinking that day. He believes his relapse was due to his failure to call his sponsor.

8(c). Petitioner continued to drink alcohol, and on June 30, 1991, while operating a motor vehicle, Petitioner entered an intersection without yielding to traffic and was struck by another motorist. At the scene, police officers detected a strong odor of alcohol on him and a field sobriety test was administered, which Petitioner failed. Petitioner was arrested for driving under the influence of alcohol and transported to the hospital for administration of a blood test. The blood test results revealed that Petitioner had a blood alcohol content which exceeded .08 percent.

8(d). On August 8, 1991, in the Municipal Court for the County of Santa Barbara, Petitioner was convicted of a driving with a blood alcohol content exceeding .08 percent. He was placed on three years probation and ordered to serve 150 days in jail and to perform 220 hours of community service.

8(e). At some point after his 1991 arrest, Petitioner returned to regular AA meeting attendance.

9(a). As a result of his 1986, 1987 and 1991 DUI convictions, the Board filed an Accusation against Petitioner. In a Decision, effective December 15, 1994, adopting a Stipulated Settlement and Disciplinary Order (1994 Probation Order), the Board placed Petitioner on probation for five years on terms and conditions which included completion of the Board's now-defunct Diversion Program; undergoing medical and psychiatric evaluations; psychotherapy, if recommended; abstention from use of alcohol; biological fluid testing; completion of an ethics course; and employment of a practice monitor.

9(b). Petitioner completed the Diversion Program and submitted to biological fluid testing for five years.

10(a). During and following completion of his Board-ordered probation pursuant to the 1994 Probation Order, Petitioner continued attending AA meetings. He married his current wife, Katherine, also a recovering alcoholic.

10(b). In 2005, Petitioner had back surgery, which failed to alleviate pain from prior back injuries. However, he began to feel that his sponsor and friends in AA did not understand what it was like to deal with chronic pain and became emotionally distant. Additionally, according to Petitioner, after 14 years of sobriety, he "lost humility and became arrogant." According to Petitioner, on April 15, 2006, he came home to find his wife drunk. Instead of immediately calling his sponsor or falling back on other recovery resources, he drank alcohol.

11(a). On August 30, 2006, Petitioner was pulled over by police while driving his vehicle in an erratic manner (i.e. speeding, weaving, driving onto the curb and nearly striking a sign post). He was arrested for DUI after police officers detected the odor of alcohol inside his vehicle and Petitioner failed field sobriety tests. A urine sample obtained after the arrest indicated that Petitioner tested positive for marijuana and opiates.

11(b). On December 18, 2007, Petitioner was convicted by a jury of DUI. On April 8, 2008, Petitioner was sentenced to three years probation.

11(c). Petitioner appealed his conviction, claiming that he was not drunk on the day of his arrest. He claimed that he had suffered a stroke or that he had been affected by a neurological condition. His appeal was denied.

11(d). At the administrative hearing, Petitioner noted that, at the time of his 2006 arrest, he had convinced himself that he was not guilty, which he now realizes was a

“continuation of [his] arrogance.” He admitted that he drank the night before and that he was “probably impaired” at the time of his arrest. When pressed during cross examination, Petitioner admitted that he was “drunk” on the day of his arrest.

12. Petitioner has two years remaining on his Board-ordered probation, as set forth in the 2009 Probation Order. He has complied with the terms and conditions of his probation.

13. Petitioner has been sober for five years and has returned to regular AA meetings. He understands that his failure to follow the AA principles resulted in his “current situation.” He has taken steps that will hopefully enable him to stay sober. He understands that if he ever “drink[s] again, [he] will not be [allowed] to practice medicine.”

14. Some time during the past three years, Petitioner began treatment with a Daniel M. Gordon, M.D., a psychiatrist specializing in addiction medicine. He sees Dr. Gordon regularly and is now able to accept the fact that he needed psychiatric help in addition to AA.

15(a). Petitioner seeks to terminate probation for financial reasons, and believes that, although public protection is important, any danger to the public is minimal in comparison to the huge impact of probation on him financially. In addition to the invalidation of his board certification, insurance companies have dropped him from their provider lists and would not contract with him until completion of his probation.

15(b). Petitioner would like to earn a regular salary in order to help pay for his wife’s liver transplant, which he estimates will cost them \$500,000 above insurance coverage. He has explored two openings for a psychiatrist with the Department of Corrections, but in order to be on the list of candidates, he must have active board certification.

16. Petitioner has the support of his treating psychiatrist, Dr. Gordon, and his colleague, F. Stuart Miller, M.D., who submitted letters in support of termination of his probation.

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LEGAL CONCLUSIONS

1. Petitioner has failed to make the necessary showing that it would be consistent with the public interest to permit early termination of his probation, by reason of Findings 1 through 16.

2. Petitioner bore the burden of proving both his rehabilitation and his 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 he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has not sustained his 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 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.

5(a). Petitioner has completed three years of his five-year probation and has complied with all terms and conditions set forth in the Probation Order. However, mere compliance with probationary terms does not automatically provide the basis for early termination of the probation agreed to by Petitioner. He must demonstrate rehabilitation sufficient to warrant termination of his probation. Although his five years of sustained sobriety is admirable, this is a relatively short period of sobriety in comparison to his 27-years of alternating alcohol abuse, rehabilitation and relapse. Although Petitioner has continued his AA meetings and has added psychiatric treatment to his supports which will help him to maintain sobriety, his prior pattern of relapse weighs against early termination of probation. The totality of the evidence established that completion of his full five years of probation is necessary to ensure adequate protection of the public.

5(b). Petitioner has failed to sustain his burden of proof that he is sufficiently rehabilitated and fit to practice medicine without restriction. Consequently, early termination of his probation is not warranted at this time.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Rand Richie, M.D., for early termination of probation is DENIED.

Dated: July 30, 2012

A handwritten signature in black ink, appearing to read 'JULIE CABOS-OWEN', written over a horizontal line.

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings