

**BEFORE THE  
BOARD OF PODIATRIC MEDICINE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Penalty )  
Relief/Termination of Probation Against: )**

**Michael Warren Colburn, D.P.M. )**

**File No. 1B-2009-199005**

**Doctor of Podiatric Medicine )  
License No. E 2942 )**

**\_\_\_\_\_  
Petitioner. )**

**DECISION AND ORDER**

**The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.**

**This Decision shall become effective at 5:00 p.m. on January 20, 2017**

**DATED December 23, 2016.**

**BOARD OF PODIATRIC MEDICINE**

  
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**John V. Cha, D.P.M., President**

BEFORE THE  
BOARD OF PODIATRIC MEDICINE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Penalty Relief/Termination of Probation Against:

MICHAEL WARREN COLBURN, D.P.M.,

License No. E2942

Petitioner.

Case No. 1B-2009-199005

OAH No. 2016080362

**PROPOSED DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings (OAH), heard this matter on October 20, 2016, in Oakland, California.

Keith C. Shaw, Deputy Attorney General, represented the Office of the Attorney General.

Petitioner Michael Warren Colburn, D.P.M., appeared and represented himself.

The matter was submitted on October 20, 2016.

**FACTUAL FINDINGS**

1. On June 7, 1982, the Board of Podiatric Medicine (Board) issued Podiatric Medicine License Number E2942 to petitioner Michael Warren Colburn, D.P.M.

2. On September 15, 2011, the Board filed Accusation No. 1B-2009-199005, alleging petitioner committed multiple violations of the Business and Professions Code for unprofessional conduct. The charges stemmed from petitioner's consensual sexual relationship with a patient. During the time period from 2008 to 2009, petitioner allowed her to observe while he examined another patient, prescribed her an antibiotic for a urinary tract infection without an examination, treated her for other conditions and failed to maintain medical records, and erroneously billed an insurance provider for medical services.

3. After an evidentiary hearing and a Decision and Order was issued, effective October 18, 2013, petitioner's podiatric medicine license was revoked with the revocation stayed and imposition of a five-year term of probation with standard terms and conditions of probation. The terms required petitioner to do the following: provide notification to his employers; submit quarterly declarations; pay probation monitoring costs; complete continuing medical education courses; take a prescribing practices course within 60 days of the effective date of the decision; and enroll in a professional boundaries program within 60 days of the effective date of the decision and complete the course within six months, or he would be considered in violation of probation. In addition, petitioner was to complete an ethics course within 60 days of the effective date of the decision, and any course taken prior to the effective date may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition. Also, the total costs of investigation and prosecution in the amount of \$37,827.59, were reduced for petitioner to pay \$18,913.79, because of the financial hardship to him.

4. Petitioner completed an online professionalism and ethics course on March 7, 2013, prior to the effective date of the decision. On November 26, 2013, petitioner also paid \$9,000, toward the cost recovery. Petitioner completed the professional boundaries course in April 2014. The probation monitor's quarterly reports indicated that petitioner had satisfied the probation condition of taking an ethics course with the March 2013 online course.

5. On June 16, 2015, petitioner filed with the Board a Petition for Penalty Relief, Termination of Probation (petition). His probation is scheduled to be completed on October 18, 2018.

6. In the Board's investigation report, dated May 14, 2016, the investigator determined that petitioner was not in compliance with the following conditions of probation: Completion of the ethics course because the internet ethics course taken in March 2013 was unapproved by the Board; completion of the prescribing practices course; payment of the outstanding probation monitoring costs of \$3,878.50, and payment of the remaining cost recovery. He had otherwise met all of the other probationary conditions.

#### *Petitioner's Evidence*

7. At hearing, petitioner reiterated the impact of the probation conditions on his personal life and his need to be relieved from probation. Petitioner takes responsibility for his actions, recognizes that his conduct was wrong, and expresses genuine remorse. Petitioner admits that he did not have Board approval before completing the online ethics course. However, he insists that he sent a letter seeking approval to his former probation monitor who did not respond and petitioner relied on the probation monitor's quarterly reports indicating that he was in compliance. He admits that he read the probationary conditions, but because he "nearly lost his wife" and "his world was falling apart," he forgot about taking the prescribing practices course.

Petitioner contends that although his probation formally started in October 2013, essentially his career ended in April 2009, when he was released from Kaiser for having the affair, which was the basis for the Board's discipline. As a result, he lost his malpractice insurance and hospital privileges. He could not obtain a job with a hospital, surgery center, or be placed on independent acceptance to any insurance plans. Eventually, one insurer agreed to provide him with malpractice insurance at an exorbitant monthly rate. Currently, he sees Medi-Care, Medi-Cal and cash paying patients. Also, he states that his reputation cannot be rehabilitated because the National Practitioner Databank reflects the Board's state licensure action as sexual misconduct as the first thing anyone views as the description for the action taken against his license.

According to petitioner, if the petition is granted, he would be able to treat patients on individual insurance plans, and it would reduce his malpractice insurance. According to petitioner, he has learned about himself and now understands how he got himself into such a situation that impacted his successful career. He explained that at the time he thought he was "above doing anything unethical." He believes that termination of his probation is in the best interest of the public because he is an excellent podiatrist and wants to restore his reputation.

8. Petitioner completed the prescribing practices course on June 17-19, 2016. He also paid the remaining monitoring costs in the amount of \$3,585.48, in October 2016. In effect, he has met all of the conditions except payment of the remaining cost recovery of over \$9,000.

9. Prior to this action, petitioner was the Chief of Services for the Podiatry Department at Kaiser facilities in Walnut Creek and Pleasanton, where he had worked for over 20 years and was a highly respected podiatrist and specialist in treating infants with clubfoot deformity. He is one of only a few specialists in the United States. He was unemployed for approximately two years. From February 2011 to December 2015, petitioner worked part-time at Avenue Family Practice in Lafayette. He had obtained a position as a staff podiatrist at a Veteran's Administration hospital and worked from April 2011 until September 2013, when he was dismissed because of his probationary status. Currently, he works at Livermore Podiatry. Until last year, he also worked as an Assistant Clinical Professor at the California School of Podiatric Medicine.

10. Petitioner submitted letters of support from the following:

a. Gary and Mona Shriver, Hope and Healing Ministries, Inc., wrote a letter, dated September 29, 2016, attesting that petitioner and his wife have served over 300 volunteer hours working in the ministry and supporting other recovering couples at weekend intensives. They consider petitioner to be very engaged in the process and a valuable asset.

b. Nitza Rodriguez, D.P.M., wrote a letter dated October 5, 2016, describing petitioner as a colleague and mentor. Rodriguez observed petitioner always treat patients and their families with respect. Rodriguez writes that she never saw petitioner demonstrate any unprofessional behavior. She believes that the description of the reason for petitioner's

probation as sexual misconduct does not accurately describe what happened and discourages potential patients from seeking his services. Rodriguez considers petitioner's inability to practice unfettered to be a great loss to the clubfoot deformity community in the Bay Area.

c. Sally Pham, with Livermore Podiatry, wrote a letter dated October 5, 2016. Pham writes that petitioner has been her business partner for eight months. She describes petitioner's specialty in correcting children with clubfoot deformity. According to Pham, since his probation, petitioner has not had one new patient seek to correct a clubfoot deformity and he is prevented from assisting other colleagues in difficult cases.

11. The Board's Decision and Order placing petitioner's license on probation directed him to reimburse one-half of the Board's recoverable costs. He was ordered to pay within 90 calendar days or other period agreed to by the Board or its designee. He made one payment of \$9,000. There is no evidence of any other payments made to the Board for the investigation and prosecution costs. Petitioner owes more than \$9,000 in unpaid costs. His full payment of all unpaid costs of investigation and prosecution must be a condition precedent to receipt of an unrestricted license.

## LEGAL CONCLUSIONS

1. Petitioner has the burden of proof in a petition for early termination of probation. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored or be relieved from further requirements of probation.

2. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (See, *Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) The standard of proof is clear and convincing evidence. (*Id.* at 1092.) Administrative proceedings related to the discipline of a professional license are noncriminal and nonpenal; they are not intended to punish a licensee, but rather to protect the public. (*Sulla v. Bd. of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1206.)

3. Pursuant to Business and Professions Code section 2307, a petitioner may petition the Board for modification or termination of probation, after a period of at least two years for early termination of probation of three years or more. Petitioner must make a satisfactory showing that, with due consideration for the public safety, it would be in the public interest to terminate his probation to the Board.

4. Generally, complete and satisfactory performance of all probationary conditions is mandatory and expected of all probationers. Failure to comply with any single condition can result in an action to revoke and terminate probation and impose any stayed penalty.

5. Petitioner has demonstrated substantial compliance with conditions of probation, notwithstanding his failure to make full payment of the investigation and prosecution costs, and that it would be in the interest of the public to terminate his probation to the Board. He has maintained employment. He is a highly skilled medical professional. That he seeks to mitigate the economic effect of the discipline does not compel the termination of probation. However, petitioner has submitted sufficient evidence of rehabilitation including compelling letters of support. His serious lapse in judgment appears to stem from a romantic relationship. There was no evidence of any other incidents of serious lapses in judgment. He appears to have learned from the error of his ways. He is sincerely remorseful and his substantial community involvement. He has restored his marriage and it is unlikely that he will engage in future misconduct to risk his marriage, livelihood, and reputation. Therefore, it would be in the public interest to terminate petitioner's probation at this time.

Pursuant to the Factual Findings set forth above, petitioner has demonstrated good cause to grant his Petition for Penalty Relief, Termination of Probation, under Business and Professions Code section 2307, in that he has demonstrated that he is safe to practice podiatry without restriction, provided that he pay his balance due.

#### ORDER

1. The petition of Michael Warren Colburn, D.P.M., Podiatric Medicine License No. E2942, for termination of probation is hereby granted, provided petitioner first meets the following condition precedent to the reinstatement of his unrestricted license.

2. Within ninety (90) calendar days of the effective date of this Decision, or other period agreed to by the Board or its designee, petitioner shall pay all unpaid investigation and prosecution costs to the Board, in the amount of \$9,913.19, as a condition precedent to the reinstatement of an unrestricted license. If payment is not made within 90 calendar days of the effective date of the Decision as ordered herein, petitioner's license shall remain in a probationary status as a result of his failure to meet this condition precedent.

DATED: November 21, 2016

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*Diane Schneider*  
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FOR REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings