

Michael A. Zapf, DPM, President

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

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

VINNCENTE H.G. TRUONG, D.P.M.

Case No. 500-2017-000478

**Doctor of Podiatric Medicine
License No. E 4177**

Respondent

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of Board of Podiatric Medicine, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 24, 2017.

IT IS SO ORDERED October 26, 2017.

BOARD OF PODIATRIC MEDICINE

By: 
Michael A. Zapf, DPM, President

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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition for Early
Termination of Probation of:

VINNCENTE H.G. TRUONG, D.P.M.,

Doctor of Podiatric Medicine License
No. E 4177

Petitioner.

Case No. 500-2017-000478

OAH No. 2017070847

PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on August 16, 2017, in Oakland, California.

Deputy Attorney General Lynne K. Dombrowski represented the Office of the Attorney General, Department of Justice.

Petitioner Vinncente H.G. Truong, D.P.M., represented himself and was present throughout the administrative hearing.

The matter was submitted for decision on August 16, 2017.

FACTUAL FINDINGS

1. On December 1, 1998, the Board of Podiatric Medicine (Board) issued Doctor of Podiatric Medicine License No. E 4177 to Vinncente H. G. Truong (petitioner). On June 18, 2007, the Executive Officer of the Board filed an accusation against petitioner alleging that discipline should be imposed on petitioner's license as a result of a criminal conviction and dishonest conduct.

Factual Circumstances Underlying the 2007 Accusation

2. On March 24, 2006, following a court trial, petitioner was convicted of violating Penal Code sections 484 and 487, subdivision (a) (grand theft of personal

property/money), with an enhancement for taking property with a value over \$150,000, within the meaning of Penal Code sections 12022.6, subdivision (a)(2), and 1203.045, a felony. Petitioner was sentenced to two years in state prison and ordered to pay restitution in the amount of \$390,845. Petitioner was released after serving approximately 16 months in prison.

The factual circumstances were that petitioner obtained over \$350,000 from a business partner in order to build podiatry clinics to market medical technology petitioner had developed. Petitioner gave his business partner false information and the clinics were not built. Petitioner failed to repay the money or to provide an accounting as to how the money was spent.

Current Probationary Grant

3. The Board issued a Decision and Order effective July 28, 2008, based upon a stipulated settlement. The Decision and Order provided that petitioner's license would be revoked, but the revocation would be stayed during a 10-year period of probation. Terms of petitioner's probation included requiring that:

- a) petitioner's license remain suspended until he either passed the National Board of Podiatric Medical Examiners Part III examination, or in the alternative, successfully completed a clinical training or education program;
- b) petitioner successfully complete an ethics course approved by the Board;
- c) petitioner's medical records, charting, pre- and post-operative evaluations, all surgical procedures and billing records be monitored;
- d) petitioner make payments on the restitution ordered by the Santa Clara Superior Court in the criminal case pursuant to an approved payment plan;
- e) petitioner pay the Board's costs in the amount of \$3,000;
- f) petitioner pay probation monitoring costs on an annual basis; and,
- g) petitioner comply with the standard conditions of probation.

4. Petitioner's probation is scheduled to expire on July 28, 2018, if he is in compliance with his probationary conditions. On January 27, 2017, petitioner submitted a petition for early termination of probation, and this hearing followed.

Petitioner's Compliance with Probationary Terms

5. Petitioner successfully passed the National Board of Podiatric Medical Examiners Part III examination on December 31, 2008; his license suspension was lifted as of February 10, 2009.

6. Petitioner completed a board-approved ethics course on April 9, 2011. Petitioner has completed his continuing medical education requirements.

7. Petitioner has complied with the practice and billing monitor condition. Jack L. Bois, D.P.M., has served as petitioner's monitor since 2015. Dr. Bois wrote a letter for the Board's consideration dated February 7, 2017. Dr. Bois reports that during the time he has monitored petitioner's practice, he has found petitioner to be providing appropriate and excellent care to his patients. Petitioner's medical records are very thorough and he has developed a sophisticated electronic medical record program. Dr. Bois does not believe that there is any risk to the public in allowing him to resume his practice with an unrestricted license.

8. Petitioner has paid \$2,000 of the \$3,000 in enforcement costs.

9. Petitioner paid probation monitoring costs in full through June 30, 2015. As of June 30, 2017, he owed \$4,712.84, and from July 1, 2017, through the day of hearing, he owes an additional \$511.49. The total outstanding probation monitoring balance is \$5,224.33.

10. Petitioner has paid \$50 per month toward restitution; however, because of interest accruing on the debt, the amount of restitution owed has increased to more than \$500,000.

11. Petitioner has complied with all other conditions of probation.

Petitioner's Evidence

12. While on probation, petitioner's services have not been covered by insurance companies, making it difficult for him to work. He has worked out of a structure at a flea market on weekends, and has made house calls on patients who are referred to him and can afford to pay cash for his services. Petitioner's income has been spent on probation costs, enforcement costs and restitution payments. Petitioner would like to have his probation terminated to enable him to obtain steady work in order to help support his family and make restitution.

13. Petitioner is married and has two children, ages 9 and 11. His wife supports the family through her work as a social worker for Santa Clara County. Petitioner's wife was diagnosed with lymphoma, stage two, last year. She finished chemotherapy eight months ago

and is checked for a reoccurrence every three months. Petitioner has cared for their children while his wife works.

14. Petitioner and his family have no large assets and have undergone financial hardship since his conviction in 2006.

15. Petitioner submitted a character reference letter from Christopher Otiko, D.P.M., dated February 14, 2017. Dr. Otiko has known petitioner since August 1993, when they were roommates as first year podiatry students. Dr. Otiko is very familiar with the failure of petitioner's medical technology company and the resulting criminal conviction. Dr. Otiko reports that petitioner has been a pioneer in the profession. He recommends early termination of petitioner's probation and considers him an asset to the profession.

16. Petitioner accepts responsibility for his misconduct and expressed sincere remorse for his errors in judgment. He feels confident that he will not be involved in misconduct again. Petitioner hopes that the technology he developed can be utilized by a school or an institution; he will not be involved in obtaining financing to promote its use.

17. Petitioner requests that probation be terminated at this time. He does not have the funds to pay the balance of the probation monitoring costs or the enforcement costs. If required, he can try to obtain a loan to pay these debts. Petitioner will continue to pay what he can on restitution, but realistically, will not be able to repay what is owed.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In a proceeding for the restoration of a license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement must present strong proof of rehabilitation, and the showing of rehabilitation must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

Statutory Authority

2. Business and Professions Code section 2307 provides in part:

(e) 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. . . .

Analysis

3. Petitioner has completed the ethics course, passed the National Board of Podiatric Medical Examiners Part III examination, complied with the billing/practice monitor condition and complied with all remaining conditions except for the full payment of restitution, enforcement and probation monitoring costs. (Factual Findings 5 through 11.) He has served nine years of his 10-year probation. His conviction occurred 11 years ago. (Factual Findings 2 and 3.)

The Board's primary concern is the safety of the public. Petitioner's misconduct involved a business proposal that failed, rather than harm to his patients. (Factual Finding 2.) There is no evidence that petitioner's patients have ever been harmed. Petitioner's billing and practice monitor strongly endorses petitioner's early termination of probation. (Factual Finding 7.) Petitioner established by clear and convincing evidence that continued billing and practice monitoring is no longer warranted.

Petitioner has paid for probation monitoring, practice monitoring and classes for many years, as well as \$2,000 of the \$3,000 in enforcement costs. The balance of the monitoring and enforcement costs totals \$6,224.33. (Factual Findings 8 and 9.) In light of petitioner's financial hardship, the final \$1,000 in enforcement costs should be waived at this time. (See, *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) However, petitioner must reimburse the Board for its monitoring costs. Once he pays the probation monitoring costs balance in full, his probation to the Board should be terminated. It is acknowledged that he will not have paid restitution in full at that time.

4. Although petitioner's request to terminate his probation at this time will be denied, cause exists under Business and Professions Code section 2307 to modify his probation to remove Condition 5 (Billing/Practice Monitor), reduce the enforcement costs (Condition 17), and to terminate his probation and restore his unrestricted license upon petitioner's payment in full of the Board's outstanding monitoring costs (Condition 19).

ORDER

The petition for early termination of probation of petitioner Vinncente H.G. Truong, D.P.M., is granted in part, as follows:

1. Petitioner is no longer required to comply with Condition No. 5 (practice/billing monitor).
2. The enforcement cost recovery condition (Condition No. 17) is reduced from \$3,000 to \$2,000 and is deemed met.

3. Petitioner must pay all outstanding probation monitoring costs in full (Condition 19).
4. Upon his payment of the outstanding probation monitoring costs, and assuming he remains in compliance with all other probationary conditions, petitioner's probation shall terminate and his license (Doctor of Podiatric Medicine License No. E 4177) shall be fully restored.

DATED: August 25, 2017

DocuSigned by:

Jill Schlichtmann

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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings