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

In the Matter of the Petition for Penalty Relief by:	)	
PATRICK EDWARD SHIPSEY, M.D.	)	File No. 16-2003-149675
	)	OAH No. N2008040069
Petitioner.	)	

DECISION

The Proposed Decision of Stephen J. Smith, Administrative Law Judge, dated June 12, 2008 is attached hereto. Said decision 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, Case No. 20-2007-187112 is stricken and replaced with Case No. 16-2003-149675

2. Page 1, OAH No. 2008040069 is stricken and replaced with Case No. N2008040069

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

This Decision shall become effective at 5:00 p.m. on August 8, 2008.

IT IS SO ORDERED July 9, 2008.

MEDICAL BOARD OF CALIFORNIA

By: Barbara Yaroslavsky
Barbara Yaroslavsky, Chair
Panel B

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

In the Matter of the Petition for Penalty Reduction-Early Termination of Probation of: PATRICK EDWARD SHIPSEY, M.D. Bakersfield, California 93313 Physician and Surgeon's Certificate No. G 86616 Respondent.	Case No. 20-2007-187112 OAH No. 2008040069

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Sacramento, California on May 20, 2008.

Dian M. Vorters, Deputy Attorney General, Health Quality Enforcement Section, Department of Justice, represented the Division of Medical Quality.

Patrick Edward Shipsey, M.D. appeared and represented himself.

The case was submitted on May 20, 2008.

FACTUAL FINDINGS

1. The Administrative Law Judge was assigned by the Medical Board of California (the Board) to hear and decide this matter pursuant to Business and Professions Code section 2307, subdivision (c). The Administrative Law Judge is duly designated in accordance with the provisions of Government Code section 11371. The Board has jurisdiction to reinstate, reinstate subject to conditions or deny reinstatement of any

previously revoked or surrendered Certificate to practice medicine and surgery in the State of California, depending upon proof of satisfactory rehabilitation.[1]

2. The Board issued Physician and Surgeon's Certificate No. G 86616 to Patrick E. Shipsey, M.D., on August 16, 2002.

3. The Board filed an Accusation against Dr. Shipsey on December 3, 2003. An evidentiary hearing on the Accusation took place on August 5, 2004, in Oakland, California, before the Hon. Jonathan Lew. The Board adopted Judge Lew's Proposed Decision that revoked Dr. Shipsey's Certificate, but stayed the revocation for a period of four (4) years and Dr. Shipsey was placed on probation, subject to numerous terms and conditions. Those conditions included that Dr. Shipsey attend and complete a medical record keeping course, attend and complete a course in ethics; keep a controlled substance log and inventory; a prohibition against prescribing controlled substances except in a hospital, emergency room or an urgent care clinic; a preclusion against solo practice; a preclusion against supervising physician assistants; to repay the Board its costs of investigation and prosecution in the amount of $1,464.50; and to pay the costs of monitoring his probation, as well as some standard terms.

4. The action against Dr. Shipsey was entirely derivative of an action against him by the Board of Medical Examiners of the State of Oregon (Oregon Board) based on a stipulation dated May 2, 2003. The Stipulated Order became effective July 10, 2003. Dr. Shipsey agreed in the Order that he engaged in unprofessional conduct, willful violation of a Board statute, rule or order, violated the Federal Controlled Substances Act, and accordingly, the Oregon Medical Practices Act. Dr. Shipsey agreed to the entry of a public reprimand, and additionally to pay a fine of $5,000. The Oregon Board also imposed a prohibition on Dr. Shipsey against self-medicating or treating himself and conditions upon his license if he seeks to reactivate it in Oregon in the future (Dr. Shipsey's medical license in Oregon was expired at the time of the action). The conditions for reactivation include that Dr. Shipsey be treated by a personal physician; not purchase, order, prescribe, dispense or possess controlled substances, including samples, in an office or clinic, except for a hospital or urgent care clinic. Dr. Shipsey has not reactivated his license in Oregon to date.

5. The Oregon Stipulated Order contained Factual Findings detailing Dr. Shipsey's acts and omissions leading to the disciplinary action. Dr. Shipsey planned to start a free medical clinic in Portland, Oregon, where he was practicing between 2000 and 2002. He purchased 19,000 tablets of hydrocodone/APAP 5/500 (Lorcet, a Schedule III controlled substance), 2500 tablets of hydrocodone ibuprofen 7.5/200 (Vicoprofen, a Schedule III controlled substance) and other non-narcotic and non-controlled substances medications from Henry Schein, Inc., a leading medical supply house. He received delivery of these controlled substances at his personal residence, where he stored them in the basement. The free medical clinic plans never came together. Dr. Shipsey received an offer to take a locum tenens position in Oklahoma City, Oklahoma. He was concerned about leaving such a large

[1] Business and Professions Code section 2307; California Code of Regulations (CCR), title 16, section 1360.2.

quantity of controlled substance medications in his basement. Over the course of a day or two, he flushed all the medications down the toilet at his home before leaving for Oklahoma City. Dr. Shipsey never maintained a controlled substances log or inventory for the controlled substances. The basement of his home had no particular security features to protect the controlled substances. There was no medical justification for Dr. Shipsey's acquisition and storage of the controlled substances other than his plans to start the clinic.

6. A representative of Henry Schein, Inc., inquired of Dr. Shipsey in March 2002 regarding the large amounts of controlled substances he was purchasing from his company. Dr. Shipsey wrote the Henry Schein representative a rather detailed responsive letter that was largely false. He told the representative that he was using the controlled substances for free clinic work that he had developed over the past four years, first in Dallas, Oregon and for the most recent six months in Portland. He described the operating hours of the clinic in the letter as well.

7. Finally, Dr. Shipsey self-administered Testrid, (methyltestosterone), a Schedule III controlled substance, and Lomotil (Diphenoxylate atropine), a Schedule V controlled substance, at times not specified in the stipulation and Order. Dr. Shipsey testified he has a testosterone deficiency and was treating himself.

8. Dr. Shipsey testified at the evidentiary hearing in 2004 that he not only purchased the controlled substances that were one of the subjects of the Oregon Board action against him, but also a variety of nonnarcotic medications and general medical equipment for the clinic. He presented invoices from Henry Schein to corroborate his claims. The invoices reflected purchases of medical instruments and equipment, such as an ECG machine, an external defibrillator and instruments for minor surgeries. The invoices also reflected purchases for anti-emetic medications, bronchodilators, anti-hypertension medications, antibiotics, anti-seizure medications, muscle relaxants and drugs for psychiatric disorders. Dr. Shipsey testified that he budgeted about $2000 per month to make such purchases and pre-equip his planned clinic. He testified he purchased the hydrocodone medications because he believed these medications provide moderate pain relief with relatively few side effects. He was hoping to obtain donations from a variety of sources, including local hospitals and foundations, to help equip the clinic, but was convinced these donors would not furnish the clinic controlled substances of any sort.

9. Judge Lew expressed concern in his Decision imposing the probation at issue here regarding the nature and extent of the false explanation Dr. Shipsey told the Henry Schein representative regarding his purchases of controlled substances. Judge Lew stated, "The letter goes far beyond misrepresentation as respondent made considerable effort to concoct a totally false account, apparently to ensure that he would continue to be able to purchase controlled substances and other supplies from Henry Schein Medical Supply Company. His willingness to lie in such fashion was brazen and quite alarming. He came clean only after being confronted by the Drug Enforcement Administration and the Oregon Board of Medical Examiners." Nevertheless, Judge Lew found it would not be contrary to

the public interest and welfare to place Dr. Shipsey on probation and impose certain education and training requirements, which Dr. Shipsey has fully satisfied.

10. Dr. Shipsey is fully in compliance with all the other terms and conditions of his probation.

11. Dr. Shipsey filed the instant Petition with the Board on October 4, 2007. This is Dr. Shipsey's first such Petition. Dr. Shipsey's probation expires on September 22, 2008. At the time of the filing of his Petition, Dr. Shipsey's probation had just less than a year to run. As of the date of the evidentiary hearing, his probation had only five months remaining.

12. Dr. Shipsey was convicted by jury on December 17, 1997, in the Circuit Court of the State of Oregon For Grant County, of nine counts of violations of Oregon Revised Statutes section 164.365, criminal mischief, ten counts of class C felonies, and two misdemeanors. He was sentenced to 18 months probation, to pay a fine and to perform 80 hours of community service.

13. The facts leading to Dr. Shipsey's criminal conviction are the stuff of frontier novels. Dr. Shipsey accepted an offer to open a practice in John Day, Oregon, a small rural and rustic Eastern Oregon town that has more in common with frontier America than the 21st century. Logging, cattle ranching and rugged outdoor activity are the primary economic activities in this area. Dr. Shipsey accepted the offer because he loves the outdoors and thought he could manage a successful practice in the area. He purchased 1000 acres of forest with a small stream that ran through the property and built a home. His practice flourished. But Dr. Shipsey's not so quiet environmentalist views soon found him in conflict with some of his neighbors. Oregon's 100 year old open range law required land owners to fence their properties if they wanted to keep grazing herds owned by others off their property. Dr. Shipsey fenced his property, much to the derision of his neighbors. His fences were repeatedly damaged or torn down, and his neighbor's cattle were repeatedly found grazing on his land, and, worse, leaving cow pies behind in such a fashion that runoff washed the feces into his stream, polluting the water. At this same time, Dr. Shipsey was a primary sponsor of an Oregon ballot initiative that would penalize and severely restrict range activity of cattle who were polluting streams with waste, much as he was encountering on his own land. The ballot measure was exceptionally unpopular in Dr. Shipsey's community, and his role in promoting the measure added to some members of the community's sentiment against him.

14. At first, return of his neighbor's cattle to his neighbor's land was a friendly proposition, and the neighbor even helped retrieve his animals. But as time passed and the repeatedly repaired fences kept being broken down, the situation grew hostile, particularly as Dr. Shipsey had to hire contract cowboys to round up the neighbor's cattle and return them, as well as continuing to have to pay for fence repair. His "No Trespassing or Grazing" signs were frequently obliterated by shotgun blasts. Tensions in the community grew so tense that his wife became fearful to live with him on his ranch. In mid-November, 1995, Dr. Shipsey grew so frustrated with local authorities repeatedly ignoring his rights that he decided to make a statement. He shot 11 trespassing cattle to death on his land. He left the carcasses as

they lay, making no effort to conceal what he did, which was not witnessed. This behavior led to his prosecution and convictions. Dr. Shipsey glibly observed in his testimony in support of his Petition that the potential for finding an unbiased jury in this community was "unlikely."

15. Yet all this time, despite all the community uproar and acrimony, his medical practice flourished and his reputation for caring and attentive medical service was outstanding. It should also be noted that the criminal convictions occurred fully 10 years before the Oregon Board action regarding the controlled substances. Dr. Shipsey continued to practice in Oregon for the entire ten year period following the convictions with no action of any sort being taken against him by the Oregon Board.

16. Dr. Shipsey moved from his locum tenens position in Oklahoma to California in 2002, where he sought and obtained licensure. He worked at his specialty in Emergency Room medicine at the Bakersfield Memorial Hospital (Memorial), Bakersfield, California, beginning in August 2002. He remained in this position until August 2007, when he joined Pinnacle Emergency Physicians of Bakersfield (Pinnacle), who then obtained the contract to staff the Memorial Emergency Room.

17. Practice while on probation for Pinnacle did not prove to be a problem for the first three years of probation. However, the Emergency Department Director at Memorial was aware of Dr. Shipsey's tenuous position as a probationer and routinely took advantage to schedule Dr. Shipsey for approximately one third more shifts per month than any other ER physician on staff. Dr. Shipsey was well aware of how tenuous employment can be for a probationer physician, so he did not "make waves."

18. Problems developed in mid 2007 with Memorial's hospital administrator learning of Dr. Shipsey's criminal convictions and "contentious" interactions with a nurse manager. The issues with the nurse were investigated and found to be the product of personality disputes having no impact on the quality of patient care. At the same time, Pinnacle and Memorial were going through a transition where the hospital was being marketed on local television and an effort was being made by hospital administration to "raise the hospital's profile in the community." The Chief Administrator told Dr. Ellis, Dr. Shipsey's supervisor and successor Chief of the Emergency Department, that the hospital could not have a person with Dr. Shipsey's past legal problems with the Oregon and California Boards on staff. Dr. Ellis was told to either terminate Dr. Shipsey or Pinnacle would lose the ER contract. Dr. Ellis had little choice, even though he was and is very impressed with Dr. Shipsey's clinical skills and sound medical care. Dr. Almklov, another physician who worked with Dr. Shipsey at Memorial, told the Board's investigator that four or five other physicians lost their positions at Memorial for similar reasons during this period.

19. Dr. Ellis unreservedly and unhesitatingly supported Dr. Shipsey's Petition and made it clear to the Board's investigator who inquired of him that Dr. Shipsey is an excellent physician who provides sound and caring medical attention to his patients, and he would

rehire him in an instant if he could do so. Dr. Ellis commented that Dr. Shipsey's use of Testrid and Lomotil was highly unlikely due to abuse, as abuse of these pharmaceuticals is exceptionally uncommon. Dr. Almklov's opinion was similar. Both were quite well informed of Dr. Shipsey's past legal difficulties.

20. Dr. Shipsey was dismissed from Pinnacle on June 27, 2007. He has been unemployed since but is actively seeking work. He has recently been approved to seek work through Doctors on Demand. He has found that his probation status is a significant impediment to obtaining employment, despite the fact that he has highly desired skills. Hospital administrators are unwilling to take the insurance risk to employ a probationer, even indirectly through a contractor.

21. Dr. Shipsey made a most impressive appearance in support of his Petition, winning over the skepticism of the undersigned and the Deputy Attorney General. He presented himself as frank to a fault, humble, contrite, and introspective at the suggestion that his past behavior was enigmatic for an environmentalist (flushing huge quantities of controlled substances into the public water supply, shooting cattle and leaving them to rot on his range) and yet being the victim of repeated flagrant transgressions of his private property rights by a group of right wingers who loudly demanded strict enforcement of such rights for themselves, but trample the rights of others if the exercise of those rights conflicts with the exercise of their own freedom, and of a hospital administration that is evidently more concerned about its public image than whether competent, effective and skillful physicians are delivering care to its patients.

22. Dr. Shipsey testified that he never had any issue with being put on probation by the Board, and described the action as "appropriate and fair." He described being the beneficiary of an excellent opportunity to learn from the conditions imposed, to his great benefit. The records keeping course has resulted in him becoming a meticulous documenter, and the ethics course was an excellent learning opportunity. He presented himself as exceptionally well organized, thoughtful and insightful, reflecting that he has invested a good deal of time thinking through the issues that led to his various legal and Board troubles in considerable detail. There was not a hint of blame shifting, excuse making or responsibility avoidance in his rather lengthy testimony. His unembellished, thoughtful candor was refreshing. He concluded his testimony by saying that he was content to allow his probation to expire on its own terms, but loss of the job has rendered him virtually unemployable due to probation. He testified he had been told scores of times that hospitals' risk management and errors and omissions insurers have told the ERs that probationers pose too great a risk to undertake.

23. Dr. Shipsey's evidence of rehabilitation is significant and persuasive. He demonstrated considerable insight into the problems that led to his discipline. Without attempting to avoid responsibility or blame anyone else but himself for the choices he made, he adequately explained the circumstances. Dr. Shipsey described several ways he has profited from the Board's disciplinary action and the additional training he received as a result of the probationary conditions. There is evidence that the cumulative effects of

continued probation have, since July 2007, become more punitive than rehabilitative. There is no evidence that granting Dr. Shipsey's Petition and releasing him early from probation will pose any appreciable risk of potential harm to the health, welfare or safety to any patients Dr. Shipsey may treat. Dr. Shipsey, by all accounts, is a highly trained, skilled, competent and effective ER physician, a medical skill greatly in need and demand in California. Every day he is unable to get back into active practice is a day the risk increases that his skills diminish, and a day patients cannot be treated by a good physician. His skills and CME are still current. Probation should be terminated at the earliest possible time to preserve that status.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2221, subdivision (b), provides, "The Division of Licensing may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee." Government Code section 11522 provides that a licensee subjected to a disciplinary action may petition for penalty relief, including reinstatement, termination of probation or modification or elimination of conditions imposed, upon making an adequate showing of good cause for such action. "...[I]t is important to bear in mind that in a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove he has rehabilitated himself and is entitled to have his license restored."[2] Proof of reinstatement must be sufficient to overcome the Board's previous adverse determination.[3]

2. California Code of Regulations (CCR), title 16, section 1360.2, provides,

> 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).

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[2] *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.
[3] *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.3d 308, 315-16.

(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."

3. "Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public."[4] "Regarding the imposition of discipline on a medical license, section 2229, subdivision (a) states: 'Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.'"[5]

4. Dr. Shipsey is rehabilitated. Dr. Shipsey's performance on probation has been exemplary. Dr. Shipsey's skills and competencies as a physician are not in doubt, as evidenced by his letters of reference. He is well respected by his colleagues. He is considered a safe and competent practitioner by those who review his work and practice with him daily. There is no lingering or unresolved public protection issue. Dr. Shipsey's approach to his probation has been positive and diligent. His expressions of insight were impressive and persuasive. As set forth in the Factual Findings, the remaining restrictions of probation are more burdensome on Dr. Shipsey than rehabilitative and beneficial to patients. It is evident that no useful public protection purpose will be served by continuing Dr. Shipsey on probation.

ORDER

The Petition of Patrick Edward Shipsey, M.D., for an Early Termination of Probation is GRANTED. Probation is terminated. Dr. Shipsey's Certificate, number G 86616, is hereby fully restored, free of any conditions, limitations or restrictions, upon the effective date of this Decision.

DATED: June 12, 2008

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

[4] *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-6. (hrg. den May 20, 1998)
[5] *Griffiths v. Superior Court* (2002) 96 Cal.App 4th 757, 768, n.2 (hrg. den. June 12, 2002)