

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

In the Matter of the Petition for Reinstatement
of Revoked Certificate of:

PHILLIP MARK MILGRAM, M.D.
17977 Valadares Drive
San Diego, California, CA 92127

Petitioner.

Case No. 20-2003-152828

OAH No. L2004050003

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on June 22, 2004.

Steven H. Zeigen, Deputy Attorney General, California Department of Justice, appeared on behalf of the Attorney General, State of California pursuant to Government Code section 11522.

M. Gayle Askren, Attorney at Law, appeared on behalf of petitioner, Phillip Mark Milgram, M.D., who was present at the hearing.

The matter was submitted on June 22, 2004.

FACTUAL FINDINGS

1. Petition number 20-2003-152828 to Reinstate Revoked Certificate, dated October 7, 2003, was filed with the Medical Board of California (hereinafter referred to as "the Board") by petitioner Phillip Mark Milgram (hereinafter referred to as "petitioner") seeking reinstatement of his physician's and surgeon's certificate. Petitioner attached the following attachments to his petition: letters of recommendation, petitioner's narrative statement, medical treatment monitoring and recovery documentation, a Diversion certificate, Board certification and UCSD teaching records, counseling certificates, continuing education certificates,

bankruptcy records, and copies of the previous disciplinary pleadings and decision. The matter was set for hearing and the proceeding herein followed.

2. Petitioner held physician's and surgeon's license number A-35411 issued by the Medical Board of California (hereinafter referred to as "the Board") on June 23, 1980. Petitioner also previously held medical licenses in the states of Nevada and New York. On September 17, 1998, accusation number 10-95-50617 was filed against petitioner. Subsequently, a first supplemental accusation was filed against petitioner. The accusation and first supplemental accusation alleged petitioner was guilty of unprofessional conduct, gross negligence, repeated negligent acts, incompetence, failure to maintain accurate medical records and excessive prescribing and/or treatment.

On October 10, 1999, petitioner entered into a stipulated settlement of the disciplinary action thereby agreeing to surrender his license. On November 15, 1999, the Board adopted the stipulated settlement and the Board's final Decision adopting the stipulated settlement became effective on November 22, 1999. Pursuant to the terms of the stipulated settlement, the Board may consider the charges in the accusation and supplemental accusation to be true for purposes of determining whether to grant reinstatement of petitioner's license. In August 2000, petitioner's Nevada medical license was revoked. In May 2000, petitioner voluntarily surrendered his New York medical license.

3. Petitioner was first licensed to practice medicine in 1980. Over the next several years, petitioner developed a thriving and successful practice as an OB/GYN specialist. Sometime in the late 1980's, petitioner began abusing drugs and alcohol as a method of coping with the pressure and stress of his demanding professional and private life. Petitioner was abusing the narcotic Demoral. In 1988, petitioner voluntarily entered the California Medical Board's Diversion Program for Physicians (hereinafter referred to as "Diversion") in order to address his drug and alcohol abuse. He completed Diversion in 1992. Thereafter, petitioner continued his practice in California until 1996 when he moved to Nevada.

4. At some point after completion of Diversion, petitioner relapsed and resumed his drug and alcohol abuse. He continued to practice medicine in Nevada until the accusations were filed in California. At that time, petitioner's plans for a new medical office in Nevada fell apart and he became very depressed. On September 28, 1999, petitioner attempted suicide with a drug overdose. On October 1, 1999, petitioner checked into the Talbott Recovery Campus (hereinafter referred to as "Talbott"), a drug abuse treatment center specializing in treatment of professionals, in Atlanta, Georgia. Petitioner remained at Talbott for 14 weeks. After his money ran out and he could no longer pay for his stay at Talbott, petitioner transferred to St. Judes' Recovery Home in Atlanta for further treatment. After nine months in treatment in Atlanta, petitioner was released from St. Judes' and he returned to San Diego.

Upon his return to San Diego, petitioner immediately contacted Duane Rogers, Marriage and Family Therapist who had previously worked with petitioner in Diversion. Petitioner worked out a continued recovery program under the care of Mr. Rogers and Dr. John Milner, M.D., a psychiatrist specializing in addiction recovery. Petitioner enrolled in the Recovering Professionals Group in San Diego (hereinafter referred to as "the Professionals Group") that is a

recovery program for professionals such as physicians who are not otherwise eligible to participate in Diversion. Over the last four years, petitioner has continued a rigorous recovery routine that has included weekly visits with Dr. Milner, weekly sessions with the Professionals Group, random drug testing, and four to five 12-step meetings a week. Petitioner has worked through all of the 12 steps, continues to do so, and maintains regular contact with his sponsor. Petitioner also volunteers at Volunteers of America helping to counsel other alcoholics and drug addicts who cannot afford treatment. Petitioner helps others by relating his own story to drug and alcohol abusers and giving them hope by his example of continuing recovery.

5. Petitioner's second effort at rehabilitation from drug and alcohol abuse during the last four years has been a successful one. He now realizes he made many mistakes in his life and he has been willing to completely change his ways in order to maintain his recovery. He also realizes he made mistakes during his first effort at recovery in the 1990's and seems to understand why that first effort failed.

Petitioner has impressed this administrative court with his insight into his problems and his determination to do whatever it takes to maintain a sober and healthy lifestyle. Petitioner has taken many jobs since returning to San Diego in order to be a productive citizen and support his family. He has shown a willingness to take even menial jobs that he would have considered beneath him when he was practicing medicine and living his old life. Petitioner worked for a time as a grounds keeper at a country club he once belonged to as a member. He has most recently worked as a secretary in a medical office, doing telephone work for Comprehensive Pharmacy Services, and as an insurance salesman. He holds a valid license with the Department of Insurance. He also works part-time as a self-employed alcohol and drug counselor and he is pursuing a masters' degree in nutrition. He wants to obtain additional training in preventative medicine and addiction medicine if his medical license is reinstated. Over the last four years, petitioner has completed numerous continuing education courses in the field of medicine with an emphasis on substance abuse studies. He is now happily married to his third wife who has stayed by his side through the loss of his career as a physician and through his drug and alcohol abuse recovery. He has a well-established support system to help him maintain his sobriety.

This time petitioner's recovery is different because he has given up trying to be perfect and he has embraced a much more humble approach to his life. He recognizes his mistakes and accepts his own culpability for his actions. He demonstrates sincere remorse for all his wrongdoing and for the harm he has caused others with his previous destructive lifestyle. Petitioner now deserves a second chance. He has demonstrated he no longer poses a threat to public safety. It would not be against the public interest if he is allowed to resume practicing medicine subject to strict terms and conditions of probation.

LEGAL CONCLUSIONS

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

“A person whose certificate has been revoked or suspended or who has been placed on probation may petition the Division of Medical Quality for reinstatement or modification of penalty . . . , after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action:

- (a) At least three years for reinstatement of a license revoked for unprofessional conduct

The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

. . . The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division . . . which shall be acted upon in accordance with Section 2335.

[T]he 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. . .”

- 2. Title 16, California Code of Regulations, section 1360.2 provides in part:

“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.”

3. In a proceeding to restore a disciplined professional’s license, the burden rests on a petitioner to prove that he has rehabilitated himself and that he is entitled to have his license 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 a sufficient showing of rehabilitation to overcome the Board’s former adverse determination. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California* (1989) 49 Cal. 3d 1084, 1092-1093.)

4. Good cause was established under Business and Professions Code section 2307 and Title 16, California Code of Regulations, section 1360.2 to grant the petition to reinstate the revoked certificate subject to strict terms and conditions of probation, as set forth in Findings 2, 3, 4, and 5.

ORDER

The petition of Phillip Mark Milgram, M.D. for reinstatement of revoked physician’s and surgeon’s certificate number A-35411 is hereby granted subject to the following terms and conditions of probation:

The order of revocation is reinstated; however the same is stayed and the license is placed on probation for a period of seven years under the following terms and conditions:

1. *Controlled Substances - Total Restriction*

Respondent shall not order, prescribe, dispense, administer, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient’s primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If respondent forms the medical opinion, after a good faith prior examination, that a patient’s medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following a good faith examination, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient’s primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient’s primary caregiver may not rely on respondent’s statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient’s chart that the patient or the patient’s primary caregiver

was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. *Controlled Substances - DEA Permit*

Respondent shall not reapply for a new DEA permit without the prior written consent of the Division or its designee.

3. *Controlled Substances - Abstain From Use*

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, respondent shall notify the Division or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

4. *Alcohol - Abstain From Use*

Respondent shall abstain completely from the use of products or beverages containing alcohol.

5. *Biological Fluid Testing*

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

6. *Diversion Program*

Within 30 calendar days from the effective date of this Decision, respondent shall enroll and participate in the Board's Diversion Program until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Upon enrollment, respondent shall execute a release authorizing the Diversion Program to notify the Division of the following: 1) respondent requires further treatment and rehabilitation; 2) respondent no longer requires treatment and rehabilitation; and 3) respondent may resume the practice of medicine. Respondent shall execute a release authorizing the Diversion Program to provide confirmation to the Division whenever the Diversion Program has determined that respondent shall cease the practice of medicine.

Within 5 calendar days after being notified by the Diversion Program of a determination that further treatment and rehabilitation are necessary, respondent shall notify the Division in writing. The Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Diversion Program determines that further treatment and rehabilitation are no longer necessary. Within 24 hours after being notified by the Diversion Program of a determination that respondent shall cease the practice of medicine, respondent shall notify the Division and respondent shall not engage in the practice of medicine until notified in writing by the Division or its designee of the Diversion Program's determination that respondent may resume the practice of medicine. Failure to cooperate or comply with the Diversion Program requirements and recommendations, quitting the program without permission, or being expelled for cause is a violation of probation.

7. *Education Course*

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval an educational program or course which shall not be less than 40 hours per year, for each year of probation. The educational program or course shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. The educational program or course shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

8. *Prescribing Practices Course*

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

9. *Clinical Training Program*

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical

Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Division or its designee in writing, except that respondent may practice in a clinical training program approved by the Division or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

10. Oral and/or Written Examination

Within 60 calendar days of the effective date of this Decision, respondent shall take and pass an oral and/or written examination, administered by the Probation Unit. The Division or its designee shall administer the oral and/or written examination in a subject to be designated by the Division or its designee and the oral examination shall be audio tape recorded.

If respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days.

Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Respondent shall pay the costs of all examinations. For purposes of this condition, if respondent is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Division or its designee.

Respondent shall not practice medicine until respondent has passed the required examination and has been so notified by the Division or its designee in writing. This prohibition shall not bar respondent from practicing in a clinical training program approved by the Division or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

11. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist, who shall consider any information provided by the Division or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Division or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Division or its designee. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

Respondent shall not engage in the practice of medicine until notified by the Division or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

12. Psychotherapy

Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Division or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation

report to the Division or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed board certified psychiatrist.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

13. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval a plan of practice monitoring, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine or billing, or both, and whether respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

14. *Solo Practice*

Respondent is prohibited from engaging in the solo practice of medicine.

15. *Supervision of Physician Assistants*

During probation, respondent is prohibited from supervising physician assistants.

16. *Obey All Laws*

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

17. *Quarterly Declarations*

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

18. *Probation Unit Compliance*

Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

19. *Interview with the Division or its Designee*

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

20. *Residing or Practicing Out-of-State*

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

21. *Failure to Practice Medicine - California Resident*

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

22. *Completion of Probation*

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

23. *Violation of Probation*

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

24. *License Surrender*

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms

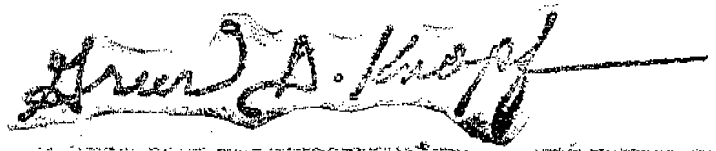
and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

25. *Probation Monitoring Costs*

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: 7/16/04



GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings