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

In the Matter of the Petition for Penalty Relief-Reinstatement of the Revoked Certificate of:	)	
NELSON FRANK LEONE	)	Case No. 27-2009-197233
Physician's and Surgeon's Certificate No. G-24538	)	OAH No. 2011070394
Petitioner.	)	

DECISION

The attached Proposed Decision is hereby 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 March 22, 2012.

IT IS SO ORDERED February 21, 2012.

MEDICAL BOARD OF CALIFORNIA

By Shelton Duruisseau
Shelton Duruisseau, Ph.D., Chair
Panel A

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

In the Matter of the Petition for Penalty Relief – Reinstatement of the Revoked Certificate of: NELSON FRANK LEONE, Petitioner.	Case No. 27-2009-197233 OAH No. 2011070394

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 18, 19, and 20, 2012.

Albert J. Garcia, Attorney at Law, represented Petitioner, Nelson Frank Leone, who was present throughout the proceeding.

Beth Faber Jacobs, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General.

The matter was submitted on January 20, 2012.

PRELMINARY STATEMENT

The Medical Board of California issued Physician's and Surgeon's Certificate No. G 24538 to Petitioner in June 1973. The Medical Board revoked Petitioner's certificate in September 1995 as a result of Petitioner's gross negligence, dishonesty, excessive prescribing practices, and aiding and abetting another in the unlicensed practice of psychology. The circumstances giving rise to the revocation occurred over a long period of time and involved very serious misconduct.

Petitioner asserts in this proceeding that he was unfamiliar with appropriate standards for practicing psychiatry, that personal issues were responsible for his forming many dual relationships and committing boundary violations, and that the revocation of his certificate has caused him to carefully reexamine his personal situation and to educate himself in such a manner that similar misconduct will not reoccur. Petitioner claims he has rehabilitated himself and that it would be safe for him to practice medicine on a probationary basis.

Petitioner has not sought psychotherapy to address his personal issues. His evidence of rehabilitation consisted of his completion of a great deal of continuing education and volunteering assistance to the homeless and disadvantaged. While some progress has been made towards rehabilitation, it cannot be concluded on this record that it would be safe for Petitioner to return to the practice of medicine at this time. The evidence of Petitioner's rehabilitation was neither clear nor convincing, and it does not support the reinstatement of Petitioner's medical certificate.

FACTUAL FINDINGS

Petitioner's Background, Education, Training, Licensure and Experience

1. Petitioner, Nelson Frank Leone, was born in 1942. He is a native of Niagara Falls, New York. Petitioner received a bachelor's degree from Niagara University in 1964. He received a medical degree from Creighton University in 1960. Petitioner completed an internship after he obtained his medical degree. He completed a two-year psychiatric residency at the Institute of Living at the University of Connecticut in Hartford in 1972. He then completed one-year fellowship in community psychiatry at Yale University in 1973. He was employed at the Connecticut Mental Health Center in New Haven as Chief Resident during his fellowship at Yale. He did not become board certified in the field of Psychiatry.

2. Petitioner moved to California around 1973.

On June 6, 1973, the Medical Board of California, Department of Consumer Affairs, State of California, issued Physician's and Surgeon's Certificate No. G 24538 to Petitioner.

In 1975, Petitioner established a psychiatric unit at El Cajon Valley Hospital; he became its Medical Director.

From 1975 until his certificate was revoked, Petitioner's goal was to establish a community mental health practice on a private practice basis. Petitioner served chronically mentally ill persons from lower economic strata, and their medical care was financed by Medicare and Medi-Cal. Without doubt, Petitioner cared for and treated many difficult psychiatric patients during his practice in San Diego County.

Petitioner's Disciplinary History

3. On July 19, 1994, the Supplemental Accusation in Case No. D-5508 was signed on behalf of Complainant, the Medical Board's Executive Director. It charged Petitioner with repeated negligent acts and gross negligence in his care and treatment of several patients, with dishonesty and corruption in his care and treatment of DS, with excessive prescribing for DS, and with aiding and abetting JG in the unlicensed practice of psychology.

Petitioner disputed the charges.

A 38-day disciplinary hearing was conducted before Administrative Law Judge Stephen E. Hjelt from October 11, 1994, through February 15, 1995. ALJ Hjelt issued a Proposed Decision dated July 6, 1995, that revoked Petitioner's medical certificate.

On August 2, 1995, the Medical Board adopted the Proposed Decision as its Decision in the matter. The Decision became effective on September 11, 1995. Petitioner has not practiced medicine since the revocation became effective.

The Medical Board's Decision

4. The Medical Board adopted ALJ Hjelt's factual findings in their entirety. These findings became a part of the Medical Board's Decision. Pertinent factual findings are summarized and quoted below.

Psychiatry maintains a set of principles that mandate what kind of conduct is professionally permissible. These principles should be well known to all practitioners irrespective of their theoretical orientation or their membership or non-membership in the various professional psychiatric associations. [Proposed Decision, p. 18.]

It is the psychiatrist's job to communicate ground rules – boundaries – that define for a patient the role of the therapist, the role of the patient, and the methodology of the treatment process. A dual relationship involves any secondary relationship between a psychiatrist and a patient beyond the primary therapeutic relationship. [Proposed Decision, p. 13.] The standard of care for psychiatrists regarding dual relationships is clear – they are to be avoided. [Proposed Decision, p. 14.]

When stripped of its veneer, Petitioner's practice was far outside the norm. It went well beyond medication management with supportive psychotherapy; Petitioner created a therapeutic milieu unrecognized by any reputable school of psychiatric practice. Petitioner's own expert recognized that there were no boundaries in Petitioner's relationship to his practice. [Proposed Decision, p. 18.]

Patient MH: Petitioner provided MH, a female patient, with psychiatric care. The Proposed Decision cited numerous examples of Petitioner's boundary violations when MH was his patient. For example, Petitioner offered to adopt MH's son; MH cleaned Petitioner's house; Petitioner took MH to the Del Mar racetrack; and MH ran errands for Petitioner's office [Proposed Decision, pp. 23-25.]

After MH left Petitioner's care, Petitioner encountered MH in an elevator at a hospital where she was hospitalized for depression. MH had, before that reunion, complained to the San Diego Psychiatric Association about the care Petitioner had provided to her. Petitioner asked MH why she was trying to hurt him and his family, and he asked her to retract her complaint. MH agreed to issue a retraction. Petitioner told MH what to write and agreed to have the retraction prepared for her, and he presented

MH with the retraction the following day. Shortly before the ethics committee hearing, Petitioner had another contact with MH in which they discussed how much it would cost for MH to leave town: "The overwhelming weight of the evidence supported a finding that respondent gave her $1500 to ensure that she would not be present to testify against him at the ethics committee hearing. She did not appear to testify." After the hearing, Petitioner met with MH again. He asked her for repayment. Later, Petitioner hired an attorney to seek monetary recovery from MH. [Proposed Decision, pp. 25-26.] The clear and convincing evidence established that Petitioner was grossly negligent in his conduct surrounding the retraction. Petitioner demonstrated a "profound lack of awareness of why his actions were unprofessional." [Proposed Decision, p. 28.]

Among other matters, the clear and convincing evidence established that Petitioner failed to recognize MH's needs. It was found that Petitioner's misconduct worsened MH's psychiatric condition and that the boundaries between Petitioner and MH "were for the most part non-existent." [Proposed Decision, p. 28.]

Patient VM: Petitioner provided VM, a female patient, with psychiatric care. The Proposed Decision cited numerous examples of Petitioner's boundary violations when VM was his patient. For example, Petitioner flirted and shared personal matters with VM; on occasion Petitioner introduced VM as his daughter; Petitioner and VM went to the racetrack together; VM worked at Petitioner's office, providing patients with physical therapy, massage therapy, range of motion exercises, and ultrasound; Petitioner paid for VM's son birthday party at Chuck E. Cheese; Petitioner paid to have VM's car repaired; and VM briefly lived in Petitioner's home. [Proposed Decision, pp. 29-32.]

As her treatment with Petitioner progressed, VM became confused, angry and upset. Her life was getting worse, and she was furious with Petitioner. [Proposed Decision, p. 31.]

> [VM] was under treatment with [Petitioner] from September 1979, until March 1985. During that time [Petitioner] engaged in numerous repeated boundary violations that were inimical to the patient's best interest. These boundary violations involved having relationships other than professional and therefore hopelessly confused the patient and the course of treatment. [Proposed Decision, p. 32.]

Patient DS: Petitioner provided DS, a female patient, with psychiatric care for many years. The Proposed Decision cited numerous examples of boundary violations when DS was Petitioner's patient. For example, Petitioner revealed to DS personal details about himself, including his sex life; Petitioner entered into a multitude of financial dealings with DS; Petitioner's office paid DS's bills and invested money for her; DS met Petitioner's mother and brother, went shopping with the mother, regularly bought powdered juice drinks from her, and went to the racetrack with Petitioner's brother. [Proposed Decision, pp. 33-36.]

For a time, DS subsisted on social security benefits. She lost those benefits. In order for DS to reinstate the benefits, Petitioner told DS to represent to the Social Security Administration that she owed him money. DS followed Petitioner's advice and falsely informed the Social Security Administration that she owned Petitioner money to qualify for reinstatement of her social security benefits. [Proposed Decision, p. 34.]

> Respondent engaged in dishonest activities in regard to a $3,500.00 he accepted from [DS]. He misrepresented to the Social Security Administration that the transfer constituted payment for services rendered, when in fact [Petitioner] had told [DS] that he would not charge her for past services. The scheme was intended to conceal the nature of [DS]'s assets so that she would have her Supplemental Security Income benefits reinstated. [Proposed Decision, p. 38.]

Material misrepresentations were made in DS's personal injury litigation as well:

> [Petitioner]'s office fabricated a billing statement . . . in the amount of $23,000.00. It was then provided to a law firm representing [DS] in a personal injury matter and it was represented to be the amount due for medical care [DS] was given by [Petitioner] as a result of the auto accident . . . The billing was corrected on March 27, 1992, reflecting the correct amount of $2,100. This was gross negligence.
>
> [Petitioner] prepared a medical report . . . regarding [DS]'s condition as a result of the auto accident . . . In that report, he grossly minimized her past history and the severity of [DS]'s psychiatric disorders prior to the accident and shifted the entire weight of casualty for her disorders to the accident. This was gross negligence. [Proposed Decision, p. 38.]

Petitioner's treatment of DS involved other acts of gross negligence unrelated to boundary violations:

> It was established by the evidence to a clear and convincing certainty that [Petitioner] failed to timely diagnose [DS]'s chemical dependency, and that he consistently misdiagnosed frontal lobe syndrome and that he failed to address her Axis II pathology.

> It was established by the evidence that [Petitioner] did over-prescribe benzodiazepines to [DS] . . . [Petitioner's] prescribing pattern regarding [DS] over the years was also grossly excessive. [Proposed Decision, p. 36.]

Patient SS: Petitioner provided SS, a male paranoid schizophrenic, with psychiatric care for about 10 years. When SS was his patient, Petitioner paid SS's personal expenses and bills on numerous occasions. [Proposed Decision, pp. 40-41.] Petitioner gave SS work, paid for lottery tickets, provided him with lodging, entered into a partnership, and managed SS's lottery winnings. [Proposed Decision, p. 102.]

Petitioner argued that his professional relationship with SS ended on August 4, 1990, before SS won $500,000 in the California Lottery. It was found that Petitioner's claim about the conclusion of the professional relationship was "a phantom termination created after the fact by [Petitioner] to justify his gambling/business dealings with his patient." [Proposed Decision, p. 40.] There was no reference to the termination of professional services in SS's chart and Petitioner did not refer SS to another psychiatrist. [Proposed Decision, p. 55.]

It was established by clear and convincing evidence that Petitioner was grossly negligent in his treatment of SS by failing to recognize SS's needs and by engaging in treatment protocols that were anti-therapeutic. Petitioner entered into and maintained multiple dual relationships and committed numerous boundary violations in his care and treatment of SS. [Proposed Decision, p. 102.]

The Issues Involving Psychology Intern JG: JG obtained a Ph.D. in Psychology in 1988. JG met Petitioner after JG began accumulating the hours of supervised practice he needed to become licensed as a clinical psychologist. JG moved into Petitioner's office, where he was supervised directly by a licensed clinical psychologist who was also in the office. Because he was not yet licensed, JG was not authorized to hold himself out as a licensed psychologist, nor was he entitled to use any title that incorporated the word psychology or psychologist. [Proposed Decision, pp. 87-88.]

Petitioner's office prepared stationary for JG that improperly referred to JG as a clinical psychologist. In May 1989, Petitioner and JG signed a report on JG's stationary that related to DS's psychological status. The report was sent to an attorney, along with a bill for $450 for the report and a bill of $1,500 for psychological testing that JG had performed. Nothing indicated that JG was a psychology intern. Petitioner knew at the time that JG was not licensed. [Proposed Decision, p. 88.] Petitioner aided and abetted JG in the unlawful practice of psychology and thus engaged in unprofessional conduct. [Proposed Decision, p. 95.]

Petitioner's Testimony at the Disciplinary Hearing: Petitioner provided a social, educational, professional and vocational history. Petitioner established that he treated the poor and the very mentally ill. He cared for two to three thousand patients in the 22 years he was in practice, seeing an average of 20 to 30 patients a day, and sometimes more.

Petitioner personally assisted his patients in buying food; he wrote reports to governmental agencies on their behalf; he entered into business relationships with them; and he managed their finances. Petitioner described his relationships with the four complaining patients, MH, VM, DS and SS, and explained the care he provided. [Proposed Decision, pp. 41-57.]

ALJ Hjelt commented on Petitioner's credibility and testimony as follows:

> [Petitioner] in a subtle and very sophisticated way blames his patients and deflects any responsibility off himself for his extremely unorthodox manner of practice. Rather than sincerely acknowledge that he may have overstepped his professional limits he explains away everything. The scenario involving the retraction letter demanded by [Petitioner] from [MH] is a classic example . . . The transactions involving [DS] are another example of [Petitioner] deflecting responsibility onto others. . . . [Proposed Decision, p. 78.]

> There is a huge difference between one isolated act of human kindness which might otherwise blur the boundary line and the repeated actions of [Petitioner] which accomplished nothing more than to confuse the patients and make them more, not less, dependent upon him. . . . [Proposed Decision, p. 81.]

And, ALJ Hjelt and the Medical Board determined that:

> [Petitioner's] transgressions are not limited to the four patients who testified. He candidly admits that his practice does not respect the customary boundaries of traditional psychiatric practice. Respondent argues that boundaries are fluid rather than rigid and this is in some sense true. But for [Petitioner], there are no real boundaries – they simply do not apply to his practice. He is thus free to create his own idiosyncratic standard of care and justify it on the basis of his clinical experience and vague references to community psychiatry. [Proposed Decision, p. 109.]
>
> [¶] . . . [¶]
>
> [Petitioner] claimed he practiced medication management with supportive psychotherapy. Unfortunately, he did not practice within the parameters

> of these well defined modalities. Supportive psychotherapy is directive, persuasive and gives advice . . . In the guise of helping his patients [Petitioner] made the decisions, he orchestrated their lives. Rather than assisting the patients in learning how to meet their needs, he satisfied them directly by entering into multiple dual relationships with them. [Proposed Decision, p. 110.]

In addition to revoking his certificate, the Medical Board adopted an order that required Petitioner to reimburse the Medical Board $46,860 for its costs of investigation and enforcement. [Proposed Decision, p. 112.]

The Petition for Reinstatement

5. Petitioner signed a Petition for Penalty Relief on February 8, 2008. Petitioner's narrative statement accompanied that petition. In that narrative statement, Petitioner set forth his disciplinary history and he described his acceptance of responsibility, rehabilitation, volunteer work, continuing education, activities since the revocation, and plans for the future. [1]

Petitioner provided a narrative report over the signature of Mark A. Kalish, M.D., a board-certified forensic psychiatrist. That report was dated July 20, 2004, and is discussed in Factual Findings 7 and 8. Petitioner also provided letters in support of his reinstatement that were authored by Paul C. Liederman, M.D., Neelakantan Ramineni, M.D., and Anthony J. Cuomo, M.D. Those letters are discussed in Factual Findings 9, 10, and 11.

6. On May 19, 2010, Clint Dicely, a Medical Board investigator, and Beth Faber Jacobs, a Deputy Attorney General, interviewed Petitioner.

In the interview, Petitioner admitted that the Medical Board issued a citation to him for representing himself to be a doctor after his certificate was revoked. Petitioner stated that the citation arose out of the following circumstances: he was present in court when an attorney asked him, "Are you Dr. Leone?," to which he responded "Yes." He said the Medical Board cited him because he was not permitted to use the title "Doctor" after his certificate was revoked, even inadvertently.[2] [Exhibit 16, pp. 7-8.][3]

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[1] In that portion of his narrative statement describing his educational activities and rehabilitative activities, Petitioner did not comment specifically upon any remedial education he undertook with or that was provided by Mary Framo, Ph.D.

[2] The Attorney General's Office represented that the citation had been expunged.

[3] Page references are to the page number of the transcript of the interview, and not to the AGO Bates stamp number at the bottom of the transcript.

Petitioner never sought any psychiatric treatment for himself, but he did speak with a number of peers about his situation. [Exhibit 16, pp. 49-50.] In contradiction to that statement, Petitioner then implied that he received psychological counseling from Dr. Mary Framo. In this regard, Petitioner represented:

> And I approached her and she said, yes, as long as, you know, I would maintain strict boundaries and, uh, that's the way she was. She was very firm and, uh, and she'd have set appointments for me and I'd have to keep them and I'd have to – to be right on time and no excuses and, uh she, she really was, uh, a very good therapist for me. [Exhibit 16, pp. 61-62.]
>
> . . . I wanted to go to the very best and that's why I chose her because, uh, I knew of her and I knew I was going to get the best treatment possible. [Exhibit 16, p. 62.]

Petitioner represented that he saw Dr. Framo mostly at her office in Solana Beach, and that he saw her regularly for almost seven years. [Exhibit 16, p. 63.] When Petitioner was asked about his interactions with Dr. Framo, he said:

> . . . I'd go to her office and I would tell her about, you know, first I'd go through the whole past, background, your family, family origin and who you are and what you are and why you do the things that you do and then you get in – so that takes about a good year and then after that, uh, uh, you kind of get into your feelings and your – and then you, after that how to express yourself, a matter of me learning how to say "No."
>
> So that became everyday experiences so I would go to her once a week, I'd go through the whole how I interacted with people and how I'd like to take shortcuts instead of dealing with the emotions of saying "No" or setting limits, I would always want to make it easy. If someone asked me for something, I – I would just automatically say "Yes." That was what I was programmed to do. I'm going to find a way to help you.
>
> So then she taught me how to discern things and really think about it before I would react or say "Yes." And find out what they're really saying to me, what's the underlying reason behind what they're asking me for something and to find out if it – if that's what they're

> really asking for . . . I had to learn to set limits. [Exhibit 16, pp. 63-64.]
>
> . . . She gave me all of the literature to read. She gave – every, you know, I also read a lot of literature, I mean, a lot of, I mean, articles and things like that, and books and . . . books by a lot of family therapists. She would give me, you know, text books and read a chapter of this and that. So I had – I probably am the poster boy for boundaries, believe me." [Exhibit 16, pp. 65-66.]

In response to a question that asked if he had treatment with any other licensed professional besides Dr. Framo, Petitioner said "No." [Exhibit 16, p. 66.] When asked if he had sought care and treatment from any professionals besides Dr. Cuomo and Dr. Framo for the issues related to the revocation of his certificate, Petitioner responded, "I went for an evaluation to see Dr. Mark Kalish." [Exhibit 16, p. 67.]

Petitioner was shown a two-page report on the stationary of Mary Framo, Ph.D. He said he had seen it before, that Dr. Framo "Hit it on the head," and that it was consistent with everything she told him. [Exhibit 16, p. 69-70.] In addition to seeing Dr. Framo in Solana Beach, Petitioner said he saw her at a couple of other offices on occasion. [Exhibit 16, pp. 72-73] When Petitioner was asked why he did not obtain more education in the field of boundary issues than the 14 hours of credit from the University of Alabama School of Medicine and the 10 hours of home study, Petitioner represented he had interacted for seven years with Dr. Framo and that she was a psychologist. [Exhibit 6, p. 79.]

Petitioner did not clarify during the interview that he did not see Dr. Framo for psychotherapy, or that her services were limited to providing him with reading materials and reviewing those materials with him. Petitioner implied that he was in psychotherapy with Dr. Framo for seven years, and he permitted the interviewers to conclude that Dr. Framo saw him in the capacity of a clinical psychologist. Petitioner's representations to the interviewers concerning his interaction with Dr. Framo and her status as a clinical psychologist were intentionally misleading.

Evidence Presented at the Hearing

7. It was stipulated that if Dr. Kalish was sworn and called to testify, he would testify that he evaluated Petitioner on June 1, 2004, and on January 12, 2012, to determine if Petitioner had a mental condition that would impair his ability to safely engage in the practice of medicine and, further, that Dr. Kalish had authored a report dated July 20, 2004, in which he concluded:

> In my opinion, Dr. Leone would not represent a danger to the public if his license was reinstated. I would

> recommend that the following terms and conditions be imposed . . . .

The parties stipulated that if Dr. Kalish was sworn and called to testify, he would modify those sentences as follows:

> In my opinion, Mr. Leone does not have a mental illness and does not have any psychiatric condition that would represent a danger to the public if his license was reinstated. I was not asked to and therefore do not, render a recommendation on the ultimate issue of whether he should be reinstated. However, if the Board were to grant Mr. Leone's petition for reinstatement, I would recommend that at least the following terms and conditions be imposed . . . .

8. Dr. Kalish's narrative report was dated July 20, 2004. That report documented his evaluation of Petitioner following an office visit on June 1, 2004. In addition to conducting a forensic evaluation on that date, Dr. Kalish reviewed the Medical Board's Decision and Dr. Framo's "psychological report" in reaching his opinions and conclusions.

Dr. Kalish's summary of the Decision was brief, and it mostly referred to boundary violations; not much factual detail was provided. With regard to Petitioner's interaction with Dr. Framo, Dr. Kalish wrote:

> In 1996, Dr. Leone saw Mary Framo, Ph.D., requesting that he be educated and followed regarding his past history of not establishing appropriate boundaries in his psychiatric practice.
>
> Dr. Framo entered into a mentoring relationship with Dr. Leone. Dr. Leone was provided with a program of journals, article reviews, required readings, and attendance at AA/NA meetings for education on structure and meetings regarding character defects. This mentoring relationship lasted seven years.
>
> In a July 13, 2003, letter, Dr. Framo express [sic] the opinion that Dr. Leone was capable of returning to the practice of psychiatry and establishing appropriate boundaries in both his personal and professional life.

Dr. Kalish directly obtained a personal history, a past psychiatric history, the medications that Petitioner was taking, a medical history, a surgical history, a reproductive history, a marital history, a legal history, an employment history, and

information concerning Petitioner's habits and current living situation. Dr. Kalish conducted a mental status examination. Dr. Kalish found that Petitioner's speech was logical and coherent, that his thought associations were tight, that there was a lack of tangential thinking, and that Petitioner presented with an euthymic mood and affect. Petitioner was orientated times three and his memory was intact. Petitioner's general fund of information was adequate; his general intellectual functioning appeared to be within the normal range; his abstract reasoning was within normal limits; and his judgment and insight were deemed "good."

Dr. Kalish provided the following diagnosis under the *DSM-IV (TR)*:

Axis I:	No psychiatric diagnosis given.
Axis II:	No personality diagnosis given.
Axis III:	Hypertension Hypercholesterolemia
Axis IV:	Psychosocial stressors: 1. Current unemployment 2. Pending hearing
Axis V:	Highest level of adaptive functioning in the past year is good.

Dr. Kalish mentioned that Petitioner had embarked on a seven-year course of education to understand his failings and to ensure that he did not make the same or similar mistakes. He observed that Petitioner had participated in an ethics program and a PACE program. Petitioner "also expressed an understanding of how these boundary violations were harmful to the specific patients he treated."

Dr. Kalish recommended that if Petitioner's license were reinstated, conditions be imposed requiring practice in a group setting, meeting with a supervisor on a biweekly basis to review the treatment provided to patients, a prohibition against prescribing any medications for off label uses without prior clearance from a supervisor, a prohibition against engaging in any business or personal relationship with current or former patients, and a prohibition against meeting with current or former patients outside the office.

9. Dr. Liederman is a board certified psychiatrist. Dr. Liederman's letter dated November 12, 2008, was provided with the petition for reinstatement. That letter stated, in part, that Petitioner understood the error of his past ways, had developed coping capacities, and had improved his boundary issues. The letter also stated that Petitioner "has been in psychotherapy, has taken courses in ethics and boundaries . . . ."

Investigator Dicely contacted Dr. Liederman after the petition was filed. He provided Dr. Liederman with a copy of the Proposed Decision and Decision for review. Dr. Liederman had not seen those documents before. After reviewing them, Dr. Liederman wrote a letter dated September 4, 2009, that stated:

> After reviewing the report you gave me regarding Mr. Nelson Leone, there are significant boundary issues.

> It is my recommendation that Mr. Nelson Leone should not get his medical license back.

Later, in a letter dated April 26, 2011, Dr. Liederman wrote:

> Nelson Leone requested a letter of recommendation directed to you in regards to his pending reinstatement of his medical license.
>
> I have some discomfort in writing this letter on his behalf as I have had limited to no contact with him since my last letter regarding him. I also feel a high degree of discomfort in rendering an ongoing opinion.
>
> Presently he appears to have some understanding as to the reason he lost his license to practice medicine.
>
> I recommend he be considered for reinstatement of his license to practice medicine with close supervision and with a probationary contract.

10. Dr. Ramineni is a primary care physician. He authored a letter dated November 17, 2008, that stated, in part, that he was aware of the circumstances resulting in the revocation of Petitioner's medical certificate. The letter stated that Petitioner was a "maverick" who "did not understand the result of his own behavior." The letter stated that Petitioner had undertaken education related to boundary issues, had completed prescribing courses, and "was involved in psychoeducation regarding boundaries in psychiatric practice and application to everyday life with Mary Framo, Ph.D." His letter did not state that Petitioner actually engaged in psychotherapy with Dr. Framo. Dr. Ramineni's letter set forth his belief that Petitioner was "a brilliant psychiatrist, one of the best I have known."

Dr. Ramineni testified in this matter. Dr. Ramineni mentioned that when he wrote his letter of recommendation, his understanding of the reason that Petitioner's certificate was revoked was based upon what Petitioner had represented, including an admission of dishonesty. Dr. Ramineni's recommendation was based, in part, on the contents of Dr. Framo's letter. Dr. Ramineni did not read the Proposed Decision until approximately 10 days before he testified. Dr. Ramineni stood by his recommendation that Mr. Leone's certificate be reinstated after reading that document.

11. Dr. Cuomo's letter stated, in part, that Petitioner always demonstrated superior clinical skills and a fund of knowledge in the field of psychiatry. He mentioned that Petitioner was compassionate with all of his patients, "perhaps to excess," and that Petitioner's patients "manipulated him to their advantage and to his disadvantage." Dr. Cuomo's letter observed that Petitioner was initially stubborn in accepting criticism of his shortcomings, but he had shown insight into and acceptance of those criticisms. The

letter stated, "He has been counseled by Mary Framo, Ph.D., a clinical psychologist. He has been under her tutelage for seven years and has been educated in regard to his deficiencies and acceptable physician-patient boundaries."

Dr. Cuomo, who is a board certified pulmonologist, testified. When Dr. Cuomo wrote his letter of recommendation dated June 26, 2008, his understanding of the reason that Petitioner's certificate was revoked was based upon what Petitioner represented and his recommendation was based on his personal observations. Dr. Cuomo testified, "I watched a transformation in his attitude towards his revocation." He testified that Petitioner's initial reaction to the revocation was petulant and combative, but Petitioner became more understanding of the reason his certificate was revoked and he ultimately accepted his errors. Dr. Cuomo stated that his interview with Investigator Dicely on September 17, 2009, occurred when he was very busy and that his comments during that interview were off the cuff and were not as thorough as they could have been.[4] Dr. Cuomo's attempt to lessen the impact of his "off the cuff" remarks was not compelling.

Dr. Cuomo stated that on at least a dozen occasions, Petitioner served as an exemplar for medical residents being educated in the field of internal medicine, and that on some of those occasions Petitioner took the time to explain to those students the concept of boundary issues and that he did so by using himself as a bad example.

According to Dr. Cuomo, Petitioner never said he engaged in psychotherapy with Dr. Framo; he always said he was being educated and mentored by her in the area of boundary issues.

12. Maria Dawson currently works as an office manager for Dr. Arnold Kaplan, a La Mesa psychiatrist. She has known Petitioner since 1973. Ms. Dawson sees Petitioner on a fairly regular basis, when he delivers IHSS clients to Dr. Kaplan's office for appointments. Ms. Dawson made office appointments for Petitioner to see Dr. Framo before Dr. Framo's death. Dr. Framo was working as a licensed clinical social worker at the time.

Ms. Dawson knew of Petitioner's reputation and difficulties, and she believed that he "had changed a lot."

13. James P. Davis is a retired Chief Petty Officer. He has known Petitioner since 1996. Petitioner provides caretaking services to his sister-in-law through IHSS.

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[4] During that interview, Dr. Cuomo told Investigator Dicey, among other things, that Mr. Leone provided him with no specifics concerning his revocation other than he violated boundary issues with some patients. Dr. Cuomo also said Mr. Leone walked in a cloud of doubt and was a great poker player, a great manipulator. Dr. Cuomo said that he hoped Mr. Leone had changed, but he was not certain that was the case. He said he had no idea if Mr. Leone would practice psychiatry in the same manner as he had in the past.

Mr. Davis enjoys Petitioner's company, and he knew about the revocation of Petitioner's medical certificate. Petitioner did not provide a lot of detail concerning the revocation other than to say he crossed boundaries in a "severe number of situations." Petitioner told Mr. Davis that he was seeking to educate himself so that his medical certificate might be reinstated.

Mr. Davis's sister-in-law is physically disabled and suffers from mental problems. Mr. Davis serves as her Social Security Administration payee, and Mr. Davis keeps her books and accounts. Mr. Davis manages her living situation. In that regard, Mr. Davis has contact with Petitioner several times a week. Petitioner runs errands for the sister-in-law, does the grocery shopping, does the laundry, and performs other necessary tasks. Petitioner does not provide counseling or any other services that requires a license.

According to Mr. Davis, Petitioner has proven himself to be an honest and reliable individual, a man of integrity.

Petitioner's Narrative Statement and Testimony

14. Nelson Leone testified. Petitioner provided testimony concerning his background, education, training, professional practice, the circumstances underlying the revocation of his certificate, and what he has done since his certificate was revoked.

Petitioner testified that his certificate was revoked because of severe boundary violations, several acts of dishonesty, the overprescribing of benzodiazepines, the comingling of funds, and aiding and abetting another in the unlicensed practice of psychology. Petitioner said he accepted full responsibility for his errors in judgment. He suggested that most of wrongdoing involved his lack of appreciation and understanding of the need to establish and maintain professional boundaries. Petitioner asserted that he had come to understand that his disregard for proper professional boundaries was "probably rooted in my own family dynamics." How he reached that conclusion was not clear.

Petitioner represented that he accepted responsibility for his acts of dishonesty, including his request that MH retract an ethics complaint and encouraging DS to make misrepresentations to the Social Security Administration. Petitioner did not mention in his narrative statement the misrepresentations he made concerning his patient's preexisting psychiatric condition in a personal injury action or the false billing his office provided for a patient in another personal injury action.

Petitioner claimed that he learned about proper prescribing practices through a PACE program and would adhere to proper prescribing practices.

Petitioner asserted that he would no longer be lax in overseeing the activities occurring in his office, implying that others may have been responsible for the finding that he aided and abetted JG in the unauthorized practice of psychology.

Petitioner mentioned his volunteer work within the community and his care of his elderly parents before their deaths as evidence of his rehabilitation.

Petitioner concluded his narrative statement as follows: "All of my actions grew out of my own personal issues, which I have come to understand and address through therapy, courses, and peer consultation."

15. Petitioner testified that his acceptance of responsibility was a gradual process. At first, Petitioner did not realize that he had engaged in wrongdoing or that he had harmed patients. Petitioner represented that he was in denial for several years. In a 1996 administrative action to revoke his New York medical license, Petitioner claimed that the California revocation was based upon evidence that was obtained from unreliable witnesses who filed complaints against Petitioner for their own monetary gain, that the ALJ and the California Medical Board applied inappropriate professional standards, and that he did not cause any patient harm. Not surprisingly, Petitioner's license to practice medicine in New York was revoked.

16. In his narrative statement in this matter, Petitioner asserted that after he lost his certificate, he took an in-depth study of the reasons his license was revoked, that he spoke with a number of peers, and that he had asked two psychiatrists, Dr. Kaplan and Dr. Palandino, for assistance. In his testimony, Petitioner described his completion of a seven-hour ethics course, the completion of a PACE prescribing practices course, his visits to Alcoholics Anonymous and Narcotics Anonymous meetings to gain an understanding of the nature of co-dependency and enabling, his visit to Dr. Kalish, and his completion of continuing professional education courses in his narrative statement.

17. For reasons Petitioner did not explain, he did not mention any mentoring with or education provided by Dr. Framo in his narrative statement. This was troubling for many reasons.

Petitioner spent a great deal of time testifying about his work with Dr. Framo, and how his study of boundaries with her assisted in his rehabilitation. Petitioner's testimony about his interactions with Dr. Framo and how she helped him identify and address the root causes of his wrongdoing was less than convincing because Petitioner testified he never saw Dr. Framo for therapeutic purposes. This testimony was at odds with the statement he provided during his Medical Board interview that is discussed in Factual Finding 6.

A two-page, unsigned report dated July 13, 2003, on the letterhead of "Mary D. Framo, Ph.D.," described Dr. Framo's services as being "Marital, Family, & Individual Therapy." The report was written on stationary that did not contain any professional license number or identify any license she held. Petitioner could not explain what happened to the third page of the report.

Dr. Framo's report stated that in 1996 Mr. Leone requested "that he be educated and followed regarding his past history of not establishing appropriate boundaries in his

psychiatric practice." The report stated that during her interaction with Petitioner, Dr. Framo and Petitioner explored the use of boundaries with a major emphasis of how Petitioner's failure to set boundaries led to the loss of his medical license, his family crisis, and his financial failures. Dr. Framo's report then discussed how Petitioner's psychological development centered on loss, the reaction to loss, and his feelings of helplessness and anxiety, for which he compensated by continued caretaking. The report concluded that Petitioner "obtained the necessary education regarding boundaries . . . He is a changed individual, especially regarding the understanding of boundaries and utilizing them appropriately." Dr. Framo's report contained her opinion that Petitioner was "capable of returning to practice psychiatry and establishing appropriate boundaries in both his personal and professional life."

Dr. Framo's report was unclear whether she and Petitioner had engaged in psychotherapy, an educational program, or both. The *DSM-IV*, the definitive manual related to mental disorders, came out in 1994, well before Dr. Framo's report. The report did not contain a *DSM-IV* diagnosis, as would be expected had there been a course of psychotherapy. More importantly, Dr. Framo's letter did not mention an investigation into Petitioner's egregious dishonesty, the roots of that dishonesty, and what steps, if any, Petitioner had undertaken to address his ethical oversights and shortcomings.

18. With regard to his use of the word "therapy" in his narrative statement, Petitioner testified that he was referring to feeling good about his education with Dr. Framo and feeling good about what he had learned by attending AA and NA meetings. Petitioner claimed that he did not represent to any person who wrote a letter in support of his reinstatement that he had engaged in psychotherapy.

19. In his testimony, Petitioner suggested that his most concentrated work supporting his rehabilitation was in the area of boundary violations and that work arose out of his interaction with Dr. Framo, who died in 2004. But, other than the two-page unsigned report dated July 13, 2003, and a collection of Petitioner's handwritten notes referring to the journal articles and publications he claimed he reviewed when working with Dr. Framo, nothing explained what they did or what was accomplished.

20. Petitioner presented certifications establishing his completion of many hours of continuing medical education, including 42 Category I credits hours in courses through the UCSD School of Medicine's Department of Psychiatry; 14 Category I credits in Professional Boundary Problems through the University of Alabama School of Medicine; a UCSD PACE Physician Prescribing Course/Psychiatric Prescribing Practices Course; the completion of various home study courses through the Texas Medical Association related professional boundaries, care for the caregivers, ethics, and intervention for physicians who may be impaired; numerous continuing medical education courses in the field of psychiatry through the CME Institute; 46 credit hours of continuing medical education from MBL Communications; 20.25 hours of credit from Pri-Med; a CME course for five Category I credits in Medical Ethics for Physicians; a CME course for five Category credits in Methamphetamine Abuse and Dependence; a one credit Category I CME course in Herbal Medications; a 15 credit Category I course

in Men's Health Issues; and a three credit Category I CME course in Pain Management. Other certificates were provided. Petitioner testified that he had completed over 800 hours of credited continuing medical courses since his license was revoked, but could only provide corroboration for about 500 hours, testifying "I either lost them [the certificates of completion] or tossed them in major moves."

21. Since 2003, Petitioner has been employed as a caregiver for persons receiving In-Home Supportive Services.[5] Petitioner currently provides services for three IHSS recipients, each of whom has a psychiatric diagnosis, one of whom is Mr. Davis's sister-in-law. Petitioner does not provide any medical care or counseling or therapy to any of these individuals. Petitioner appears to enjoy his work with IHSS, although it is not financially rewarding.

Petitioner did not advise IHSS that his certificate to practice medicine had been revoked when he applied for employment as an IHSS care provider.

22. Petitioner has provided volunteer services to San Diego's homeless community through Backyard Ministries, an organization that provides food, clothing and shelter to the homeless living in Ocean Beach. Petitioner is a member of the Advisory Board of the San Diego Action Partnership, an anti-poverty governmental program that assists the economically disadvantaged living in San Diego County.

When he applied to become an advisory board member, Petitioner represented that he was a "retired physician."

23. Petitioner attended many AA and NA meetings to gain an understanding of how those programs worked. He never identified himself as an alcoholic or an addict.[6] He has not participated in the 12-Steps.

24. Petitioner has not paid any part of the $46,860 in costs that were imposed. He testified he would pay those costs if his certificate were reinstated.

25. Petitioner signed up for Phase I of the PACE Clinical Assessment and Education Program in 2010 and he paid a $6,100 enrollment fee. Petitioner claimed he did not enter the PACE program after paying the enrollment fee because he was not

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[5] Notice is taken that In-Home Supportive Services (IHSS) is a government sponsored health and social service program that provides personal care and domestic services for individuals who are aged, blind, or disabled and in need of those services. An IHSS recipient must be a lawful resident of California with low income and limited resources; and need personal assistance services to remain safely in his or her own home. The basic purpose of the IHSS program is to enable an eligible person to remain safely in the person's home not in a board-and-care home or facility.

[6] There is no evidence that Petitioner ever suffered from a substance abuse problem.

computer literate and he had to become trained in that regard. It was not clear why Petitioner did not begin the PACE program before the hearing on his petition.

26. Petitioner's expression of remorse had a somewhat hollow ring – he expressed minimal concern for the significant harm that he caused his patients, and his lack of psychotherapy raised questions about the validity of his assertion that he had identified his personal shortcomings, that the source of his character defects were rooted in family dynamics, and that he had successfully addressed those issues.

The Closing Arguments

27. It was argued that the primary issue for determination was Petitioner's rehabilitation, and that the clear and convincing evidence established that Petitioner had taken proactive and effective steps to address the boundary issues that resulted in the revocation of his certificate many years ago. It was argued that Petitioner's rehabilitation was a gradual process, progressing from the initial denial of any wrongdoing to a total acceptance of responsibility. It was argued that Petitioner had thoroughly educated himself in boundary matters through his studies with Dr. Framo, continuing education courses, and the University of Alabama School of Medicine boundaries course. It was argued that those who knew Petitioner well believed he had transformed himself to the extent that he has become a man of honesty and integrity, and that Dr. Cuomo and Mr. Davis's testimony was particularly compelling. It was argued that Petitioner had done everything possible to establish his rehabilitation and that Petitioner was entitled to have his certificate restored on a probationary basis.

28. The Office of the Attorney General recommended against granting the petition, arguing that Petitioner's testimony was full of distortion, misrepresentation, and outright fabrication. The Office of the Attorney General observed that Petitioner had not undergone any psychotherapy, suggested that Dr. Framo may not have composed the two-page report, and argued that Petitioner's expression of remorse was merely "lip service." The Office of the Attorney General claimed that the physician letters offered in support of Petitioner's reinstatement were not ringing endorsements, and that Petitioner failed to establish by the clear and convincing evidence that he had changed to the extent that his certificate should be reinstated, even on a probationary basis.

Determinations

29. Petitioner had the heavy burden of proving by clear and convincing evidence that he had rehabilitated himself, that it would be safe for him to return to practice medicine, and that he is entitled to have his certificate reinstated. Petitioner's rehabilitation must be measured against the nature and extent of his wrongdoing.

Between 1973 and 1995, Petitioner engaged in widespread, long-term professional misconduct that involved many patients. His boundary violations were offensive to every reputable school of psychiatry. Petitioner engaged of acts of blatant dishonesty. He claimed that his unprofessional conduct arose out of personal issues and a lack of

education and familiarity with professional standards. These explanations minimized the wrongdoing and disregarded the evidence.

Petitioner never undertook psychotherapy to assist him in identifying and resolving the personal issues that he claimed gave rise to his professional and ethical departures. A person possessing significant underlying personal issues and a history of misconduct who was in denial should not be left in charge of diagnosing and treating his own illness. No standard of care authorized Petitioner's egregious boundary violations; the departures could not have been the result of unfamiliarity with acceptable standards, the violations exceeded the bounds of reason. And, no formal training in moral or ethical standards was required to provide Petitioner with the insight that it was wrong to lie to the Social Security Administration and that it was wrong to misrepresent material matters at issue in personal injury litigation.

Petitioner has not sought psychiatric, psychological or other clinical treatment to address his personal issues. Petitioner's testimony concerning his path to rehabilitation and what he has learned on his journey was not compelling, consisting of incomplete evidence of a self-directed educational program and some volunteer efforts to help the mentally ill and homeless in his community. While progress has been made, it cannot be concluded that it would be safe for Petitioner to return to the practice of medicine at this time. The evidence of Petitioner's rehabilitation was neither clear nor convincing, and that evidence does not support the reinstatement of Petitioner's medical certificate. The petition must be denied.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding for the restoration of a revoked 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 restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.)

A person seeking reinstatement must present strong proof of rehabilitation and the showing of rehabilitation must be sufficient to overcome the Board's 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 and Regulatory Authority

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

(a) A person whose certificate . . . has been revoked . . . may petition the board for reinstatement or modification of penalty . . .

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

[¶] . . . [¶]

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

(d) . . . The board 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 board . . . which shall be acted upon in accordance with Section 2335.

(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. . . .The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary. . . .

3. Title 16, California Code of Regulations, section 1359 provides:

> (a) A petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division.
>
> (b) Consideration shall be given to a petition for reinstatement of license or modification or termination of probation only when a formal request for such has been filed in the division's office in Sacramento at least thirty (30) days before a regular meeting of the division or appropriate medical quality review panel.

4. Title 16, California Code of Regulations, section 1359 provides in part:

> When considering a petition for reinstatement . . . pursuant to the provisions of Section 11522 of the Government Code, the division . . . 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).
>
> [¶] . . . [¶]
>
> (e) Evidence, if any, of rehabilitation submitted by the applicant.

Rehabilitation

5. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct

over an extended period of time that he is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

Cause Does Not Exist to Grant the Petition

6. Cause does not exist to grant the petition for reinstatement.

Petitioner did not establish by clear and convincing evidence that he has rehabilitated himself to the extent that it would be appropriate for him to return to the practice of medicine at this time, even with conditions precedent and terms and conditions of probation. Petitioner is not fit to practice medicine at this time.

ORDER

The petition to reinstate Physician's and Surgeon's Certificate No. G 24538 previously held by Nelson Frank Leone is denied.

DATED: February 1, 2012

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings