

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

In the Matter of the Petition for Penalty Relief –)
Reinstatement of Revoked Certificate of:)
)
WANDA JUNE HEFFERNON) **Case No. 27-2013-235728**
)
) **OAH No. 2014051163**
)
Petitioner.)
_____)

DECISION

The Proposed Decision of Ruth S. Astle, Administrative Law Judge, dated September 4, 2014 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

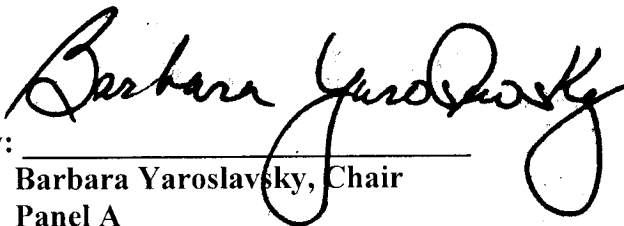
1. Page 1, Case No. 27-2013 is stricken and replaced with Case No. 27-2013-235728

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

This Decision shall become effective at 5:00 p.m. on **October 31, 2014.**

IT IS SO ORDERED **October 2, 2014.**

MEDICAL BOARD OF CALIFORNIA

By: 

Barbara Yaroslavsky, Chair
Panel A

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

In the Matter of the Petition for Penalty
Relief – Reinstatement of Revoked
Certificate of:

WANDA JUNE HEFFERNON,

Petitioner.

Case No. 27-2013

OAH No. 2014051163

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on July 29, 2014.

Joshua M. Templet, Deputy Attorney General, represented the Department of Justice.

Petitioner Wanda June Heffernon was present and represented by Thomas Still, Attorney at Law.

The matter was submitted on July 29, 2014.

FACTUAL FINDINGS

1. Wanda June Heffernon (petitioner) filed a Petition for Penalty Relief – Reinstatement of Revoked Certificate on September 3, 2013. On May 24, 1995, the Board issued Physician and Surgeon’s Certificate No. G 81259 to Wanda Heffernon-Newbreast, a.k.a. Wanda June Heffernon, M.D., PT.

2. Petitioner’s license was revoked by the Medical Board of California pursuant a Stipulated License Surrender. That decision and order became effective June 14, 2001. The disciplinary action was based on violations of Business and Professions Code sections 2234 (unprofessional conduct/commission of acts involving dishonesty), 2236, subdivision (a), (conviction of a substantially related crime) and 2238 (violation of statutes regulating drugs). Petitioner was convicted of theft, embezzlement from an elder, and receiving stolen property, felonies. She also forged prescriptions for drugs for her own use.

3. Petitioner complied with all the terms and conditions of her criminal parole/probation, which she completed successfully . The Deputy Attorney General does not oppose granting petitioner’s request for reinstatement of her surrendered license.

4. Petitioner has waited 13 years to request reinstatement. She wanted to be completely ready. She describes her present life as peaceful. She finds herself to be physically and emotionally healthy. She was addicted to IV drugs. She stole to support her habit. Finally, on January 27, 2000, petitioner became clean and sober. She worked with Delancy Street and Walden House while she was incarcerated. She has continued her recovery in 12-step programs. She has acted as a sponsor. She has also attended psychotherapy and counseling. She is “mature” in her recovery. She has now internalized what she needs to do to stay clean and sober. Petitioner presented six letters of support and verification of her treatment and rehabilitation. Petitioner also attends a professional support group.

5. Petitioner is employed in the field of real estate at this time. She has been active in the non-profit service community with domestic violence education and with Swords to Plowshares.

6. Petitioner presented five physicians’ letters of recommendation. One was from Timothy W. Kelly, M.D., who also testified at the hearing. He is a clinical professor of pediatrics at UCSF. He is familiar with petitioner’s recovery and is completely supportive of her petition for reinstatement. He finds petitioner to be a “treasure” in the recovery community. The other letters speak very highly of petitioner and her strong commitment to recovery. Petitioner also presented 15 additional letters of support. They all speak to her compassion and generosity and kindness.

7. Petitioner presented proof of many, many hours of continuing medical education. Particularly in 2013 and 2014, she has made an effort to keep up with developments in the field of medicine.

8. Petitioner is a Blackfeet Native American. She grew up under difficult family circumstances. She loved education and successfully completed medical school. Her personal life was not very successful. She had a failed relationship and a number of miscarriages that left her depressed. She started self-medicating with IV opiates around 1998. She has completely changed her life. In the last 14.5 years she has done everything to be a stellar member of her community.

9. Petitioner wants to be reinstated to serve her community better. Petitioner has learned a great deal from her experiences and believes it has made her a better person, and if reinstated, a better physician. Petitioner has demonstrated rehabilitation, however, there needs to be a determination that her skills are up to the standards required to practice medicine in California. Reinstatement on probation with a requirement to attend a clinical training program before practicing medicine would protect the public.

LEGAL CONCLUSIONS

Pursuant to the Findings set forth above, petitioner has demonstrated good cause to grant her petition for penalty relief – reinstatement of surrendered license under Business and Professions Code section 2307 and Government Code section 11522, in that she has demonstrated that she is rehabilitated. However, the reinstatement is stayed until she has successfully completed the clinical training program and has been notified by the Board or its designee in writing, except that Petitioner may practice in a clinical training program approved by the board or its designee. Petitioner’s practice shall be restricted only to that which is required by the approved training program. The condition will be made a part of the following probationary order .

ORDER

The petition of Wanda June Heffernon, M.D., physician and surgeon’s certificate number G 81259, for reinstatement of surrendered license is hereby granted. However, the license is immediately revoked, the revocation is stayed and petitioner is placed on probation for a period of five years upon the following terms and conditions.

1. Controlled Substances- Maintain Records and Access to Records and Inventories

Petitioner shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by petitioner, and any recommendation or approval which enables a patient or patient’s primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Petitioner shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

2. Controlled Substances - Abstain From Use

Petitioner 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 petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

3. Alcohol - Abstain From Use

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

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, petitioner shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

5. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, petitioner 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"). Petitioner shall successfully complete the Program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice in which petitioner was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which petitioner 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 Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the Program will advise the Board 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 petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Condition Precedent

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

6. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the Board or its designee within 5 calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

7. Notification

Within seven (7) days of the effective date of this Decision, petitioner shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

8. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

9. Obey All Laws

Petitioner 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.

10. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board 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).

Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Petitioner shall immediately inform the Board 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.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

12. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

13. Non-practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner 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; and General Probation Requirements.

14. Completion of Probation

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

15. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner 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 petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

16. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his or her license. The Board reserves the right to evaluate petitioner's request and to exercise its discretion in determining 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, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

17. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: September 4, 2014

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings