

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

**In the Matter of the Petition for the)
Early Termination or Modification of)
Probation of:)**

Maximo Diamond, M.D.)

Case No. 26-2010-208057

**Physician's and Surgeon's)
Certificate No. G 74989)**

**Respondent)
_____)**

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 May 27, 2011.

IT IS SO ORDERED April 28, 2011.

MEDICAL BOARD OF CALIFORNIA

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

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Petition for the Early
Termination or Modification of Probation of:

Case No. 26-2010-208057

MAXIMO DIAMOND, M.D.,

OAH No. 2011030246

Physician and Surgeon's Certificate No. G
074989

Petitioner.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 28, 2011, in San Diego, California.

Petitioner, Maximo Diamond, M.D., represented himself and was present throughout the hearing on the petition.

Alexandra M. Alvarez, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General, State of California.

The matter was submitted on March 28, 2011.

PRELIMINARY STATEMENT

On March 27, 2009, the Medical Board revoked Dr. Diamond's certificate, stayed the revocation, and placed Dr. Diamond on probation as a result of his unprofessional conduct related to his abuse of Marinol. Dr. Diamond completed the PACE prescribing course, a medical ethics course, and has abstained from the unlawful use of controlled substances and dangerous drugs. Dr. Diamond seeks to terminate his probation and to remove the fact of his discipline from the Medical Board's website.

Dr. Diamond established through clear and convincing evidence that he has rehabilitated himself and that probation is no longer required to protect the public. The posting of the fact of disciplinary action on the Medical Board's website was not a condition of probation and cannot be stricken in this proceeding.

FACTUAL FINDINGS

Background and License History

1. Maximo Diamond's given name at birth was Sanjay Sunder Gianchandani. He was born in Baroda India. He received a bachelor's degree in Biological Sciences from the University of California, Irvine in 1987. He thereafter attended the University of California, Irvine, School of Medicine. He received his medical degree in 1991.

On August 25, 1992, the Medical Board issued Physicians and Surgeons Certificate No. G 74989 to Sanjay Sunder Gianchandani, M.D., who is now known as Maximo Christian Diamond, M.D.¹

Dr. Diamond completed an internship in 1991 and a residency in Internal Medicine in 1992 at the Santa Barbara Cottage Hospital in Santa Barbara, California. Dr. Diamond had extensive emergency physician experience at Vandenberg Air Force Base, Nellis Air Force Base, and at the Memorial Hospital of Tampa from 1993 through 1999.

Dr. Diamond became board-certified in Quality Assurance and Utilization Review in 1999. He became board-certified in Internal Medicine in 1995.

Dr. Diamond was employed by Inpatient Management System, a Texas corporation that was sold to Humana Healthcare, as a Medical Director/Hospitalist from 1997 through 2000. He was employed by Inpatient Care Management, Inc., as its President and as a Hospitalist from 2000 through 2003. Dr. Diamond was employed as a Lead Physician/Hospitalist by Health Care Partners Medical Group, Inc., from 2003 through 2005. He was employed as a Medical Director/Hospitalist by Monarch HealthCare, Inc., from 2004 through 2005. Dr. Diamond was employed as a Medical Director/Hospitalist with Southern California Network from 2005 through 2006. In 2006, Dr. Diamond founded Diamond Luxury Skin Care, a cosmetic medical practice in Laguna Beach. He continues this employment, providing laser treatment and hair removal procedures approximately four hours per week. Since November 2008, Dr. Diamond has been employed as a consultant Hospitalist with North American Health Care, Inc.

¹ Before September 11, 2011, many patients were relieved to discover that Dr. Diamond was fluent in the English language. After September 11, 2001, based upon his prior experiences with patients and based upon the recommendation of friends and colleagues who believed that by retaining his birth name, Dr. Diamond might experience some measure of discrimination, Dr. Diamond changed his name.

The Accusation

2. The Accusation in this matter was filed on October 10, 2007. The Accusation alleged that on January 10, 2006, the Medical Board received a report that Dr. Diamond was terminated from his employment as a result of an anonymous complaint that Dr. Diamond had used controlled substances; that on October 24, 2006, a Medical Board investigator requested Dr. Diamond to provide a urine sample; that, upon testing, the sample tested positive for THC (tetrahydrocannabinol), and that in an interview on October 24, 2006, Dr. Diamond admitted that he had used his deceased wife's medication, Marinol², to help him sleep, and that he last used that medication in October 2006. The Accusation alleged that Dr. Diamond was guilty of unprofessional conduct in that he violated drug laws (first cause for discipline), self-administered a controlled substance (second cause for discipline), and that such misconduct involved general unprofessional conduct (third cause for discipline).

The Stipulated Settlement and Decision

3. On October 15, 2008, Dr. Diamond signed the Stipulated Settlement and Disciplinary Order. He was represented by counsel. While Dr. Diamond testified that he would have liked to have been present when the settlement was negotiated and asserted that he was rushed into signing the agreement, he conceded that he read all of the terms and conditions of the agreement before he signed it, agreed to be bound by those terms and conditions of probation, and suffered no prejudice as a result of having entered into that agreement. In connection with the stipulation, Dr. Diamond admitted the truth of all factual allegations and conceded that his certificate was subject to disciplinary action. He agreed to the imposition of a revocation, stayed, and being placed on 35 months probation. He agreed to abstain from the use of controlled substances, to submit to biological fluid testing at his own expense, to complete a practices prescribing course, to complete an ethics course, to undergo a medical evaluation, to notify all hospitals where he held privileges of the discipline imposed against his certificate, to not supervise physician assistants, and to comply with other standard terms and conditions of probation.

On February 5, 2009, the Medical Board adopted the Stipulated Settlement and Disciplinary Order as its Decision in the matter. On March 27, 2009, the Decision became effective.

² The Accusation stated in footnote 2 that "Marinol is a Schedule I controlled substance under Health and Safety Code section 11504(2)(20). That statement was erroneous. Marinol was a Schedule II at the time, and is now classified a Schedule III drug under Health and Safety Code section 11506, subdivision (h). Notice is taken that Marinol, the brand name for Dronabinol, is currently considered to be a non-narcotic medication with a low risk of physical or mental dependence. As a result of the rescheduling of Marinol from Schedule II to Schedule III, refills are now permitted for this substance.

The Petition for Penalty Relief

4. On June 30, 2010, Dr. Diamond signed a Petition for Penalty Relief (Termination of Probation). In that petition, Dr. Diamond represented that he was engaged in the solo practice of medicine and was a medical consultant. He provided an employment history. He represented that he was not on criminal probation, that he was not charged with any crimes, that he had not been convicted of any criminal offenses, that he had not been disciplined by any other medical board, that his staff privileges had not been disciplined by any hospital, that no civil action had been filed against him for medical malpractice, that he was not addicted to alcohol or drugs, and that he had not been hospitalized for substance abuse problems or mental illness.

In his letter in support of his petition, Dr. Diamond stated that he wished his probation to be terminated and that he wished the mention of the accusation be removed from the Medical Board's website. Dr. Diamond represented in part:

Since 2006, I have carefully reflected on my actions and have successfully made changes in my life. After countless hours discussing my unprofessional conduct with colleagues, family, and clergy, the changes are not only reflected in my personal and professional behavior, but also in my way of thinking.

...

My unprofessional conduct and wrongful action included the self-use/abuse of a controlled substance and not seeking professional guidance for my depression and insomnia. In retrospect, I believe that it was "pride" that caused me to stray off-course. I was managing over 600 physicians at the time and felt embarrassed to be in need of any assistance.

I have fully and consistently complied with all the terms and condition of my probation, including biological fluid testing, abstaining from all drugs and alcohol, quarterly reports/ meetings, fees, and active participation in the UCSD Physician Prescribing Course and the UCSF Medial Ethics Curriculum. I found both courses to have a substantial benefit to my medical practice. . . .

Dr. Diamond's Evidence

5. Dr. Diamond submitted a letter signed under penalty of perjury by Dr. Boris M. Ackerman, a Plastic Surgeon, which stated that Dr. Diamond provides excellent care to his patients and has a courteous bedside manner. Dr. Ackerman believed Dr. Diamond was an exemplary physician and requested the Medical Board grant the petition. Dr. Diamond testified that Dr. Ackerman read the Accusation and Stipulated Settlement and Disciplinary Order before drafting the letter.

6. Dr. Diamond submitted a letter signed under penalty of perjury by Dr. Nagi Ibrahim, who met Dr. Diamond after Elizabeth, Dr. Diamond's first wife, passed away. According to that letter, Dr. Diamond carefully reviewed the patient care that Dr. Ibrahim and others delivered, and was a compassionate, caring physician that mentored a large group of physicians on best practices. Dr. Diamond mentored Dr. Ibrahim personally for approximately six months before Dr. Ibrahim established an Internal Medicine practice in Vista. Dr. Ibrahim believed that Dr. Diamond was an asset to the medical community. Dr. Diamond was unaware if Dr. Ibrahim read the Accusation and Stipulated Settlement and Disciplinary Order before drafting the letter.

7. Dr. Diamond produced on the day of the hearing a notarized, three page letter signed under penalty of perjury by John L. Sorensen, President/CEO of North American Health Care, Inc., and Timothy J. Paulsen, the Executive Vice President and Chief Operating Officer of North American Health Care, Inc. The letter described the operation of North American Health Care, an organization based in Dana Point that provides support to 35 skilled nursing facilities in the Western United States. When Dr. Diamond interviewed for a position as a consultant with North American Health, he disclosed his disciplinary record voluntarily, told Mr. Sorensen and Mr. Paulsen about the basis for the discipline, and provided them with the Accusation and the Stipulated Settlement and Disciplinary Order. North American Health carefully investigated Dr. Diamond's background and, after hiring him, observed Dr. Diamond very carefully. According to the letter, in the past two years Dr. Diamond has become an integral participant in the leadership team and is involved in many corporate projects and initiatives. He interacts regularly with facility administrators, nurses, support staff, and community physicians. Dr. Diamond routinely teaches current clinical guidelines and best practices. He has consistently demonstrated a strong work ethic. Mr. Sorensen and Mr. Paulsen recommended that the petition be granted.

8. In his letter and in his testimony, Dr. Diamond provided evidence in explanation of his offense. In 2003, three months after he married his wife, Elizabeth, she was diagnosed with cancer. Over the next year and a half, Elizabeth underwent seven surgeries, three courses of chemotherapy, extensive radiation treatments, and numerous hospitalizations. Marinol was prescribed for Elizabeth. During Elizabeth's illness, Dr. Diamond felt helpless and guilty because he was not always able to provide the care he felt a good husband should provide. He continued his employment in a highly demanding position. Elizabeth passed away in October 2004. She left behind some medication, including a bottle of Marinol with 21 capsules in it. Dr. Diamond was very depressed and suffered insomnia. Over the next 18 months, Dr. Diamond self-administered 19 capsules of

Marinol to help him sleep. Looking back on his actions, Dr. Diamond knows that his self-administration of Marinol was inappropriate, raised questions about his character, and brought disrespect to himself, his employer, and the profession. He knows now that he should have sought professional help for his insomnia and his depression.

Dr. Diamond did all that was asked of him while he was on probation. Dr. Diamond was evaluated by Dr. Kenneth Gheyser³, a physician selected by the probation monitor. On June 18, 2009, Dr. Gheyser faxed a report to the Medical Board probation officer that stated, "Dr. Diamond is found to be in complete remission for his Cannabis Abuse and has no psychiatric or substance dependence issues identified at this time." Dr. Diamond submitted to numerous drug tests, all of which were negative. He completed the PACE Prescribing Practices course in October 2009. He completed the Medical Ethics course in a timely fashion. He submitted all quarterly reports in a timely fashion and appeared at interviews with his probation monitor every time an interview was scheduled. Dr. Diamond complied with all terms and conditions of probation in every respect.

Dr. Diamond was not required to obtain counseling from a licensed professional, but he testified that he spoke about his use of Marinol with his priest for about 90 minutes on one occasion, and that he spoke briefly by telephone with his priest several times thereafter.

Dr. Diamond testified that he remarried in May 2010, and that his wife, Jacqueline, as well as his parents and friends, provide him with a great deal of support. Dr. Diamond very much enjoys his work.

9. Dr. Diamond seeks to have his probation terminated because he wants to see patients in hospitals, and being on probation is an impediment to his obtaining privileges. Dr. Diamond seeks to have his probation terminated because he wants to publish a best practices manual for skilled nursing facilities and believes that "the information will be shot down" if he remains on probation.

10. Dr. Diamond's testimony was sincere. He took responsibility for his wrongdoing and he acknowledged that the Medical Board acted properly by placing him on probation with terms and conditions that were designed to assure the protection of the public. Dr. Diamond's testimony concerning the reason he used Marinol and the reason he failed to obtain professional help was compelling. It is unlikely that a similar violation will reoccur.

The Attorney General's Recommendation

11. The Attorney General's Office acknowledged that Dr. Diamond complied with all terms and conditions of probation and provided ample evidence of his recovery. The Attorney General's Office did not oppose the petition to terminate probation.

³ Notice is taken that Dr. Gheyser is certified by the American Board of Addiction Medicine and that Dr. Gheyser provides consulting services to the Medical Board in the field of substance abuse.

LEGAL CONCLUSIONS

Statutory Authority

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

(a) A person whose . . . whose certificate has been revoked . . . or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(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:

. . .

(2) At least two years for early termination of probation of three years or more.

(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. . . .

Regulatory Authority

2. Title 16, California Code of Regulations, section 1359 provides:
 - (a) A petition for modification or termination of probation . . . 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.
3. 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:

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.

The Burden and Standard of Proof

4. 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 is entitled to have his license restored, and not on the board to prove to the contrary. The most clear and convincing proof of reform must be shown by a person seeking reinstatement in the medical profession. A petitioner's actions since his misconduct are the essential criterion to judge whether he has so rehabilitated himself as to compel his readmission to the medical profession. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-317.)

Relevant Factors in Determining Rehabilitation

5. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) (Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an application for readmission to a professional practice can demonstrate by sustained conduct over an extended period of time that he or she is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.) When evidence of substance abuse at the time of professional misconduct is coupled with evidence that the abuse was addictive and contributed to the misconduct, and when the professional demonstrates a meaningful and sustained period of successful rehabilitation, such evidence should be considered as a factor in mitigation of disciplinary sanctions. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

Cause Exists to Terminate Petition

6. Cause exists under Business and Professions Code section 2307 and under Title 16, California Code of Regulations, section 1360.2 to grant the petition and to terminate probation. Dr. Diamond established through clear and convincing evidence that he has rehabilitated himself and that probation is no longer required to protect the public. The People of the State of California acknowledged his successful rehabilitative efforts by not opposing the petition.

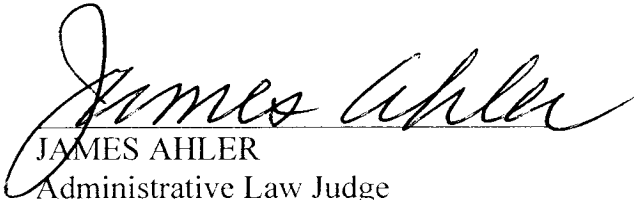
The posting of the fact of disciplinary action on the Medical Board's website was not a condition of probation and it cannot be stricken in this proceeding.

Business and Professions Code section 803.1 requires that the Board disclose to an inquiring member of the public information regarding any enforcement action taken against a licensee. The Board is not authorized to remove this information from its website, even though probation has been completed. (*Szold v. Medical Board of California* (2005) 127 Cal.App.4th 591, 597-599.)

ORDER

Dr. Maximo C. Diamond's petition for the early termination of his probation is granted. The period of probation imposed in this matter is terminated provided all costs and expenses related to the probation have been paid.

DATED: April 5, 2011


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings