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

In the Matter of the Petition for Early Termination of Probation By: **Carmen Philomena Hsu, M.D.,** **Physician's and Surgeon's Certificate No. G 83166** **Respondent.**	**Case No. 800-2018-048491**

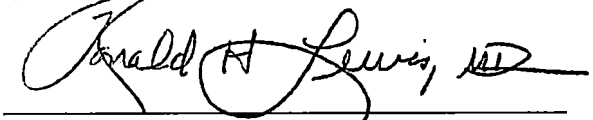
DECISION

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 July 30, 2020.

IT IS SO ORDERED June 30, 2020.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Petition for Early Termination of Probation of:

CARMEN PHILOMENA HSU, M.D., Petitioner.

Case No. 800-2018-048491

OAH No. 2020021030

PROPOSED DECISION

Karen Reichmann, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 27, 2020, by telephone.

Brenda P. Reyes, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice.

David M. Balfour, Attorney at Law, represented petitioner Carmen Philomena Hsu, M.D.

The matter was submitted for decision on April 27, 2020.

FACTUAL FINDINGS

Background

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 83166 to petitioner Carmen Philomena Hsu, M.D., on June 25, 1996.

2. On September 29, 2015, the Board filed an accusation alleging that petitioner's certificate was subject to disciplinary action due to unprofessional conduct, premised on a criminal conviction substantially related to the practice of medicine and dangerous use of alcohol.

3. Petitioner entered into a stipulated settlement agreement, which was adopted by the Board. The Board's Decision became effective August 18, 2016. Under the Board's Decision and Order, petitioner's certificate was revoked, and she was placed on probation for a period of five years on conditions that included: 1) abstinence from the use of controlled substances and alcohol; 2) biological fluid testing; 3) substance abuse support group meetings; 4) worksite monitor; 5) ethics course; 6) psychiatric evaluation; 7) psychotherapy; and 8) paying probation monitoring costs. Petitioner's probation is scheduled to terminate on August 18, 2021.

4. On September 15, 2018, petitioner submitted a petition to terminate probation to the Board.

5. Petitioner's discipline stemmed from a June 2014 driving under the influence (DUI) incident which resulted in a conviction on October 24, 2014. The circumstances underlying the conviction are that she drove home from a party after consuming alcohol. A sheriff's deputy observed her swerving and pulled her over.

Preliminary alcohol screening tests reflected blood alcohol levels of 0.17 and 0.18 percent.

Petitioner pleaded no contest to a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or higher), and admitted that she had incurred a prior driving under the influence conviction in 2004.

Rehabilitation and Probation Compliance

6. Within days of her arrest, petitioner voluntarily enrolled in the Pacific Assistance Group monitoring program for healthcare professionals. Petitioner was required to submit to random drug testing, have a worksite monitor, attend Alcoholics Anonymous meetings weekly, and attend weekly meetings at the Coastal Turning Point intensive outpatient program.

Petitioner's participation in this program was confirmed by a September 8, 2018, letter to the Board, from Francine A. Farrell, M.S., L.M.F.T., of the Pacific Assistance Group. She wrote that petitioner participated in the program for monitoring and support from June 13, 2014 through May 4, 2016, when she began monitoring with the Board. Petitioner was required to use a Soberlink breathalyzer device three times a day; submit to 24 observed urine tests per year, attend a support group, and have a worksite monitor. After a brief relapse in December 2014, all tests were negative.

7. In order to comply with the psychiatric evaluation requirement of her probation, petitioner was examined by psychiatrist Gloria M. Kardong, M.D., who submitted a report to the Board's Enforcement Unit on August 30, 2016. Dr. Kardong noted that petitioner had been abstinent for two years by this time and was

committed to her rehabilitation program. Dr. Kardong believed that petitioner was safe to practice, as long as she remained compliant with her rehabilitation program. Dr. Kardong recommended continuing psychotherapy with a specialist in addiction.

8. Petitioner has been compliant with the random drug testing program imposed by the Board's probation. She calls in daily to determine whether she has been selected to test. If selected, testing is performed on urine, blood, or hair. Petitioner has had no missed tests and no positive tests.

Petitioner failed to call in on only one occasion. She explained that she accidently ran over her boyfriend's cat that day, and was distracted due to this incident. She was not selected to submit for testing that day. Petitioner contacted her probation monitor to let her know that she had forgotten to call in, and no action was taken.

9. Petitioner has been attending the rehabilitation program at Coastal Turning Point to comply with the substance abuse support group requirement of her probation.

In a letter dated August 27, 2018, clinical psychologist Genevieve Shaefer, petitioner's case manager at Coastal Turning Point, confirmed petitioner's ongoing participation. Petitioner began intensive outpatient treatment in October 2016. Dr. Shaefer described petitioner as motivated and working hard to make healthy changes in her personal and professional life.

After several years attending the intensive outpatient group, petitioner transitioned to the aftercare group in 2019. The aftercare group is smaller and consists of people who are further along in recovery, with a focus on long-term abstinence and relapse avoidance.

10. Petitioner's partner in her medical practice, Patrick Clyne, M.D., has served as her worksite monitor since she began monitoring with the Pacific Assistance Group in 2014 through the present. He wrote a letter in support of the petition, and testified at the hearing.

Petitioner notified Dr. Clyne of her DUI arrest within a day or two of the offense. He described her as "remorseful and embarrassed." He knows that she has been in treatment and in counseling, but has not discussed with her the details of her rehabilitation because he respects her privacy.

Dr. Clyne works closely with petitioner in their practice. Their facility is small and they share an office. As her worksite monitor, he knows he is expected to look for changes in behavior and any signs that she is not practicing safely. He has never had any reason to suspect that she has relapsed. Dr. Clyne believes she is a committed, compassionate, and caring pediatrician, and he supports her release from probation. He believes this would benefit the community, because it would enable her to serve more patients.

11. Petitioner testified with humility and candor about her history of alcohol abuse and the insights she has gained in rehabilitation. Petitioner explained that her two DUI convictions occurred in similar circumstances. In both, she had been at a party after competing in a windsurfing competition. Being in large groups with people she did not know caused anxiety, and petitioner drank to relax.

When she first started rehabilitation in 2014, she was reluctant to acknowledge that she had a problem. She gradually realized that she had not been drinking in an appropriate manner. Through her rehabilitation program, she has gained insight into

stressors and learned strategies to prevent relapse. She has maintained sobriety since December 2014.

Petitioner has been attending psychotherapy since 2016. She initially attended weekly sessions, but is now attending biweekly. In therapy, petitioner has worked on strategies for dealing with anxiety in social settings. At first, she avoided social situations. She then learned strategies to manage these situations. She will seek out someone to talk with and she is always aware that leaving the event is an option. Petitioner no longer feels uncomfortable at these events and no longer feels a desire to drink. Being sober around people who are intoxicated has made her see how "stupid" people act when drunk, and she does not want to act that way.

Petitioner has also worked on improving her self-confidence in therapy. She intends to continue in therapy, even if her petition is granted and she is no longer required to attend. She wants to maintain her therapy relationship, so that she has support available in case of unpredictable future stressors.

Petitioner testified sincerely that she has no intention of resuming drinking, because she sees it as a threat to the more important things in her life, including her medical career.

12. Petitioner's therapist, Licia Ginne, Psy.D., M.F.T., wrote two letters on her behalf and testified at the hearing. Dr. Ginne is a specialist in substance abuse.

Dr. Ginne reported that petitioner has been engaged in therapy and has brought in materials from her substance abuse program to discuss in the therapy setting.

Dr. Ginne has worked with petitioner to identify triggers and to support her in understanding her emotional and physical needs. She has noticed petitioner's wellbeing improve by "leaps and bounds." Petitioner succeeded in reducing social anxiety and in increasing her confidence and capacity for self-care.

Dr. Ginne confirmed that petitioner has a supportive boyfriend and other close friends. Petitioner is committed to a healthy lifestyle and eliminating contact with toxic people.

Dr. Ginne has never felt concerned that petitioner was at a risk of relapsing. Dr. Ginne does not believe that continued therapy is essential for petitioner to maintain sobriety. Petitioner has tools to support sobriety on her own and would seek help if needed.

13. Petitioner submitted proof that she completed a professionalism course in ethics and continuing medical education courses. She has paid all probation monitoring costs.

Other Evidence

14. Petitioner attended medical school at the University of Minnesota. She completed a one-year internship at Kaiser Permanente in Oakland. After a year-long hiatus to focus on competing in taekwondo, petitioner completed her residency in general pediatrics at UCSF Fresno. Petitioner joined a solo practitioner in Antioch, where she practiced for three years.

15. In 2000, petitioner relocated to Watsonville, an underserved agricultural community, and joined an established practice. During this time, she also did inpatient

calls at the Watsonville Community Hospital. These calls usually involved newborn infants in intensive care.

16. In 2013, petitioner and another doctor purchased a practice in Watsonville from a retiring physician. They have about 3,000 patients ranging from newborns to age 21. The majority of patients are poor and insured through Medi-Cal. Their parents are primarily farmworkers. Petitioner works 26 hours per week, side by side with Dr. Clyne. She no longer performs hospital calls. Petitioner enjoys building relationships with families in the community. As a result of being placed on probation by the Board, petitioner lost her privileges to treat patients who are insured by Dignity Health, an HMO. These patients' families miss having petitioner as their physician and are eager to be able to receive care from her in the future.

17. Obesity and gangs are major public health problems in Watsonville. Petitioner has been engaged in addressing both of these issues with her patients and with the community at large. She has attended various events to promote bicycling in the community and has sponsored bicycle repair events. She has encouraged the local government to open a bicycle park. Petitioner hopes to sponsor a mountain biking club at the high school to provide an alternative for teens to avoid gangs. Petitioner has also used insights gained through her rehabilitation to counsel her teenage patients about alcohol.

18. Petitioner has been in a stable relationship for six years. Her boyfriend has been very supportive of her rehabilitation. Petitioner views him as playing the role of a "sponsor" to her in maintaining her sobriety. They avoid attending alcohol focused events and pursue an active healthy lifestyle.

19. In addition to being an avid windsurfer and bicyclist, petitioner is a musician and enjoys playing in two chamber music groups. She has performed on a local radio station and at weddings and other events.

20. Petitioner submitted a letter signed October 8, 2018, by Yasemin Golan, M.D. Dr. Golan is aware of the basic facts of the accusation and of petitioner's probation. At the time she wrote the letter, Dr. Golan had worked with petitioner for six months. She described petitioner as a brilliant pediatrician who is adored by her patients and well-liked by coworkers and staff. Dr. Golan never observed any signs of impairment and noted that petitioner lived a healthy lifestyle. Dr. Golan supports the early termination of petitioner's probation so that she can better serve patients in the Watsonville community.

21. Darryl Green, R.N.-P.H.N., is the office manager of petitioner's practice. He wrote a letter dated July 16, 2018. He is aware of the facts in the accusation and of petitioner's probation. At the time of the letter, he had worked with petitioner for five years. He had observed her be consistently professional with patients and staff and was impressed by her exceptional level of medical knowledge

Petitioner informed Green after she was arrested for DUI in 2014 and was ashamed and remorseful. Since petitioner began rehabilitation, Green has noticed that she seems more satisfied in her practice and more joyful. Green supports her petition so that she can serve more patients in the community. He confirmed that many families are eager to resume care with petitioner, if she is able to provide care through Dignity Health.

22. Petitioner seeks termination of probation so that she can serve more patients in the underserved community where she practices, specifically the patients

who are insured by Dignity Health. Petitioner would also like to travel; due to difficulties arranging for drug testing out of the area, she has not been able to travel. In addition, petitioner is looking forward to the end of probation because this will give her more time for other pursuits.

LEGAL CONCLUSIONS

1. Petitioner has the burden of proving that she is rehabilitated and entitled to have her license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The showing of rehabilitation must be sufficient to overcome the 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.)

2. Business and Professions Code section 2307 provides that a licensee whose certificate has been placed on probation for three years or longer may petition for early termination of probation after two years. Petitioner's certificate was placed on probation effective August 18, 2016. More than two years have passed from the effective date of probation and the filing of the petition. The petition must be accompanied by recommendations by two physicians licensed in any state. Petitioner's petition is supported by Dr. Clyne and Dr. Golan.

3. In determining whether to grant a petition for early termination of probation, all activities of petitioner since the disciplinary action was taken, the offense for which petitioner was disciplined, petitioner's activities during the time the certificate was in good standing, and petitioner's rehabilitative efforts, general

reputation for truth, and professional ability may be considered. (Bus. & Prof. Code, § 2307, subd. (e).)

4. Factors to be considered in determining whether a licensee has been rehabilitated include the following: a) the nature and severity of the act involved; b) subsequent misconduct; c) the amount of time that has elapsed since the misconduct took place; d) evidence of rehabilitation; and e) whether the licensee has complied with the terms of probation. (Cal. Code Regs., tit. 16, §§ 1360.1, 1360.2.)

5. The above-described criteria have been considered. The conduct underlying petitioner's most recent DUI conviction occurred almost six years ago. The offense posed a great risk of harm to petitioner and to the public, especially in light of the high blood alcohol content recorded upon her arrest.

After her arrest, petitioner immediately sought help, and after a brief relapse, has maintained sobriety since December 2014, almost five and one-half years. Petitioner has been on probation with the Board since August 2016 and has complied with all probation conditions. She has not missed a drug test and has never tested positive. Petitioner is committed to her sobriety. Through therapy, she has been able to tackle the social anxiety which triggered her drinking. Petitioner has a strong support network, including a supportive boyfriend and her partner in her medical practice. She is engaged in the community where she practices and dedicated to serving these underserved patients.

Clear and convincing evidence established that further Board monitoring of petitioner is not needed to further her rehabilitation or for the protection of the public. It would not be against the public interest, pursuant to Business and Professions Code section 2307, to grant the petition and to terminate petitioner's probation.

ORDER

The petition for early termination of probation of petitioner Carmen Philomena Hsu, M.D., is granted. Physician's and Surgeon's Certificate No. G 83166 is fully restored.

DATE: May 12, 2020

DocuSigned by:
Karen E Reichmann
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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings