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: David Minho Rhee, M.D. Physician's and Surgeon's Certificate No. A 101726 Respondent.	Case No. 800-2020-066697

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 November 12, 2021.

IT IS SO ORDERED October 14, 2021.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

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:

DAVID MINHO RHEE, M.D.,

Physician's and Surgeon's Certificate No. A 101726

Petitioner.

Case No. 800-2020-066697

OAH No. 2021070433

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter on September 2, 2021, by videoconference.

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

Petitioner David Minho Rhee, M.D., was present and represented himself.

The matter was submitted for decision on September 2, 2021.

FACTUAL FINDINGS

Background

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 101726 to petitioner David Minho Rhee, M.D., on October 3, 2007. Petitioner is a board-certified anesthesiologist.

2. On August 21, 2017, a first amended accusation was filed against petitioner, alleging that his certificate was subject to disciplinary action due to his failure to comply with the Board's order directing him to undergo a psychiatric evaluation and for his 2017 convictions of crimes substantially related to the practice of medicine (two counts of corporal injury to a spouse, one count of petty theft, and one count of violating a restraining order). These convictions arose after he was arrested multiple times in 2015 and 2016 following altercations with his now ex-wife, who reported that petitioner hit her, slapped her, and knocked her to the ground, violated a restraining order, and stole her purse. Petitioner was sentenced to 180 days in jail and placed on probation.

3. Petitioner entered into a stipulated settlement agreement, which was adopted by the Board and became effective March 16, 2018. Under the Board's Decision and Order, petitioner's certificate was revoked, and he was placed on probation for a period of three years on conditions that included: 1) 100 hours of community service; 2) ethics course; 3) psychotherapy; 4) practice monitor; 5) batterer treatment program; and 6) paying probation monitoring costs.

4. Petitioner violated the terms of his criminal probation. As a result, a petition to revoke his Board probation was filed on May 30, 2019.

5. Petitioner entered into another stipulated settlement agreement, which was adopted by the Board and became effective February 28, 2020. Petitioner's probation was extended by one year, under the same conditions, with the addition of a requirement that he complete an anger management course. Petitioner's probation is now scheduled to end in March 2022.

6. On April 13, 2020, petitioner submitted a petition to terminate probation.

Petitioner's Evidence

7. Petitioner expressed regret for his behavior, which he called inexcusable and unbecoming of a physician. He explained that he did not comply with the Board's order to undergo a psychiatric evaluation at the advice of his attorney in the criminal matter. After he was released from custody, he did have a psychiatric evaluation and was deemed safe to practice.

8. Petitioner had psychotherapy with psychologist Douglas Drucker, Ph.D., for approximately one year. Petitioner reports that he found therapy beneficial. He was able to talk freely in a safe environment, and feels that it helped him "tie up and put away" his failed marriage and estrangement from his young daughter. He added that Dr. Drucker helped him deal with his frustration with the criminal and family courts in a more productive manner.

In a letter dated March 13, 2019, Dr. Drucker wrote that he did not believe that further treatment was necessary. Termination of psychotherapy was approved by the Board.

9. Petitioner completed the community service requirement by working for two years at the Trinity Presbyterian Church's foodbank in San Jose. Petitioner related

that this was a positive experience that gave him a feeling of inner peace. He hopes to find other opportunities to give to others in the future.

10. Petitioner completed the batterer treatment program in 2018. Several of the other participants were individuals petitioner had met while in jail. Petitioner benefited from the program and found the instructor's life story to be inspiring. The instructor also taught ways to deal with anger and to set personal goals that petitioner found to be useful.

11. Petitioner completed the anger management class for healthcare professionals offered by UCSD in April 2020. Because of the pandemic, the program was conducted over Zoom. Petitioner did not relate to many of the other participants who were physicians who had lost control in a clinical setting. Nonetheless, petitioner reported that he learned valuable breathing techniques in the course. After the course, he sought out more information about breathing exercises and now does a 15-minute deep breathing regimen every morning. Petitioner added that in the past year he has also undertaken other positive lifestyle changes, including a strict diet and rigorous exercise program.

12. Petitioner has worked for Anesthesia Care Consultants since 2017, providing services at multiple outpatient surgical centers. Christopher A. Viale, M.D., is the president of Anesthesia Care Consultants and served as petitioner's practice monitor. In a letter to the Board in December 2019, he recommended that monitoring be discontinued, and his recommendation was accepted.

Dr. Viale also wrote a letter in support of the petition, dated April 2, 2020. He wrote that petitioner has always provided outstanding patient care, but that when he was first hired, he could be late to start cases, difficult to reach, overly critical of others,

and inappropriately displayed anger. Dr. Viale wrote that petitioner had altered his behavior significantly and at the time of the letter, petitioner arrived early, was self-sufficient, responded to communications, and was calm and respectful of others. Dr. Viale reported that petitioner had become the highest-sought provider in the group and was the "go-to" anesthesiologist for difficult patients and surgeons.

At hearing, petitioner stated that he was surprised when he first read Dr. Viale's negative comments about his earlier behavior because nothing was ever mentioned to him at the time. He surmised that his improved mental well-being has altered the way he is perceived by others, including his work colleagues.

13. Ira J. Schwalb, M.D., is petitioner's colleague at Anesthesia Care Consultants. He wrote a letter in support of the petition dated April 1, 2020. He described petitioner as a superb anesthesiologist who is compassionate, kind, thoughtful, empathetic, and a "real team player." Dr. Schwalb was surprised when petitioner informed him of his anger management issues that resulted in Board probation, because he had not observed or heard of any issues arising at work. He believes that petitioner is an asset to his community and his profession, and has put his anger issues behind him.

14. Petitioner was licensed in New York in 2005, during residency. As a result of the disciplinary action against his California certificate, disciplinary action was commenced in New York. Petitioner decided to surrender his license pending discipline, and expressed some regret about this decision.

15. Petitioner reported that his mental health has improved greatly since the time of his offenses, and that he is experiencing much less anxiety than in the past. He feels that he is a different person who is better able to handle his emotions. Petitioner

is saddened that he does not at present have a relationship with his daughter, but is no longer consumed by negative emotions about the situation.

16. Petitioner completed the ethics course in 2019 and has paid probation monitoring costs annually.

17. Petitioner completed criminal probation in July 2020.

18. Petitioner seeks termination of probation because he would like to seek employment opportunities in an inpatient hospital. Prior to his certificate being placed on probation, petitioner worked at a county hospital and he found this type of work rewarding and a better fit for his skills than the outpatient setting.

LEGAL CONCLUSIONS

1. Petitioner has the burden of proving that he is rehabilitated and entitled to have his physician's and surgeon's certificate 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. More than two years passed between the effective date of probation and the filing of the petition.

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. Petitioner was convicted of numerous domestic violence offenses and violated the Board's order to submit to a psychiatric evaluation. The misconduct was extremely serious. Petitioner violated criminal probation and his Board probation was extended, raising concerns about his commitment to rehabilitation. Petitioner has since been in full compliance with the terms of probation, which is scheduled to end in approximately six months. All special terms of probation have been satisfied. Petitioner has made beneficial lifestyle changes and has incorporated techniques for reducing his anxiety and anger. At hearing, he expressed remorse and insight into his offenses, and appeared sincere in his desire to move forward in his life in a positive way. He is highly regarded by his peers as a safe and competent practitioner.

6. Clear and convincing evidence established that Board monitoring of petitioner is no longer needed. 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 David Minho Rhee, M.D., is granted. Physician's and Surgeon's Certificate No. A 101726 is fully restored.

DATE:09/13/2021

Karen Reichmann
KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings