

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

**In the Matter of the Petition for Termination)
Of Probation of:)**

SIMON OURIAN, M.D.)

Case No. 26-2012-221043

**Physician's and Surgeon's)
Certificate No. A 65201)**

**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 April 12, 2013 .

IT IS SO ORDERED March 13, 2013 .

MEDICAL BOARD OF CALIFORNIA

By: Reginald Low M.D.
Reginald Low, M.D., Chair
Panel B

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

SIMON OURIAN, M.D.

Physician and Surgeon's
Certificate No. A 65201,

Petitioner.

Case No. 26-2012-221043

OAH No. 2012090714

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on January 10, 2013, in Los Angeles, California. Simon Ourian, M.D. (Petitioner) appeared and was represented by Peter R. Osinoff with Bonne, Bridges, Mueller, O'Keefe & Nichols. Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Supervising Deputy Attorney General Gloria Castro.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on January 10, 2013.

FACTUAL FINDINGS

1. On May 15, 1998, the Medical Board of California (Board) issued Physician and Surgeon's Certificate Number A 65201 to Petitioner. That certificate is current and will expire on December 31, 2013, unless renewed.

2(a). In a Decision and Order effective July 30, 2009, adopting a Stipulated Settlement and Disciplinary Order (Probation Order), the Board revoked Petitioner's certificate, stayed the revocation and placed Petitioner on probation for five years on specified terms and conditions, including that he: complete a clinical training program equivalent to the Physician Assessment and Clinical Education (PACE) Program at the University of California, San Diego (UCSD) School of Medicine; complete a medical record keeping course; complete an ethics course; complete a clinician-patient communication course; refrain from the solo practice of medicine; and employ a Board-approved practice monitor.

2(b). The Probation Order was based on, among other things, Petitioner's: numerous instances of inadequate record keeping; improper laser destruction of dysplastic nevi; failure to submit specimens obtained during surgery for pathology; improper use of Radiance; use of misleading marketing materials; and improper treatment of syringoma.

3. In January of 2012, Petitioner filed a Petition for Termination of Probation with the Board (Petition).

4. Petitioner earned his medical degree from Wayne State University School of Medicine in 1994. In 1998, he opened a small practice with his brother, Dr. Babak Ourian, specializing in the use of non-invasive laser and cosmetic procedures.

5. At the administrative hearing, Petitioner testified persuasively. His demeanor was forthright and he responded to questions candidly and without hesitation. He provided a credible history of the events leading to his discipline and regarding his efforts at rehabilitation.

6(a). In 2003 through 2004, Petitioner experienced several difficulties in his life. His fiancé became very ill and was diagnosed with non-Hodgkin's lymphoma, with a poor prognosis. During the year when he was at her side while she was in and out of the hospital, Petitioner was also dealing with his father's illness, deterioration and inability to care for himself. Dr. Babak Ourian had been largely responsible for the administrative functions of the practice, but to help care for their father, Dr. Babak Ourian significantly reduced his hours at the practice, leaving Petitioner responsible for administrative as well as medical duties. Additionally, Petitioner's office manager became overwhelmed, ceased performing her duties and eventually left the practice.

6(b). Petitioner acknowledged that, 10 years ago, he was "not wise enough to understand [his] own limitations and thought [he] could handle [everything by himself]." The result of this assumption was that patients received "no customer service," and although they attempted to complain to him, their messages never received. Since he was relatively new to the practice of medicine and had never run a business before, he was overwhelmed. Moreover, he did not understand the gravity of the situation because he felt that patients had not been harmed.

6(c). Petitioner eventually came to understand his acts and omissions which resulted in his discipline. He noted that, in general, he "lost track of the administrative part of the practice [which] caused him to have very little medical documentation." Additionally, he did many things in the practice which were "immature." He was able to correct matters quickly once they were brought to his attention by the Board.

7. Petitioner has completed all of the terms and conditions of his probation, including an ethics course, a medical record keeping course and a clinician-patient communication course. He has also completed all of the required continuing medical education units.

8(a). As required in the Probation Order, Petitioner completed the PACE Program.

8(b). Petitioner found PACE “very helpful” because it made his practice more effective and “showed him many different resources” that he had not previously realized were available to him. One of the biggest benefits of PACE, in Petitioner’s opinion, was interacting with his PACE mentor, Marek Krzyztof Dobke, M.D., who later became his practice monitor. Petitioner practices in a “very competitive area” (Beverly Hills-located, cosmetic treatments) and when he previously wanted to ask a physician in the area for advice, he was not sure if his competitor would give him an unbiased opinion. He described Dr. Dobke as “a breath of fresh air,” whom he “could ask whatever questions he wanted,” and would receive a “very direct” response. Petitioner plans to continue his mentor relationship with Dr. Dobke, even after termination of his probation, because he believes Dr. Dobke “is the best resource he has had.” He appreciates the ability to exchange information and to learn from someone whom he “can fully trust.”

9. Initially, Petitioner fulfilled the “no solo practice” requirement of his probation by having his brother and two other physicians available for telephone consultation and intermittently using his office to see patients. However, their frequency of availability declined. In May 2010, Petitioner was informed by his Board probation monitor that he would need to comply with the “no solo practice” condition in a different manner. After many discussions and emails between Board personnel and Petitioner’s attorneys, he was finally informed that he would need to have a physician in the same specialty on the premises during all business hours. Although he has a very well-appointed office in Beverly Hills, his offer to share his space was declined since he was on probation and “no reputable doctors wanted to be associated with him.” Petitioner was told that he would be out of compliance with his probation unless this condition was satisfied. Petitioner’s brother had opened his own practice, but given the gravity of the situation, Petitioner pleaded with him to close his office and reschedule his patients in order to be available at Petitioner’s practice, which was open early in the mornings. Petitioner was finally able to have Nima Shemirani, M.D., join him at his building in exchange for free rent. Dr. Shemirani left Petitioner’s practice in June 2012, and Petitioner was joined by a physician moving from Washington.

10. During his probation, Petitioner learned that medical charting is “not just paperwork,” and that “if information about patient care is not documented immediately, it will be forgotten.” Even before he entered into the Stipulated Settlement, he implemented an electronic medical record-keeping system to make sure that patient care is not compromised. He also began to use the records as an educational retrospective study, learning from his treatment of prior patients.

11. Petitioner no longer uses Radiance, since new and different treatments are available. He has also decided that he “no longer wants to be the first guy” to use a treatment method, but will instead wait to see the issues which arise from other physicians’ practices. It took him “a while to understand that FDA approval is the bare minimum in the practice of

medicine,” and that he must “take great caution,” in using newly-approved treatment methods.

12. Petitioner now refers patients to UCLA for any dermatological issues and to other specialists for any issue which is not aesthetic. He has self-limited his scope of practice to a handful of cosmetic procedures and “super-specializes” in that field so that he can practice safely.

13. Petitioner has changed his marketing techniques to guard against presenting information unless it is scientifically proven.

14. Petitioner has also reformed his consent procedures. Patients now watch videotapes regarding the risks and benefits of procedures. He then has a discussion with the patient and has electronic and paper consent forms, which are very detailed regarding the potential side-effects, including death.

15. Petitioner has hired a full-time in-house attorney, who has become “an integral part of [Petitioner’s] practice.” Since Petitioner does not know “how to run the business part” of the practice, the in-house attorney makes sure that his practice is safer and in full compliance with the applicable laws and regulations. Petitioner believes that this addition to his staff has made his practice better and more effective. His attorney has also helped him to improve his recordkeeping, and every year they re-evaluated the software used for electronic medical charting in order to continue to improve the system and making it more efficient and user-friendly. Petitioner has “a great deal of respect” for his practice monitor, and when Dr. Dobke recommended changes, he immediately contacted the software company to implement any recommended changes.

16. Petitioner now has a room dedicated to photography of patients which is akin to a professional photography studio. This allows him to accurately document pre-treatment and post-treatment appearance, which creates an additional visual record of the treatment.

17. Petitioner observed that, if probation did not have such a “huge stigma attached to it,” he believed that it “was a blessing in disguise” since he shifted his practice in the right direction and instituted multiple layers of patient safety. He also noted that his office is much more organized and is easier for him and his staff to operate. Petitioner insisted that, once he is off probation, the positive changes that he has made to his practice will continue. However, he noted that, if he is no longer on probation, he would be “a lot less isolated,” and would be able to have physicians willing to join him at his office. Additionally, with no stigma attached to his name, he will be able to publish papers and participate in teaching.

18(a). Petitioner’s practice monitor, Dr. Dobke, testified very candidly (in a brusque, no-nonsense fashion) and credibly on Petitioner’s behalf. Dr. Dobke is a Professor of Surgery in the Division of Plastic Surgery at UCSD, and July 2000 through January 2011, he was the Head of that Division. He has worked with the PACE Program since 2002 and met

Petitioner while Petitioner was attending Phase I and Phase II of PACE. Thereafter, he agreed to act as Petitioner's practice monitor, and periodically visited his office and observed his interactions with patients and staff, and gathered information about his office organization and marketing, and reviewed his medical records.

18(b). According to Dr. Dobke, while he was Petitioner's examiner at PACE, Petitioner "did all right" in his examinations and "presented a level of knowledge and competence that allowed [him] to declare [Petitioner] competent in his area of practice." When he began as Petitioner's practice monitor, Petitioner was "candid regarding the facts and circumstances" regarding the events leading to his discipline, and Dr. Dobke opined that Petitioner was "rightfully so sanctioned." However, he also observed that Petitioner "understood his wrongdoing" and regretted that his standards had not been at a level Petitioner would have liked. Dr. Dobke could see that Petitioner wanted help to bring his practice to a proper level. Petitioner demonstrated that he understood Dr. Dobke's observations and Petitioner took the initiative at multiple levels. He worked to eliminate poor record keeping, he slowed down his practice to ensure every patient received appropriate attention, and he "put a lot of effort into validating everything he did" and to have a practice that is evidence-based. Dr. Dobke noted that Petitioner's marketing materials were appropriate and, in 2011, Petitioner's medical records "started to be solid," based on Dr. Dobke's higher standards.

18(c). Dr. Dobke ultimately opined that Petitioner can safely practice in his selected field. Dr. Dobke noted that, if Petitioner's probation is terminated, he would still continue their relationship as mentor/colleague.

18(d). Dr. Dobke's testimony mirrored the reports and letters that he authored as Petitioner's practice monitor. The pertinent parts of those reports and letters are as follows:

- (1). As noted in Dr. Dobke's August 2011 report:

During the two year process of . . . practice monitoring our relationship evolved position my role more as the monitor-mentor rather than 'monitor-controller.' Improvements and stabilization of his practice operations are striking and looking retrospectively I see that the practice monitor can play a very positive role in the restoration or establishment of a quality practice.

(Exhibit G.)

- (2). In an October 28, 2011 report, Dr. Dobke stated:

The scope of [Petitioner's] practice (non-invasive cosmetic medicine) remains unchanged. Significant operational changes in [Petitioner's] practice resulted from the addition of two new physicians to the practice site: board certified otolaryngologist/head/neck and facial

plastic surgeon (Dr. Nima Shemirani) and cosmetic dentist (Dr. Eddie Siman). The established full time practices within [the] same premises where [Petitioner's] practice is located (some changes in the building layout were made) providing space for new practitioners. The presence of other professional peers changed the operational spirit and arrangements to more of the mini-multispecialty group like operations. [Petitioner] reported that they are all available for each other for help, advice and formal (or informal) consultations.

Similarly, like in other instances of my long term involvement as the practice monitor, my monitor's role shifted towards a more mentoring function. The same happened in my interactions with [Petitioner]. For example, he sought my advice during the process of selection of his new professional affiliates. The potential impact of new associates on such sensitive issues as patient safety, fair and sometimes unfair competition issues, long-term commitments and practice-growth, as well as stability, were extensively discussed. These discussions reaffirmed my opinion that [Petitioner's] commitment to quality and excellence of care is very solid, consistent and that his overall performance evidences that he drew appropriate conclusions from unfortunate events leading to his sanctioning by the [Board]."

(Exhibit G.)

- (3). In his March 31, 2012, report, Dr. Dobke noted:

The overall scope of [Petitioner's] practice has not changed since the last, recent site-visit. "Lipo-Freeze" is a new technology which [Petitioner] incorporated into his practice. On February 7, 2012, I witnessed cryo-sculpting performed on patients. It appears to be safe and effective non-invasive modality. Patients were well informed about predicted outcomes, cryo-fat reduction limitations and appropriately consented for the procedure. Medical records pertaining to this procedure met appropriate standards.

New practitioners who joined [Petitioner] during the last few months remain well-integrated into the work-flow of the site. [Petitioner] himself continues to believe that the expansion and diversification of clinical operations at the site of his practice was a positive change. Patients appreciate changes, additions and the overall patient satisfaction rates remain high. . . .

[At the Annual Meeting of the American Academy of Dermatology, I] have had an opportunity not only to discuss [with Petitioner] the content of lectures but also new products, devices, medications and cosmeceuticals presented . . . as part of the Meeting. These

discussions, and [Petitioner's] critical approach to cosmetic medicine, reaffirmed to me that his competence is solid, his knowledge is very advanced and covers very well his scope of practice.

(Exhibit G.)

(4). On October 13, 2011, Dr. Dobke wrote a letter in support of the Petition, as follows:

[Petitioner] was very candid with me about the facts and circumstances leading to his sanctioning by the [Board], demonstrating appropriate insight and remorse. . . . My direct observation of [Petitioner's] work affirmed my opinions of PACE Phase I and II examinations: [Petitioner] possesses a sophisticated, in-depth body of medical knowledge, which more than adequately supports the scope of his practice. His patients' high level of satisfaction speaks for itself about the outcomes of his treatments. Regarding innovations: [Petitioner] adheres to evidence based principles and evaluates critically any new (and there [are] many of them) innovations in cosmetic medicine before incorporating a new modality into his practice. It should be mentioned that many protocols and modifications of existing modalities and innovations were developed by him.

[M]y two years of observations allow me to state that the overall pathways of [Petitioner's] limited practice in cosmetic medicine are safe and well established. At this point I can also credibly add that [Petitioner] is an asset to patients and the medical community. In my opinion, no further practice monitoring is necessary.

(Exhibit J.)

19. Board Inspector Dianna Gharibian testified credibly at the administrative hearing. She confirmed that Petitioner is currently in compliance with all terms and conditions of his probation. She agrees with Dr. Dobke that there is no longer any need for Petitioner to be monitored or to be on probation.

20. Dr. Shemirani testified credibly in support of the Petition. He is currently a facial plastic surgeon, board certified in Otolaryngology and Head and Neck Surgery. While practicing in the same office as Petitioner, he observed that Petitioner practiced in a safe manner. He supported the termination of Petitioner's probation.

LEGAL CONCLUSIONS

1. Petitioner has made the necessary showing that it would be consistent with the public interest to permit early termination of his probation, by reason of Findings 1 through 20.

2. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden required a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained his burden of proof.

3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the division or 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. . .

4(a). Petitioner has complied with all of the conditions of the Probation Order. However, mere compliance with probationary terms does not automatically provide the basis for early termination. Nevertheless, Petitioner has demonstrated that he is not "deserving of the adverse character judgment associated with the discipline imposed against his certificate."

4(b). Under the mentorship of his practice monitor, Petitioner has made significant efforts to reform his practice, not only to comply with probation, but to be exemplary. He has completely changed his medical record-keeping methods, and continues to implement changes when indicated to achieve excellence. He has also revised the focus of his practice so that it is more specialized and provides more attention to his patients. In an effort to maintain compliance with the law and to run a safe and efficient practice, he has hired a full-time, in house attorney whose input has resulted in the more effective delivery of quality services to the patients. Additionally, Petitioner has recognized the need for evidence-based practice and the invaluable resource of colleagues/mentors.

4(c). Significantly, Petitioner has the support of his practice monitor, who is also a PACE examiner and Professor of Surgery in the Division of Plastic Surgery at UCSD. Dr. Dobke, who did not appear to suffer fools lightly, was quite complimentary of Petitioner, and his opinion weighs heavily in favor of termination of Petitioner's probation. Also significantly, the Board Inspector agreed with Dr. Dobke's recommendation of termination of Petitioner's probation.

4(d). The totality of the evidence established that, in the event his probation is terminated, Petitioner would no longer pose a danger to the public.

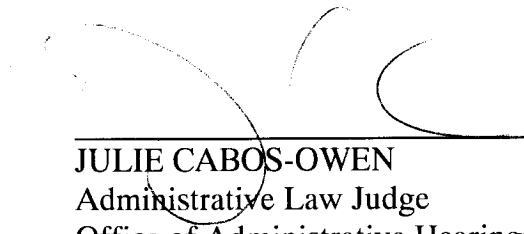
5. Petitioner has sustained his burden of proof that he is entitled to early termination of his probation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Simon Ourian, M.D., for termination of probation is granted.

Dated: February 11, 2013



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings