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

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

JEFFERY CLYDE CHANTERY,

Dental License No. 41368
Oral Conscious Sedation Certificate for Adult Patients No. 1875

Respondent,

Case No. DBC 2009-23
OAH No. 2014051289

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Dental Board of California, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective on September 10, 2014.

IT IS SO ORDERED August 11, 2014.

Fran N. Burton, MSW
Board President
Dental Board of California
Department of Consumer Affairs
BEFORE THE
DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

JEFFERY CLYDE CHANTERY, D.D.S.,
Rancho Murieta, California 95815

Dental License No. 41368
Oral Conscious Sedation Certificate for Adult Patients No. 1875

Case No. AD 2008-2673
OAH No. 2014051289

Petitioner.

PROPOSED DECISION

This matter was heard by Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, on June 20, 2014, in Sacramento, California.

Jeffrey M. Phillips, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Jeffery Clyde Chantry, D.D.S., represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 20, 2014.

SUMMARY

Petitioner seeks early termination of his five-year term of probation, which began April 10, 2011. As discussed below, he demonstrated sufficient rehabilitation to justify early termination of probation. Therefore, petitioner’s Petition for Termination of Probation should be granted.

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FACTUAL FINDINGS

Issuance of Petitioner’s License

1. On October 27, 1993, the Board issued petitioner Dental License No. 41368 (license). On April 9, 2009, the Board issued petitioner Oral Conscious Sedation Certificate for Adult Patients No. 1875 (certificate). The license and certificate will expire October 31, 2015, unless renewed or revoked.

The Board’s Decision Revoking License

2. Effective April 10, 2011, the Board revoked petitioner’s license and certificate, but stayed the revocation and placed the license and certificate on probation for a period of five years, subject to terms and conditions. The terms and conditions included the requirement that petitioner participate in a program of remedial education related to the allegations sustained by the Board and a course in ethics.

3. The factual basis for the Board’s discipline was that petitioner committed three separate acts of gross negligence in violation of Business and Professions Code section 1670 by failing to: 1) obtain the current health history of a patient; 2) document that patient’s current health history; and 3) contact that patient’s treating physician to discuss the patient’s Coumadin therapy. The patient in question was a 91-year-old gentleman who was: 1) new to petitioner’s practice; 2) on Coumadin therapy for atrial fibrillation; and 3) required to take antibiotics for endocarditis prophylaxis prior to receiving any dental treatment. Prior to treating the patient on December 18, 2008, petitioner failed to confirm: 1) whether or not the patient had stopped taking Coumadin; 2) when he took his last dose; 3) that the patient had actually brought penicillin with him; and 4) the patient took his penicillin while waiting to be treated. The Board learned of petitioner’s conduct after he self-reported the patient’s death two days after treating him.

4. The Board’s decision disciplining petitioner’s license included the following factual finding:

In aggravation, respondent was grossly negligent in failing to obtain a reliable health history, to document crucial information on an elderly patient with known health problems, or take the time to consult with treatment professionals who knew the patient better. To date, he sees nothing wanting about his care of this patient who hemorrhaged to death, at home, alone, from the extraction site. Respondent does not accept responsibility for his lack of appropriate care prior to the extraction. As such, no remorse was expressed or exhibited.
5. On March 5, 2014, petitioner signed a Petition for Termination of Probation (Petition) and submitted it to the Board for consideration. Included with the Petition was his narrative statement, in which he wrote the following:

Immediately after the incident, we performed a complete systems analysis and began the process to overhaul virtually everything that we do. Checklists were utilized in the training of staff and ensuring that steps were not missed. I can report that as of today, to the best of my knowledge, no lapses have occurred in the treatment of my patients by either me, my associates, or other auxiliary personnel.

The present policy in our practice is that we do not proceed with treatment with any patient that presents with a medically compromised condition without first getting instruction from the physician. They either have to wait until we get proper directive or they are referred out of the practice.

In addition to systems updates and policy enforcement within the practice, I have continually strove to be the most educated dentist that I could be. The formal continuing educational hours that I participate in, [sic] is well above the board mandated levels, and have been so for many years. Additionally, I continually read articles and gather information that do not count towards that formal CE requirement that provide excellent information on what is at the forefront of our profession. I have also invested a great portion of the revenues that the practice produces back into the practice in the form of new technologies and equipment, consulting and professional fees, and employing and training of additional staff members. All of these efforts are for the purpose of trying to create the finest dental facility, team, and patient experience that is available in the area. The focus is to provide the finest care in the safest manner possible. It is my sincere desire and hope that none of my patients have a bad or dangerous outcome to our treatment by providing a positive uplifting experience.

6. Petitioner submitted with his petition a letter of recommendation written by Veronica Alvarado, D.D.S. Dr. Alvarado has known petitioner in a professional capacity since approximately 2008. While she spoke highly of his chair side manner, great ability to put his patients at ease, and commitment to furthering his knowledge of dentistry, she did not discuss the extent of her knowledge, if any, of the reasons for which his license and certificate were disciplined by the Board. Furthermore, Dr. Alvarado did not provide any
information helpful to evaluating petitioner’s technical skills as a dentist and ability to practice dentistry in a manner that is consistent with public health, safety, and welfare. Dr. Alvarado’s character reference was given little weight. (See, *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 [a character witness’s opinion is entitled to less weight when she is unaware of the reason for which discipline was imposed])

**Testimony and Documentary Evidence at Hearing**

7. At hearing, documentary evidence was introduced that petitioner completed 227 hours of Continuing Education in the general field of dentistry between May 20, 2011, and April 4, 2014. Additionally, he completed a six-hour one-on-one course in Remedial Ethics Education, a five-hour course on Medical Review, Pharmacology and Pathophysiology Review, and a four-hour course on Oral Diagnosis and Treatment Planning, Examination and Chart Writing and Medical Review, all of which were required by the Board as part of his probation. Furthermore, he has taken several courses concerning practice management, customer service, and utilization of technologies which did not count toward his Continuing Education requirement because they were not scientific in nature.

8. Petitioner testified at hearing and explained that while he does not necessarily agree with all of the findings in the Board’s decision, he accepts responsibility for his actions that led to the discipline of his license and certification.

9. Petitioner also explained that probation has “absolutely” been a burden on his practice. For instance, shortly after his license and certification were disciplined by the Board he was notified by the California Dental Association that his membership status was being reviewed to determine whether he should be excluded from the Association in light of the Board’s discipline. Ultimately, petitioner agreed to accept a probationary status with the California Dental Association to avoid possible exclusion.

10. Additionally, petitioner explained that several insurance companies dropped him as a provider as a result of the Board’s discipline. That resulted in him having to lay off some of his staff. He has since been able to renegotiate his provider status with some, but not all, of those insurance companies. Petitioner said part of his motivation for asking the Board to terminate his probation early was to put himself back into good standing with those insurance companies who have yet to reinstate him as a provider.

11. Petitioner explained that the remedial course Oral Diagnosis and Treatment Planning, Examination and Chart Writing and Medical Review provided him with the opportunity to have actual patient charts reviewed by the instructor. This provided him with immediate feedback on what he was doing correctly and did not need to change, what he was doing correctly but could do better, and what he was doing incorrectly. Petitioner enjoyed this opportunity very much and implemented several of the instructor’s suggestions.
12. During the remedial course Medical Review, Pharmacology and Pathophysiology Review, petitioner learned about the various approaches different industries use to correct and avoid mistakes, problems, or unfortunate circumstances. For example, he learned about the numerous checklists the Federal Aviation Administration requires commercial airlines to use to ensure public safety.

13. Adopting a similar approach, petitioner returned to his office after completing the course and developed and implemented several checklists to ensure patient safety. For example, one checklist requires the receptionist to review a patient’s chart immediately upon the patient checking in for his or her appointment and the receptionist pulling the patient’s chart to determine if his or her health history needs to be updated. The receptionist provides the patient with any forms necessary for updating his or her health information. A checklist upon which the receptionist indicates having fulfilled his or her duty accompanies the patient’s chart.

When the dental assistant brings the patient from the reception area to the operatory, the patient’s chart is reviewed to confirm that the receptionist verified that the patient’s health information is current or obtained current information. If the receptionist did not, the patient and his or her chart are sent back to the receptionist.

Finally, prior to petitioner treating the patient, he reviews the patient’s health history contained in the chart while his dental assistant discusses the highlights with him. This is done in front of the patient in order to provide an additional opportunity to obtain current health information that may have been missed by the receptionist. Additionally, this practice allows petitioner to ask the patient about any pertinent medical history and obtain immediate answers.

14. Petitioner also changed the manner in which he treats patients whose medical histories indicate they may be at high-risk for complications during dental treatment. Now, he insists on speaking with the patient’s treating physician prior to any treatment. If that is not possible, petitioner postpones treatment. And if the patient insists on proceeding with treatment, petitioner refers him or her to another dentist.

15. Petitioner explained that he has spent “literally $150,000” on hiring consultants, updating his equipment, and training for himself and his staff to ensure that there is no repeat of the incident that led to the discipline of his license. He is proud of the changes he has made to his practice since the incident, and invited the Board to review his charts and office procedures at any time.

Discussion

16. As previously discussed, the Board placed petitioner’s license and certificate on probation for five years because he committed three separate acts of gross negligence. In particular, he failed to properly confirm that a patient had stopped taking Coumadin and had taken his penicillin prior to treatment. Such conduct was particularly egregious. In
aggravation, the Board wrote in its decision imposing discipline that petitioner did not take responsibility for his actions.

But the clear and convincing evidence produced at hearing showed petitioner in a different light. Not only did he participate in the remedial education required by the Board, but he implemented several of the strategies taught during those courses. For instance, he implemented a checklist system to ensure he has the most up to date medical information for his patients. Additionally, he now insists on consulting with the treating physician for any patient who is at high-risk for medical complications prior to administering any treatment. That new policy is without exception.

17. The Board’s decision imposing discipline expressed concern over petitioner’s failure to take responsibility for his actions. The evidence presented at hearing showed that he is now of a different state of mind. His testimony that he accepts responsibility for his actions was corroborated by evidence that he has changed the way in which he practices dentistry in order to ensure patient safety. It was also corroborated by evidence of petitioner’s commitment to furthering his knowledge about the practice of dentistry.

18. Based on all the evidence introduced at hearing, petitioner demonstrated that he has been sufficiently rehabilitated such that it would be consistent with the Board’s duty to protect public health, safety, and welfare to terminate his probation two years early. Therefore, his Petition for Termination of Probation should be granted.

LEGAL CONCLUSIONS

Applicable Burden of Proof/Standard of Proof

1. Petitioner has the burden of proving sufficient rehabilitation to justify the Board terminating his probation early. (Flanzer v. Board of Dental Examiners of California (1990) 220 Cal.App.3d 1392, 1398; citing, Housman v. Board of Medical Examiners (1948) 84 Cal.App.2d 308, 315.) The requisite rehabilitation must be established by clear and convincing evidence to a reasonable certainty. (Housman v. Board of Medical Examiners, supra, 84 Cal.App.2d at p. 315.) Clear and convincing evidence demonstrates a high probability of truth of the facts for which it is offered and is a higher standard than proof by a preponderance of the evidence. (People v. Mabini (2001) 92 Cal.App.4th 654, 663.)

Applicable Law

2. Business and Professions Code section 1686 gives the Board authority to terminate a licensee’s probation early. With regard to criteria for the Board to consider when ruling on a petition to terminate probation early, that statute provides:

In considering reinstatement or modification or penalty, the board or the administrative law judge hearing the petition may
consider (1) all activities of the petitioner since the disciplinary action was taken, (2) the offense for which the petitioner was disciplined, (3) the petitioner’s activities during the time the license, certificate, or permit was in good standing, and (4) the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board or the administrative law judge as designated in Section 11371 of the Government Code finds necessary.

(Bus. & Prof. Code, § 1686.)

3. For the reasons discussed in Factual Findings 16 through 18, petitioner produced sufficient evidence to demonstrate that he has been sufficiently rehabilitated such that it would be consistent with the Board’s duty to protect public health, safety, and welfare to terminate his probation two years early. Therefore, his Petition for Termination of Probation should be granted.

ORDER

The Petition for Termination of Probation filed by petitioner Jeffery Clyde Chantry, D.D.S., is GRANTED.

DATED: July 17, 2014

[Signature]
COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings