

BEFORE THE
OSTEOPATHIC MEDICAL BOARD
STATE OF CALIFORNIA

FILED

FEB 20 2013

OSTEOPATHIC MEDICAL BOARD
OF CALIFORNIA

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

DAVID MITZNER, D.O.,

Petitioner.

Case No. 00-2009-002623

OAH No. 2012120830

DECISION

This matter was heard before a quorum of the Osteopathic Medical Board of California (Board) comprised of Joseph Provenzano D.O.; President; Alan Howard; Scott Harris, Esq.; Keith Higginbotham, Esq.; David Connett, D.O.; Jane Xenos, D.O.; Claudia Mercado; Michael Feinstein, D.O. and Joseph Zammuto, D.O., in Sacramento, California on January 31, 2013. Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, presided.

Jessica Amgwerd, Deputy Attorney General, represented the People of the State of California pursuant to Government Code section 11522.

David Mitzner, D.O. (petitioner) was present and represented himself.

Evidence was received and the matter was submitted for decision on January 31, 2013.

FACTUAL FINDINGS

1. On July 1, 1990, the Board issued Osteopathic License No. 20A5898 to petitioner.

2. On January 10, 2011, Donald Krpan, Executive Officer of the Board, issued the First Amended Accusation against petitioner,¹ which alleged that petitioner was subject to disciplinary action for aiding and abetting the unlicensed practice of medicine. The First Amended Accusation also alleged that petitioner, while working at another facility, did not know who the owners of that facility were and failed to file a fictitious name permit with the

¹ OAH Case No. 2011030189.

Board. In addition, the First Amended Accusation alleged that petitioner hired a person, sight unseen, to serve as a medical assistant without knowing the level of skill and ability of the person. That person performed intravenous placement on several patients when no physician was physically present when the services were being performed.

3. On October 26, 2011, petitioner entered into a Stipulated Settlement and Disciplinary Order, wherein he admitted the truth and accuracy of each and every allegation set forth in the First Amended Accusation and agreed to be bound by the imposition of discipline set forth in the Disciplinary Order. The Board adopted the Stipulated Settlement and Disciplinary Order as its Decision and Order on November 29, 2011, effective December 13, 2011.

4. The Decision and Order revoked petitioner's license, but stayed the revocation and placed petitioner on probation for 35 months from December 13, 2011, subject to specified terms and conditions. Petitioner's 35-month probation ends on November 13, 2014.

5. On November 17, 2012, petitioner filed his Petition for Early Termination of Probation. Included in the petition is petitioner's statement, letters of support, documents pertaining to petitioner's rehabilitation, certificates of continuing medical education and quarterly probation reports. Board staff verified the letters of support.

Petitioner's Statement

6. Petitioner's statement included an explanation of how he has complied with all terms of his probation, including reimbursing the Board for investigative and prosecution costs; timely submission of quarterly reports; completion of a Board approved 22-hour Professional Ethics course; completion of a medical education course/assignment related to his offense as requested by and approved by Dr. Krpan, Former Executive Director of the Board; and that he has obeyed all laws and rules covering the practice of medicine in California.

7. Petitioner explained how difficult it has been for him and after taking the ethics course, how he has taken the message to heart. He explained how he has developed rules to guide his personal and professional life. With respect to his professional life, he explained how he will only work for established, verifiable entities and only in a capacity which would not clearly violate the Medical Practice Act. He will also not enter into any medical business or business relationship without a written contract and that he will not hire or supervise in any capacity, any mid-level provider or ancillary personnel without verification of professional credentials.

Petitioner's Letters of Support

8. Petitioner submitted a letter from Paul T. Ananias, D.O., dated November 20, 2012. Dr. Anaias is an Osteopathic Psychiatrist who is employed as the Acting Chief

Psychiatrist of the Department of Psychiatry at Metropolitan State Hospital in Norwalk, California. Dr. Anaias has known petitioner for at least twelve years. Petitioner was his mother's personal physician. Dr. Anaias is aware of the circumstances leading to petitioner's probation and states petitioner has taken the Board's decision and recommendations very seriously. He believes petitioner has complied with the Board's requirements and practices well within the standard of care. Dr. Anaias supports petitioner's request for early termination of his probation.

9. Petitioner also submitted a letter dated November 21, 2012, from Edward A. Pillar, D.O., FACEP. Dr. Pillar is a practicing Board Certified Emergency Medicine Physician and Chair of the Department of Emergency Medicine at Southwest Healthcare Systems (Inland Valley Medical Center & Rancho Springs Medical Center). Dr. Pillar has worked with petitioner for over 10 years as a colleague, Hospitalist and Primary Care Physician, and can attest to petitioner's responsiveness, conduct, professionalism and quality of care. Dr. Pillar believes petitioner has been honest and forthcoming regarding the circumstances that placed him on probation. Dr. Pillar, without reservation and with the highest confidence, strongly supports petitioner's request for early termination of his probation.

10. Petitioner submitted a letter dated November 20, 2012, from Douglas J. Wise, D.O. Dr. Wise has practiced in California since 1987 and has known petitioner for over 15 years. He and petitioner covered each other on weekends and holidays for a number of years. Dr. Wise states that petitioner is well-liked and respected by his colleagues, hospital staff and patients. He states petitioner interacts well with all members of the health care team at the hospital and assumes the medical care of his patients in a serious fashion. Dr. Wise believes petitioner practices well within the standard of care. Dr. Wise strongly supports petitioner's request for early termination.

Educational Courses

11. As part of its Decision and Order, the Board required petitioner to take and complete a medical ethics course during his first year of probation. Petitioner participated in a 22-hour Medical Ethics and Professionalism Course on April 27-28 2012.

12. The Board also required petitioner to take an educational program or course related to the violations charged in the accusation. Petitioner did so and submitted a paper entitled "Overview of Risks of Cosmetic Outpatient Procedures."

Petitioner's Testimony

13. Petitioner credibly testified at the hearing and confirmed the information set forth in his petition. Petitioner has complied with all the terms and conditions of probation and accepted responsibility for his actions. He is disappointed with himself and never expected to be on probation. He has learned from his experience and the ethics and professionalism course, and has taken the right steps to practice in an ethical way.

14. Petitioner is currently employed as a hospitalist² and has taken positive steps to accept his role and responsibility with regard to his offense. He has developed insight and an action plan to prevent any further similar circumstances from occurring.

15. The evidence is persuasive that petitioner has made significant progress in rehabilitation. He understands what happened and why it happened and has performed all conditions of probation. He has accepted responsibility for his actions and has been humbled by this experience. Petitioner does not pose a risk to the public. Accordingly, petitioner's probation may be terminated and his license fully restored.

LEGAL CONCLUSIONS

1. California Code of Regulations, title 16, section 1657 sets forth the criteria for the Board to consider when reviewing a petition for reinstatement:

When considering a petition for reinstatement or a petition for modification of penalty, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, may consider all activities of the petitioner since the disciplinary action was taken and shall also consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) for which the petitioner was disciplined.
- (2) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) committed subsequent to act(s) or crime(s) for which the petitioner was disciplined which could also be considered as grounds for denial under Code Section 480.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) above.
- (4) The extent to which the petitioner has complied with any term of parole, probation, restitution, or any other sanctions lawfully imposed.
- (5) Petitioner's activity during the time the certificate was in good standing.
- (6) Evidence, if any, of the rehabilitation submitted by petitioner.
- (7) Petitioner's professional ability and general reputation for truth.

² Petitioner explained a "hospitalist" is a physician who assumes the responsibilities of a treating physician while a patient is in the hospital.


2. Petitioner bears the burden of establishing that he has been rehabilitated. As set forth in Findings 6 through 15, petitioner has met this burden and demonstrated that he has been rehabilitated.

ORDER

1. The Petition for Early Termination of Probation submitted by petitioner David Mitzner is GRANTED.

2. Probation is terminated. Dr. Mitzner's license is fully restored.

Dated: 2/20/13



JOSEPH J. PROVENZANO, D.O.
President
Osteopathic Medical Board of California