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:

JOSE EFRAIN CARRILLO HERNANDEZ,
Dental License No. 51902
Petitioner,

Case No. DBC 2008-51
OAH No. 2014071063

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 August 26, 2015.


Fran Burton, MSW
Board President
Dental Board of California
Department of Consumer Affairs
PROPOSED DECISION

This matter convened for hearing on June 4, 2015, in Sacramento, California, before Vincent Pastorino, Administrative Law Judge for the Office of Administrative Hearings, State of California.

Kristina Jarvis, Deputy Attorney General, appeared and represented the Department of Justice, Office of the Attorney General, pursuant to Government Code section 11522.

Jose Efrain Carrillo Hernandez (Dr. Carrillo), petitioner, appeared and represented himself. Tina Torez, certified English-Spanish language interpreter, was present and provided interpreter services.

Each party submitted evidence and argument at the hearing. The record was closed and the matter submitted on June 4, 2015.

FACTUAL FINDINGS

Procedural Background

1. On January 19, 2005, the Dental Board of California (Board) granted Dental License No. 51902 (license) to Dr. Carrillo. The license is current and will expire on March 31, 2016, unless renewed.

2. On or about January 7, 2009, the Board’s executive officer filed an Accusation against Dr. Carrillo, alleging that his license was subject to disciplinary action as a result of unprofessional conduct involving “clearly excessive treatment,” “incompetence,” and “gross negligence.” The allegations arose from Dr. Carrillo’s examination and/or treatment of a
patient on or about March 7, 2007. The Accusation alleges that Dr. Carrillo “diagnosed various lesions on fifteen (15) teeth, and prescribed restorations with amalgam on the fifteen (15) teeth.” It further alleges that the proposed “restorations were unnecessary as patient had been examined by her long time family dentist on April 3, 2007, who found no cavities, which was consistent with his prior examinations on April 21, 2006, and a more recent examination on September 22, 2008.”

3. The Accusation also alleges that the “excessively prescribed treatment” constituted cause for discipline as unprofessional conduct under Business and Professions Code sections 1670 and 1680, subdivision (p), and as incompetence under section 1670. The Accusation further alleges that Dr. Carrillo committed gross negligence under section 1670 by making no reference in the patient’s medical history, dental history, and/or records as to the following: the patient’s mental condition or the type of psychotropic drugs the patient was taking; the identity of the party responsible for making any decisions on the patient’s dental treatment; gum bleeding during brushing and flossing and teeth sensitivity to hot and cold liquids/foods; a formal treatment plan for the restoration; a formal treatment plan for the periodontal charting or periodontal screening period; whether an oral cancer exam done; and written or verbal informed consent for any restorations or for the “scaling” and root “planning.”

4. On March 2, 2010, the Board adopted a stipulated settlement and disciplinary order (Stipulated Order), which became effective on April 2, 2010. By signing the Stipulated Order, Dr. Carrillo acknowledged his understanding that “the charges and allegations in [the Accusation], if proven at hearing, constitute cause for imposing discipline upon his Dentist License.” He also acknowledged that “[f]or the purpose of resolving the Accusation without the expense and uncertainty of further proceedings [Dr. Carrillo] agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that [Dr. Carrillo] hereby gives up his right to contest those charges.”

5. Pursuant to the Stipulated Order, Dr. Carrillo’s license was revoked. The Stipulated Order further stated that the revocation was stayed and the license was placed on probation for five years on terms and conditions, which included the following: (1) a severability clause; (2) compliance with all conditions of probation and obedience to all federal, state, and local laws and all rules and regulations governing the practice of dentistry; (3) submission of quarterly declarations stating whether there has been compliance with all the conditions of probation; (4) compliance with the Board’s probation surveillance program; (5) appearance for interviews with a Board representative upon request with reasonable notice; (6) notification of change of address or of extended travel outside of California; (7) payment of investigatory and prosecutorial costs in the amount $6,300; (8) payment of probation monitoring costs; (9) license surrender upon cessation of practice or inability to satisfy the terms and conditions or probation; (10) tolling of the five-year probation period

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1 The Stipulated Order contains no specific provision regarding whether or not the allegations in the Accusation would be deemed true in the event of the filing of a petition for reduction of penalty or early termination of probation.
during periods of residence or practice outside of California or upon ceasing to actively practice dentistry in California; (11) full restoration of the license upon successful completion of probation; (12) approval and completion of a program of remedial education; (13) approval and completion of a community service program; and (14) approval and completion of a course in ethics.

Petition

6. On May 29, 2014, Dr. Carrillo submitted his petition for early termination of probation. Although more than five years have passed since the effective date of the Stipulated Order, Dr. Carrillo last worked as a dentist on or about April 29, 2013. Thus, due to the tolling provisions of the Stipulated Order, only three years and 27 days have applied toward the five-year probationary term.

7. With regard to the matters alleged in the Accusation, Dr. Carrillo testified that he saw the particular patient only one time. She objected when he told her that she needed work on 15 teeth, and he told her that she was free to seek a second opinion. Dr. Carrillo testified that the office where he worked, Woodland Family Dental, submitted x-rays to the insurer and the insurer approved work on 14 of the 15 teeth. He also testified that he was a salaried employee at Woodland Family Dental and his salary was dependent upon hours worked rather than being dependent upon how much treatment he provided.

8. After being placed on probation, Dr. Carrillo continued to work at Woodland Family Dental. However, in January 2012, Dr. Carrillo received a letter from Delta Dental notifying him that because he had been placed on probation by the Board, he could no longer continue as a contracted provider. Shortly thereafter, Dr. Carrillo received a similar letter from another insurance carrier, to the same effect. Those two insurance carriers accounted for approximately 90 percent of the work and/or revenue generated at Woodland Family Dental. Woodland Family Dental agreed to keep Dr. Carrillo as an employee and pay him in accordance with work performed. However, due to the insurance restrictions, Dr. Carrillo could see only a few patients. Consequently, his salary was equivalent to minimum wage, and the arrangement was not sustainable. Dr. Carrillo last worked at Woodland Family Dental on or about April 29, 2013.

9. At the hearing, Dr. Carrillo presented a list of 48 dental offices at which he had applied for employment from May 2013 through January 2015. Due to his inability to qualify as contracted provider for dental insurance plans while he remained on probation, Dr. Carrillo has been unable to obtain a position. He has worked temporary jobs in “the fields” and in a candy factory.

10. Dr. Carrillo submitted character reference letters from his pastor, his former dental assistant at Woodland Family Dental, and two friends. He also submitted a letter from Jose Aguilar, D.D.S., his former employer at Woodland Family Dental. Dr. Aguilar wrote that “in all the time I have known him, Dr. Carrillo has been a decent, hardworking and
trustworthy person.” Dr. Aguilar also submitted, directly to the Board, a favorable and somewhat more detailed letter dated April 29, 2013, signed under penalty of perjury.

11. Dr. Carrillo has paid the entire $6,300 cost-recovery amount and, with two exceptions, has complied with all terms and conditions of his probation. The exceptions relate to the requirements that he remain employed as a dentist in order to avoid tolling of the probation period, and that he provide dentally-related community service, concurrent with his period of probation, for a least 25 hours per year. The non-compliance relating to those terms and conditions resulted from Dr. Carrillo’s inability to find employment as a dentist, in spite of his diligent efforts.

12. The Board has conducted a review of Dr. Carrillo’s petition for early termination of probation. The resulting report, dated May 29, 2014, is signed by Sean Cogan, investigative analyst, and April Alameda, Staff Services Manager I. The report recounts the procedural history, notes the compliance with all terms of probation except for the tolling provisions, and concludes with the recommendation that “Dr. Carrillo be granted early termination of his probation based on his approximate 3 years and 3 months of compliance with the terms of his Disciplinary Order until he began tolling on July 1, 2013.”

13. The record included letters dated July 12 and 28, 2010, from the senior program manager for continuing education at University of California, San Francisco (UCSF). The letters were sent directly to the Board’s Enforcement Unit and refer to Dr. Carrillo’s “remedial education.” The July 12 letter confirms that Dr. Carrillo successfully completed a “6-hour lecture/one-on-one course in Oral Diagnosis and Treatment Planning.” The June 28 letter confirms that Dr. Carrillo successfully completed a “6-hour lecture/one-on-one course in Ethics.” Both letters state that Dr. Carrillo had also completed all of the necessary reading assignments prior to the course session, and that he “came prepared, ready to work and was attentive and focused on the course material.”

14. The list of continuing education classes taken by Dr. Carrillo is extensive. The completed classes include the following: University of the Pacific (UOP), July 24 and 25, 2010, 13.5 hours, hospital dentistry; Butte-Sierra District Dental Society, October 8, 2010, two hours on the Dental Practice Act, two hours on infection control, and two hours on “OSHA/BBP Annual Training”; UCSF, March 19, 2011, seven hours, preparation for medical emergencies occurring in the office; UOP, May 14, 2011, seven hours, 4th Annual Pacific Dental Hygiene conference; UOP, June 4, 2011, seven hours, “Are you Numb Yet?”; UCSF, October 8, 2011, seven hours, drug interactions; UCSF, November 5, 2011, seven hours, periodontal care and risk management; Management Experts, Inc., June 2, 2012, 4.5 hours, scheduling productivity; UOP, July 21 and 22, 2012, 13.5 hours, hospital dentistry; UCSF, August 25, 2012, seven hours, sleep apnea; UCSF, December 1, 2012, seven hours, Dental Practice Act and infection control; UCSF, December 8, 2012, seven hours, Dental Hygiene Symposium; The American Dental Institute, July 18, 2013, three hours regarding oral cancer, four hours regarding oral oncology, three hours regarding tobacco cessation, and one hour regarding early detection and prevention of oral cancer.
15. Dr. Carrillo's actions since the effective date of the Stipulated Order have demonstrated that Dr. Carrillo is dedicated to his profession and to improving his ability to practice his profession. He agreed to work for minimal compensation at Woodland Family Dental and has persisted in his efforts to find employment as a dentist. He has taken extensive amounts of continuing and/or remedial education through July 2013. Although he continues to dispute some of the allegations in the Accusation, he acknowledges that through taking the classes required as a condition of his probation, as well as other classes, he has learned to address his professional weaknesses that led to the accusation and he is now a better dentist.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 1686, a licensee who has been placed on probation for three years or more may petition the Board for modification or early termination of probation upon completion of at least two years of probation. Section 1686 further provides, in pertinent part, as follows:

[¶] ... [¶]

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 board or the administrative law judge may impose necessary terms and conditions on the licentiate in reinstating a license, certificate, or permit or modifying a penalty.

[¶] ... [¶]

2. Application of the above factors to the Findings in this matter shows that Dr. Carrillo has worked diligently to comply with all terms of his probation. Except for matters related to tolling of the five-year probation period due to Dr. Carrillo's unemployment, he has complied with all terms of probation. Some of the alleged offenses for which Dr. Carrillo was disciplined are serious. However, all of the allegations involve only one patient at one visit. There is no record of other complaints against Dr. Carrillo, and he has shown persuasive evidence of rehabilitation and a general reputation for truthfulness. With regard to professional ability, Dr. Carrillo fully acknowledges that he needed to address some significant weaknesses in his approach to dentistry, and he credits the remedial and
continuing education classes with revealing those weaknesses and giving him the ability to address them.

3. Given the above Findings, particularly in Findings 8 thru 15, Dr. Carrillo has demonstrated that with due regard for the public health and safety he can be granted early termination of probation. However, Dr. Carrillo has not practiced dentistry for about two years. His most recent continuing education courses were in July 2013. Therefore, Dr. Carrillo must complete a refresher course or program, as prescribed by the Board, prior to having his probation terminated and his license fully restored.

ORDER

The petition of Jose Efrain Carrillo Hernandez, D.D.S., for early termination of probation is granted, subject to the following terms and conditions:

(1) Dr. Carrillo shall be required to complete a refresher course or program prior to termination of probation. The exact number of hours and specific content of the course or program shall be determined by the Board or its designee.

(2) Upon successful completion of the refresher course or program, Dr. Carrillo’s Dental License No. 51902 shall be fully restored.

DATED: July 2, 2015

VINCENT PASTORINO
Administrative Law Judge
Office of Administrative Hearings