

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early)
Termination of Probation of:)
)
)
GERSHON WALTER HEPNER, M.D.)
)
)
Physician's and Surgeon's)
Certificate No. A-30885)
)
Respondent.)

File No: 20-1999-99250

OAH No: L2005050367


DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision and Order by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 31, 2005.

DATED August 1, 2005.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA



Ronald L. Morton, M.D.
Chair, Panel A
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

GERSHON HEPNER, M.D.,

Physician's and Surgeon's Certificate No. A 30885

Petitioner.

Case No. D-4867

OAH No. L2005050367

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, heard this matter on June 22, 2005, in San Diego, California.

Henry Lewin, Attorney at Law, represented petitioner Gershon Hepner, M.D., who was present throughout the proceeding.

Mary Agnes Matyszewski, Deputy Attorney General, represented the Office of the Attorney General, State of California, under Government Code section 11522.

Sworn testimony and documentary evidence was received, closing arguments were given, the recommendation from the Office of the Attorney General was received, and the matter was submitted on June 22, 2005.

FACTUAL FINDINGS

The Issuance and Revocation of Certificate No. A30885

1. On March 28, 1977, the Medical Board of California (the Board) issued Physician's and Surgeon's Certificate No. A30885 to Gershon Hepner, M.D. (Dr. Hepner or Petitioner).

2. On March 1, 1995, the Division of Medical Quality adopted a Stipulation and Disciplinary Order, which became effective on March 31, 1995. The Disciplinary Order

revoked Physician's and Surgeon's Certificate No. A30885. Dr. Hepner was represented by counsel in the settlement proceedings.

With regard to the underlying accusation, Dr. Hepner specifically admitted the following facts were true:

"On or about October 25, 1991, in the Superior Court of the State of California for the County of Los Angeles, in proceedings entitled *People of the State of California v. Gershon Hepner*, Case No. BA092582, the respondent was convicted, upon his plea of guilty, of the following crimes:

(1) Fourteen counts of filing a false Insurance [sic] claim, a violation of Insurance Code § 556(a), felonies;

(2) Three counts of attempt to file a false insurance claim, a violation of Penal and Insurance Code §§ 664/556(a), felonies;

(3) One count of grand theft over \$100,000.00, a violation of Penal Code § 487(1), a felony;

(4) One count of conspiracy to commit insurance fraud, a violation of Penal Code § 182/556(a), a felony;

(5) One count of grand theft, a violation of Penal Code § 487(a), a felony;

(6) One count of payment of unlawful referral fees to a doctor ('capping'), a violation of Business and Professions Code § 650, a felony;

(7) Three counts of filing false personal income tax returns, a violation of Revenue and Taxation Code § 19406, felonies. Respondent also admitted to a violation over \$100,000.00 pursuant to Penal Code § 12022.6(b); and

(8) One count of perjury under oath, a violation of Penal Code § 118, a felony."

Dr. Hepner stipulated the convictions involved unprofessional conduct and constituted cause for disciplinary action under Business and Professions Code sections 650, 2236, subdivision (a), and 2234, subdivisions (a), (b), (c), (e) and (f).

Dr. Hepner agreed the Medial Board could issue an order revoking his physician's and surgeon's certificate.

Dr. Hepner's Background and Convictions

3. The following information was contained in the Proposed Decision, the Corrected Decision After Non-Adoption, and the Medical Board's Decision After Remand. This factual information has not changed since the publication of those decisions.

Petitioner earned his medical degree from the University of London in 1963. He became a Member of the Royal College of Physicians in 1965 (the English equivalent of board certification). After receiving a research fellowship in gastroenterology from Mount Sinai Hospital in New York, Petitioner came to the United States in 1968. Two years later, he moved to Rochester, Minnesota, where he engaged in research at the Mayo Clinic. From 1972 to 1976, Petitioner served as an Assistant Professor of Medicine at Pennsylvania State University in Hershey, Pennsylvania. From 1976 to 1980, Petitioner served as an Associate Professor of Medicine in the Division of Gastroenterology, Department of Medicine, at the Harbor Campus of UCLA, which involved Petitioner spending 75% of his time teaching and doing research and 25% of his time seeing patients.

In 1980, Petitioner left UCLA to begin a private practice in internal medicine. He chose against a gastroenterology practice because he did not perform procedures associated with that specialty. While he served as a consultant for patients with gastroenterological disorders, Petitioner referred these patients to other physicians for necessary procedures.

Around 1985, Petitioner changed the focus of his practice to one involving the care and treatment of personal injury patients. His practice was a great success. Between 1984 and 1989, Petitioner opened and operated offices in Century City, Inglewood, Hollywood and Studio City, earning an average annual gross income of \$1,700,000. Petitioner paid "cappers" to provide him with personal injury patients. Petitioner billed for more extensive examinations than he actually performed. Petitioner prepared fraudulent medical reports for patients he had not seen. Petitioner charged for more patient visits than actually occurred at a rate of \$500 per visit and he billed for other work he did not perform. Patient signatures were often forged on sign-in sheets to increase the amount of their bills without their knowledge. Insurance companies paid petitioner's inflated bills. Petitioner evaded income taxes and fraudulently attributed tens of thousands of dollars of personal expenses to his corporation on his income tax returns.

During the late 1980's, Petitioner's conduct and demeanor began to change. He went through alternating stages of euphoria and depression. Petitioner's life-style became flamboyant, even to the point of purchasing a taxicab-yellow Rolls Royce and wearing bright red silk shirts to his Orthodox synagogue, which he was aware was grossly inappropriate.

In June 1989, the Department of Insurance executed search warrants at Petitioner's office and residence. Those searches resulted in his arrest. Petitioner recognized his emotional condition had undergone some very significant changes. He became severely depressed and sought treatment with Franklin C. Milgrim, M.D. (Dr. Milgrim), a psychiatrist specializing in forensic psychiatry. Dr. Milgrim initially believed Petitioner suffered from a dysthymic disorder, but quickly realized Petitioner also suffered from hypomania. Dr.

Milgrim changed the diagnosis to Bipolar Disorder, a diagnosis upon which all mental health care providers involved in this case concurred. Dr. Milgrim prescribed Lithium and Depakote for the hypomania and a number of antidepressants. The medications, or a similar regimen, were continued at Atascadero State Hospital and the California Men's Colony during Petitioner's imprisonment.

Petitioner suffered the criminal convictions referred to in Factual Finding 2. He was sentenced to serve 8 years, 4 months in state prison and was ordered to pay restitution in the sum of \$10,000.

Petitioner spent the first 18 months of his sentence at Atascadero State Hospital, where he was treated for Bipolar Disorder. He was transferred to California Men's Colony at San Luis Obispo in December 1993 and served approximately two and one-half years at the California Men's Colony before he was paroled. Petitioner was in custody from January 1992 through May 1996, serving slightly more than half of his sentence. Petitioner was on parole for three years after his discharge from prison without any violations. Parole was terminated on May 29, 1999.

Before his incarceration and while he was treating with Dr. Milgrim, Petitioner maintained his medical practice. During that period of time, he did not engage in any fraudulent practices and his patients were not adversely affected by his bipolar disorder. However, his depression eventually reached the point that Dr. Milgrim became concerned about Petitioner's ability to concentrate and make good judgments.

On November 1, 1990, more than four years before his certificate was revoked, Petitioner followed Dr. Milgrim's recommendation and terminated his medical practice.

Petitioner did not treat with Dr. Milgrim during his incarceration (although they occasionally spoke by telephone). Petitioner returned to Dr. Milgrim's care in June 1996 and has been treating with him since. Due to the unpredictable nature of his disorder, Petitioner intends to continue treating with Dr. Milgrim indefinitely.

Petitioner was severely depressed and withdrawn in 1996 and he had difficulty interacting with others, including his family. He spent most of his time writing poetry and scholarly works on the Torah, avocations he had pursued for many years. Petitioner's symptoms waxed and waned and in August 1997 his depression improved to the point Zoloft was discontinued. In December 1998, Dr. Milgrim discontinued Depakote because of adverse physical side effects. Petitioner had no recurrence of bipolar symptoms.

Dr. Milgrim considered the bipolar disorder to be in remission. He firmly believed Petitioner could return to the practice of medicine and could practice medicine without a risk to the public.

Dr. Milgrim's opinion regarding Petitioner's fitness to return to medical practice was disputed by James Rosenberg, M.D. (Dr. Rosenberg), another forensic psychiatrist.

Dr. Rosenberg shared the commonly held opinion that bipolar disorder was unpredictable and since Petitioner was no longer being medicated, his disorder was a "ticking bomb." Dr. Rosenberg believed advancing age, change in season, lack of sleep, stress, change in routine (i.e., crossing time zones), and other medications might trigger a relapse. Dr. Rosenberg believed that while certain physicians who suffer from bipolar disorder can safely practice medicine, bipolar disorder was a life-long disorder that medications may control but do not cure and the risk of relapse was increased by discontinuing medications. He further believed that a patient who suffered a recurrence could lose insight and fail to seek timely treatment, and manic physicians could become sexually inappropriate, perform procedures for which they lacked the requisite skill, and practice beyond their expertise.

Dr. Rosenberg believed in order for Petitioner to return to practice, he should be returned to a regimen of proper medication, be supervised on a daily basis, have his charts regularly reviewed and remain in psychotherapy.

Before his reinstatement, Petitioner practiced Orthodox Judaism, studied the Talmud nearly every day and attended a weekly Talmud class. He gave seminars on the Bible once every three weeks. Petitioner believed his biblical and Talmudic studies have helped him to "understand the gravity of [his] offenses and reinforce [his] determination never to commit any crimes again." Between March 1998 and May 1999, Petitioner performed volunteer work at the Museum of Tolerance in West Los Angeles, which consisted primarily of research for the museum's studies.

In December 1998, Petitioner began performing volunteer work for the Midnight Mission in Los Angeles. He obtained food for the mission six days per week and assisted in obtaining clothing for the mission's denizens.

Before his reinstatement, Petitioner met and exceeded his CME requirements. He read the New England Journal of Medicine every week. He has twice taken the journal's self-assessment examination, earning an 88% for the first program and 74% for the second, each time receiving 50 Category 1 credits. In addition, he also successfully completed the 11th Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians, a program that addressed all aspects of internal medicine.

In October 2000, Petitioner voluntarily enrolled in the Physician Assessment and Clinical Education Program (PACE) offered by the University of California, San Diego School of Medicine, which involved a Clinical Skills and Knowledge Assessment, a physical examination and a psychiatric examination.

On November 3, 2000, William A. Norcross, M.D., the Director of the PACE program, wrote Petitioner and advised him of his results. That letter read in part:

"The neuropsychologists who performed your Neuropsychological Assessment noted your history of bipolar affective disorder, but noted no significant mania or thought disorder at the time of your Assessment. However, given your history of bipolar affective disorder, they did recommend that you maintain a clinical relationship with

a psychiatrist, even if you are currently in remission and do not require treatment, because of the unpredictable nature of the disease. The results of your physical examination were completely normal.

Your performance on the Clinical Skills and Knowledge Assessment was superior. In fact, Dr. Harrity, our PACE Faculty member in the Department of Internal Medicine and Director of the Medicine Residency Program, gave you a 93% score on her exam, the highest ever received in Internal Medicine in the history of the PACE Program. Dr. Harrity remarked that you had done a superb job in keeping abreast of advancing knowledge in the field of Internal Medicine and did not feel that you required any clinical remediation.

In summary, a thorough assessment of your clinical skills and knowledge, as well as your physical and mental health, reveals that it is quite safe for you to re-enter medical practice (with the above caveat of intermittent follow-up with a psychiatrist)”

On Dr. Milgrim’s recommendation, Petitioner obtained Social Security Disability Benefits for his bipolar disorder. However, in May 1999, Petitioner informed the Social Security Administration that he no longer needed those benefits because he was no longer disabled. He stopped receiving the benefits 11 months thereafter, notwithstanding his repeated attempts to terminate the benefits earlier. Until his license was reinstated, Petitioner supported himself through loans and other types of support from his family members and former wife.

The Petition for Reinstatement

4. In 2001, Dr. Hepner filed a petition for the reinstatement of his revoked certificate in 2002. On April 6, 2001, the hearing on that petition was held before Administrative Law Judge H. Stuart Waxman (ALJ Waxman).

Petitioner submitted numerous letters supporting the reinstatement of his medical license. The letters were written by individuals within and outside the medical profession, all portraying Petitioner as an extraordinary individual who, despite his past transgressions, was a paragon of intelligence, competence, piety, honesty, integrity, trustworthiness and contrition. The letters stated Petitioner comported himself in a respectful manner toward others and no longer manifested any of the symptoms consistent with bipolar disorder.

5. The Legal Conclusion set forth in ALJ Waxman’s Proposed Decision stated:

“Cause exists to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 2 through 21, 24 and 26, provided the newly reinstated certificate is accompanied by a probationary Order requiring satisfaction of specific terms and conditions.

The evidence did not establish whether Petitioner committed his crimes because of his bipolar disorder, anti-social personality traits, or both. However, the fact that Petitioner enjoyed an exemplary and distinguished career as a researcher, professor, and internist for many years before beginning to engage in conduct completely inconsistent with his high standards and ethics, tends to weigh in favor of the former. Regardless of the source of his criminal conduct, Petitioner has shown outstanding rehabilitation and has taken appropriate steps to ensure continued monitoring of his psychiatric condition in order to adequately protect the public.

Although no patients were harmed while Petitioner was going through the worst phases of his Bipolar Disorder, the analysis of his fitness to practice must go beyond that fact. The public in general was harmed by Petitioner's abuse of the insurance system. However, at some point, Petitioner recognized that something about his mental state was very wrong, and he ceased his illegal activity. Thereafter, he sought professional assistance for his Bipolar Disorder and began a long road toward rehabilitation. Even in the early stages of recovery, years before his license was revoked, Petitioner cared enough about his patients' well being that he voluntarily ceased practicing medicine when his psychiatrist expressed concerns that Petitioner's concentration and judgment could be compromised by his psychiatric condition.

Petitioner's Bipolar Disorder is presently in remission. Although a relapse of Bipolar Disorder cannot be predicted, that is not an adequate reason to proscribe an otherwise highly qualified physician from practicing medicine. Surely a great many physicians with diseases and disorders in remission are presently practicing medicine without inordinate risk to the public, and the requisites of the Medical Practices Act are not so harsh as to preclude them from doing so. In this case, no evidence was offered to prove that Petitioner would relapse, only that he might. It would be a tremendous waste of an excellent medical talent to prohibit Petitioner from practicing solely because of that possibility.

To the extent that Petitioner's crimes may have been caused by his own criminality rather than by a debilitating mental disorder, his rehabilitation has been extraordinary. He has met and exceeded the criteria set forth in Business and Professions Code section 2307, and in Title 16, California Code of Regulations, section 1657. He has shown a sincere interest in assisting the less fortunate and intends to continue in that work should his medical certificate be reinstated. In the 9½ years since his conviction, Petitioner has not had any other negative contact with the criminal justice system."

6. ALJ Waxman proposed a disciplinary order in which the petition for reinstatement was granted, then revoked, with the revocation stayed and with Dr. Hepner being placed on probation for six years. Terms and conditions of probation required, among other matters, that Dr. Hepner pass a Special Purpose Examination (SPEX) within 60 days of the effective date of the effective date of the Decision, that Dr. Hepner undergo continuing psychotherapy with a Division-approved psychotherapist, that Dr. Hepner have a practice monitor, and that Dr. Hepner not engage in solo practice.

The Corrected Decision After Nonadoption

7. The Division of Medical Quality declined to adopt ALJ Waxman's Proposed Decision and after reviewing the administrative record and considering further argument, the Division of Medical Quality issued a Corrected Decision after Nonadoption on October 27, 2001.

The vast majority of ALJ Waxman's proposed factual findings were adopted and incorporated into the Corrected Decision after Nonadoption, but the Division of Medical Quality ultimately found Dr. Rosenberg's expert opinion to be more persuasive than that of Dr. Milgrim, reasoning, "The Panel has no confidence in Dr. Milgrim's expert opinions due to the dual relationship between Petitioner and Dr. Milgrim." Based on this finding:

"The Panel concludes there is sufficient evidence to suggest that Petitioner has other underlying personality disorders that have not been appropriately diagnosed or treated and which are likely to pose a risk to public health and safety."

and

"It was not established to the Panel's satisfaction that Petitioner can practice medicine safely even with restrictions."

8. The following order was issued on October 25, 2001, which was to become effective on November 26, 2001:

"The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A30885 is denied."

The Superior Court's Ruling and Order of Remand

9. Petitioner was dissatisfied with the Corrected Decision After Nonadoption and filed a writ of mandate in the Superior Court of California, County of Sacramento, to review the Medical Board's decision. After reviewing the administrative record and after hearing oral argument, the Honorable Talmadge R. Jones (Judge Jones), Judge of the Superior Court, signed the Court's Ruling on Submitted Matter on July 3, 2002.

Judge Jones concluded the Corrected Decision After Nonadoption was not supported by substantial evidence. Judge Jones concluded the Board's decision rested primarily on two factual findings: First, Petitioner's bipolar disorder rendered him unfit to practice even with restrictions; and second, Petitioner had other underlying personality disorders that were not appropriately diagnosed and treated and which posed a risk to the public health and safety. Each factual finding was based on Dr. Rosenberg's medical opinion. Judge Jones concluded Dr. Rosenberg's testimony did not constitute substantial evidence supporting either factual finding or the conclusions based thereon.

On the issue of Petitioner being a “ticking time bomb” due to his bipolar disorder for which he was not taking any medication, Judge Jones noted Dr. Rosenberg did not examine Petitioner in person or administer testing, but based his opinion on his limited review of Petitioner’s medical records. Dr. Rosenberg conceded there were physicians in California who had been diagnosed with bipolar disorders who practiced medicine safely while being treated with regular medication for that disorder.

On the issue of Petitioner having underlying personality disorders that were not appropriately diagnosed and treated and which posed a risk to the public health and safety, Judge Jones found the conclusion to be sheer speculation rather than any kind of definitive opinion.

Following his review of the record, Judge Jones concurred with ALJ Waxman’s finding that Petitioner’s “rehabilitation has been extraordinary.”

In his opinion, Judge Jones wrote:

“Because the record demonstrates petitioner’s rehabilitation and because there is no substantial evidence that he cannot practice safely with proper monitoring and conditions, either by virtue of his bipolar disorder or some other underlying personality disorder, the [Medical] Board’s decision denying reinstatement altogether was not supported by substantial evidence. Accordingly, the petition for writ of mandate is granted.

The Court recognizes, however, that the evidence demonstrates the nature of petitioner’s bipolar disorder, and the danger of relapse if it is not properly monitored and controlled, require that reinstatement be granted on appropriate terms and conditions in order to insure patient safety. The matter is thus ordered remanded to the Board for consideration of such terms and conditions. Nothing in this ruling is intended to control the discretion of the [Medical] Board in imposing such terms and conditions on petitioner’s reinstatement as, in its judgment, are necessary and proper under the circumstances.”

The Decision and Order after Remand

10. On September 25, 2002, the Medical Board issued an order setting aside its decision after nonadoption. It reconsidered the matter in light of the Superior Court’s ruling. On November 21, 2002, the Medical Board issued its Decision After Remand.

In the Decision After Remand, the Medical Board noted:

“Although the Panel finds Dr. Rosenberg’s expert opinion to be more persuasive than that of Dr. Milgrim the court did not. The Panel notes for the record that it has no confidence in Dr. Milgrim’s expert opinions due to the dual relationship between Petitioner and Dr. Milgrim.”

and,

“The Panel concludes there is sufficient evidence to suggest that Petitioner has other underlying personality disorders that have not been appropriately diagnosed or treated and which are likely to pose a risk to public health and safety.”

and,

“Although it was not established to the Panel’s satisfaction that Petitioner can practice medicine safely even with restrictions, the court has ordered that Petitioner be reinstated. The terms set forth in the Order are necessary and proper to protect the public.”

and,

“The Panel does not find the PACE psychiatric evaluation to be dispositive of the issue of Petitioner’s safety to practice medicine. The Panel further believes that, with due regard to its highest priority of consumer protection, Petitioner must successfully complete the SPEX examination and a psychiatric evaluation before Petitioner resumes the practice of medicine.”

11. The Medical Board issued an Order reinstating Dr. Hepner’s certificate, revoking that certificate, staying the revocation and placing Dr. Hepner on six years probation. Terms and conditions of probation required, among other matters, that Petitioner pass the SPEX examination, undergo a psychiatric evaluation by a Division-appointed psychiatrist, undergo psychiatric treatment if required, not engage in the practice of medicine until notified that he was mentally fit to practice safely, pass an approved Ethics course, not engage in solo practice and comply with other standard terms and conditions of probation.

*Dr. Hepner’s Compliance with the
Decision and Order after Remand*

12. On January 7, 2003, Dr. Hepner passed the SPEX examination with a score of 81 (a score of 75 was the minimum score recommended for passing that examination).

13. On January 14, 2003, Dr. Hepner underwent a psychiatric evaluation provided by Dr. Saint Martin, the Division-appointed psychiatrist, which included an MMPI. Dr. Hepner was informally advised it was safe for him to return to practice, but he did not receive formal notification until early December 2003.

14. On August 16, 2003, Dr. Hepner completed an Ethics course.

15. On December 2, 2003, Carmen Aguiulera-Marquez wrote Dr. Hepner and advised him, “Dr. Saint Martin determined that you can safely practice medicine and psychiatric treatment is not needed.” Dr. Saint Martin’s narrative report, if one exists, has never been provided to Dr. Hepner.

16. Ivor Geft, M.D. (Dr. Geft) was approved as Dr. Hepner's practice monitor. Since Dr. Hepner was not going to be involved in any direct billing, a billing monitor was not required.

17. On February 7, 2005, Medical Board Senior Investigator Catarina Le (Investigator Le) confirmed Dr. Hepner was in compliance with all terms and conditions of his probation including standard conditions, the psychiatric examination, passing the SPEX, not engaging in solo practice, having a practice monitor, passing the Ethics course, not supervising Physician's Assistants, filing required quarterly reports, and paying probation monitoring costs.

The Petition to Terminate Probation And the Investigation into the Petition

18. On December 16, 2004, Dr. Hepner signed a Petition for Termination Probation. Attached to the petition was Dr. Hepner's narrative statement, various decisions and orders, documentary evidence establishing his proof of compliance with various terms and conditions of probation, and 15 letters of recommendation.

Following the Medical Board's receipt of Dr. Hepner's petition, Medical Board Investigative Assistant Virginia Gerard (Investigative Assistant Gerard) submitted a report dated March 21, 2005, which was approved by Supervising Investigator Shane Wright.

19. According to Investigative Assistant Gerard's report, Senior Investigator Le "said that Hepner was in compliance with his probation, but that she does not support him in his petition for early termination of probation. She said that she does not feel he has been on probation long enough and would like to see at least half of the term served."

20. On February 24, 2005, Investigative Assistant Gerard spoke with Dr. Milgrim, who said Dr. Hepner had no diagnosable symptoms, that he was asymptomatic, and "I have serious doubts as to whether he was ever bipolar." Dr. Milgrim supported the petition for termination of probation.

21. Investigative Assistant Gerard interviewed the persons who submitted letters in support of the petition to terminate probation. Many of these persons were physicians who had a relationship with Dr. Hepner through his Synagogue. Most of the physicians had no direct knowledge of Dr. Hepner's clinical skills. All of the persons contacted endorsed Dr. Hepner and supported the termination of his probation.

The comment of greatest concern set forth in Investigative Assistant Gerard's report was attributed to Michael Shallman, M.D. (Dr. Shallman) who said, when he was reminded that Dr. Hepner had spent time in prison, "Oh, that's right . . . because he pretended to be crazy." Dr. Shallman also said thought Dr. Hepner was a "safe doctor and an honest doctor if someone is there to check on him."

22. On March 14, 2005, Investigative Assistant Gerard interviewed Dr. Hepner by telephone. Dr. Hepner's attorney was present during the interview, which was conducted on a speakerphone.

In the course of that interview, Dr. Hepner said he was continuing to see Dr. Milgrim on a voluntary basis every three months or so. Dr. Hepner said he had become increasingly sensitive to ethical issues through coursework and his contact with other physicians. When asked why probation should be terminated, Dr. Hepner said:

"I think the main reason is I think I'm fully rehabilitated. I think I deserved the discipline. I think that they wanted me to prove myself, and I think that I have. I am diagnosed as rehabilitated psychiatrically by two psychiatrists. I think that, more than anything, is gratifying. In addition to my psychiatric rehabilitation, I have been rehabilitated ethically."

23. A number of letters supporting the petition were submitted. Nearly every letter mentioned the author was aware of Dr. Hepner's convictions. The letters accompanying Dr. Hepner's petition are briefly summarized as follows:

- Dr. Milgrim has known Petitioner for 15 years, and sees Petitioner every three months or so. Petitioner has not fulfilled the criteria for an Axis I or Axis II psychiatric disorder since 2002 and he has handled the inevitable stressors of life extremely well according to Dr. Milgrim. Dr. Milgrim was aware that Petitioner provided volunteer services at the Midnight Mission and was close to his grandson.
- Clancy Imislund, Managing Director of the Midnight Mission, confirmed Dr. Hepner had provided volunteer services at the Midnight Mission since 2003, demonstrating the highest level of loyalty and integrity while doing so.
- Steven Weil, Rabbi of Beth Jacob Congregation, confirmed Dr. Hepner was a devoted member of Beth Jacob, was a biblical school, was assiduous in his Jewish studies and enjoyed an excellent relationship in the community. Rabbi Weil stated Dr. Hepner had expressed remorse for his criminal offenses.
- Paul A. Lessler, M.D. (Dr. Lessler), a board certified anesthesiologist, shared board and care patients with Dr. Hepner since February 2003. Dr. Hepner was extremely professional and related well to patients and others. Dr. Lessler was aware of instances in which Dr. Hepner turned down employment which Dr. Hepner believed might be unethical.
- Steven M. Kaye, M.D. (Dr. Kaye) knew Dr. Hepner for slightly more than a year when he wrote his letter. Dr. Hepner provided initial assessments and recommendations for patients with vestibular dysfunction and balance disorders that Dr. Kaye was seeing. Dr. Hepner was extremely conscientious and competent. He worked well with others.

- Seymour Perl, M.D. (Dr. Perl), a family practitioner, has known Dr. Hepner since 1976. Dr. Hepner provides comfort to a mutual friend who with ALS. Dr. Hepner had expressed great remorse for his crimes. Dr. Perl was unaware of any criticism of Dr. Hepner since Dr. Hepner returned to the community and he believed Dr. Hepner was rehabilitated.
- Charles Feinstein, M.D. (Dr. Feinstein) has known Dr. Hepner for 14 years and was impressed with his wide and current medical knowledge. Dr. Hepner has discussed patient care with Dr. Feinstein, which has helped Dr. Feinstein, particularly in the treatment of patients with asthma. Dr. Hepner practices competent and ethical medicine, according to Dr. Feinstein, and is caring and compassionate.
- John Hochman, M.D. (Dr. Hochman) is a board certified psychiatrist who has seen Dr. Hepner on nearly a daily basis at the Beth Jacob Congregation for the past two years. While Dr. Hochman had no knowledge of Dr. Hepner's clinical skills, he observed Dr. Hepner was predictably appropriate and sensitive in his interactions with others. Dr. Hochman had no expert opinion, but said he had no reason to disagree with the recommendation Dr. Saint Martin offered.
- Ronald Ralbag, M.D. (Dr. Ralbag) is a board certified psychologist to whom Dr. Hepner has expressed remorse on several occasions. Dr. Ralbag believed Dr. Hepner was fully rehabilitated and behaves in an honest manner.
- Samuel M. Berger, M.D. (Dr. Berger) is a psychiatrist who has known Dr. Hepner for 25 years. Dr. Berger was aware of any criticism concerning Dr. Hepner since Dr. Hepner's release from state prison. Dr. Hepner gives "every impression of being fully rehabilitated," according to Dr. Berger.
- Bernard G. Slavin, Ph.D. (Dr. Slavin) is a Professor of Anatomy at the Keck School of Medicine, University of Southern California. Dr. Slavin has known Dr. Hepner since 1976, is aware of his past and stated "The way he has managed to regain the community's faith in him since his release from prison has been quite remarkable" and "Dr. Hepner has surely been fully rehabilitated."
- Ivor Geft, M.D. (Dr. Geft) is a cardiologist who has served as Dr. Hepner's probation monitor since November 2002. Dr. Geft believed Dr. Hepner was committed to the honest and ethical practice of medicine, refused to work in any group whose practices might be questionable, related well to his patients, conducted himself professionally and kept abreast of medical developments. Dr. Geft believed granting the petition would enable Dr. Hepner to obtain better employment and lower his insurance premiums.
- Michael Shallman, M.D. (Dr. Shallman) wrote two letters. In the first, Dr. Shallman described the reason he has known Dr. Hepner for 25 years. Dr. Shallman resumed

contact with Dr. Hepner in 2002. Dr. Shallman would like to associate with Dr. Hepner on a professional basis, but he cannot do so as long as Dr. Hepner remains on probation. In the second, Dr. Shallman stated his comments were misrepresented in the report prepared by Investigative Assistant Gerard and he had kept in touch with Dr. Hepner far more than she reported. According to Dr. Shallman, Dr. Hepner "expressed to me the greatest remorse for his crimes and I feel that he has been fully rehabilitated."

- Jonathan Hulkower, MD. (Dr. Hulkower), a psychiatrist, has known Dr. Hepner for many years. According to Dr. Hulkower, Dr. Hepner was "a fine and considerate doctor and it was a distress to learn he stopped his medical practice due to his crimes." Since his release from prison, Dr. Hepner has provided caring medical services to psychiatric patients at a local board and care facility, according to Dr. Hulkower. While Dr. Hulkower does not treat Dr. Hepner, he has not seen any signs of bipolar disorder in the settings in which Dr. Hulkower observed Dr. Hepner.

24. Dr. Hepner's ex-wife, Linda Hepner, lives with Petitioner. In her letter of support, she described Dr. Hepner's behavior in the late 1980s as bizarre, but believed he was successfully rehabilitated. His behavior is now more subdued and calm. He has regained his ex-wife's confidence and trust. He is a caring grandfather. He voluntarily sees a psychiatrist every three months. Linda Hepner stated Dr. Hepner was fully rehabilitated in her letter.

On February 20, 2005, Investigative Assistant Gerard spoke to Linda Hepner. When asked why she wrote the letter, Linda Hepner said she wanted to move on, the past years were terribly difficult; Dr. Hepner turned over a new leaf and wanted to be a better person. Linda Hepner said she had observed an enormous change.

25. In his narrative statement, Dr. Hepner outlined his educational training and professional background. Then, he wrote, "In the middle 1980s my life changed when I began suffering from bipolar disorder, a disease that, because it was undiagnosed and therefore untreated, took a devastating toll on me, my family and my career."

Dr. Hepner wrote about his convictions, being in custody from January 1992 through May 2006, and on parole for three years thereafter. He wrote:

"For 11 years (between November 1990 and February 2002), I did not practice medicine. During that time, I devoted myself to gaining insight into and treating my disease, attempting to understand the reasons behind by transgressions and how to avoid them in the future, rehabilitating myself personally and professionally, strengthening my connection with my religion, reaching out to my community and maintaining and expanding my fund of medical knowledge."

Dr. Hepner described his full compliance with all terms and conditions of probation following the reinstatement of his certificate, writing, "I understand and respect the restrictions placed on me." But, he went on to write:

“Nevertheless, having a probationary license, particularly which restricts my practice, has proven to be an enormous obstacle to securing full-time employment, to finding a position in my specialty, hepatology, and to restoring my reputation in the medical community. It has also made malpractice insurance premiums prohibitively expensive. It is principally for these reasons that I seek early termination of my probation.”

and,

“Although I was initially elated about the opportunity to practice medicine again after 13 years, and have dutifully complied with all terms and conditions of my probation, my enthusiasm was quickly subdued by the bitter reality of trying to secure respectable employment and affordable malpractice insurance premiums with a probationary license.”

and,

“Additionally, I have found that most reputable group practices or even solo practitioners will simply not employ or affiliate with a doctor with a probationary license due not only to the insurance dilemma but the negative stigma associated with being on probation.”

Dr. Hepner also wrote:

“This entire experience, although difficult, has been surprisingly positive. I have become a better practitioner: my knowledge of medical-record keeping skills and my understanding of medical/legal ethics are much stronger than they were . . . Finally, through regular psychotherapy, I have gained personal insight and understanding as to what lead to my criminal conduct over 18 years ago and am grateful my condition was diagnosed and I am in remission. I never want to re-visit the horrible place from which I finally escaped and can assure the Board I have the tools to ensure that my past mistakes are never repeated.”

26. In his testimony at this hearing, Dr. Hepner essentially reiterated everything set forth in his narrative statement. He described his education, professional background and the legal difficulties arising out of his private practice of medicine after leaving academia. In this regard he testified:

“I became greedy and focused on money, rather than on patient care. I was preoccupied with methods to increase my income, with the medical care of my patients a secondary consideration.”

He sought psychiatric assistance from Dr. Milgrim after the Department of Insurance “raided my office and confiscated all my charts.” He was acutely depressed and needed professional help, which was delivered in the form of medicines and talk therapy.

Dr. Hepner briefly testified about being in prison, and stated he stopped taking medications in 1998. He continues to see Dr. Milgrim once every three months on Dr. Norcross' recommendation and his belief it is reasonable to do so given his history. Dr. Hepner is not aware of any relapses in his bipolar disorder since he stopped taking medication about seven years ago, a period in which he has gone through several stressful episodes including being out of work, the difficulty related to obtaining the reinstatement of his certificate, the death of his mother, and his beloved grandson's developmental disabilities and complicated medical problems.

Dr. Hepner provides volunteer services at the Midnight Mission because he feels the obligation to give back to his community and because the recipients of his services are quite diverse, not simply unfortunate persons who share his religious orientation.

Dr. Hepner identified several reasons he seeks the termination of his probation. It would help restore his self-image and to some extent validate his rehabilitative efforts; it would permit him to be more effective and of greater service in the medical community; it would assist him in finding more suitable employment; it would reduce his malpractice premium by at least 60%; it would serve to increase his personal income; it would permit him to enjoy staff privileges at many health care facilities and it would permit him to serve MediCal patients.

Dr. Hepner said he, his ex-wife (with whom Dr. Hepner resides) and Dr. Milgrim monitor his emotional and mental state. If he were told he was acting differently or if he suspected he was having a relapse, he said he would get professional help immediately.

Dr. Hepner was very well spoken and sincere. He was somewhat animated and garrulous in his testimony. Dr. Hepner acknowledged one problem a person suffering from mania has is difficulty in recognizing the existence of a problem.

Dr. Hepner clearly stated his view that he was not entitled to the termination of probation, but, simply, he thought termination of probation was in his best interest and would not be contrary to the public interest or safety.

The Attorney General's Recommendation

27. The Attorney General's Office opposed the petition to terminate probation. The Attorney General's Office argued most of letters supporting Dr. Hepner were authored by persons who had no actual knowledge of Dr. Hepner's clinical skills or competence. The fact that Dr. Hepner's bipolar disorder might be in remission did not necessarily mean the actual causes of his wrongdoing were resolved. Dr. Hepner's extensive, longstanding criminal activities were never clearly established to be the consequence of any bipolar disorder; poor moral character was another explanation for those offenses. The Attorney General's Office argued continuing probation would best serve to protect the public in the case of this intelligent but flawed medical practitioner whose history included the

commission of numerous felonies and who was diagnosed with a serious bipolar disorder, apparently now in remission.

LEGAL CONCLUSIONS

Statutory Authority

1. Business and Professions Code section 2307 provides in part:

“(a) A person whose certificate has been . . . placed on probation, may petition the Division of Medical Quality for . . . modification of penalty, including . . . termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of . . . the decision ordering that disciplinary action:

...

(2) At least two years for early termination of probation of three years or more.

...

(c) The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(d) . . . The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division . . . which shall be acted upon in accordance with Section 2335.

(e) . . . [T]he 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 . . .

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary”

The Burden and Standard of Proof

2. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored, and not on the board to prove to the contrary. *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.

3. A person seeking reinstatement must adduce stronger proof of his present honesty and integrity than one seeking admission for the first time. An applicant for reinstatement must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. *In re Menna* (1995) 11 Cal.4th 975, 986.

Relevant Factors in Determining Rehabilitation

4. Rehabilitation is a "state of mind." The law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." *Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.

5. Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.

6. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an application for readmission to a professional practice can demonstrate by sustained conduct over an extended period of time that he or she is once again fit to practice. *In re Menna* (1995) 11 Cal.4th 975, 991.

7. Cases involving rehabilitation commonly involve a substantial period of exemplary conduct following misdeeds. The more serious the misconduct and the bad character evidence, the stronger the showing of rehabilitation must be. Rehabilitation cannot be determined separate and apart from the offenses from which one claims to have become rehabilitated. Numerous illegal and bad acts cannot reasonably be viewed each in isolation, and they suggest a pattern of antisocial behavior casting doubt on moral character. Persons under the direct supervision of correctional authorities must behave in exemplary fashion, so little weight may be placed on the fact that an applicant did not commit additional crimes or continue improper behavior while in prison or while on probation or parole. See, *In re Gossage* (2000) 23 Cal.4th 1080, 1096-1099.

Evaluation Under Business and Professions Code Section 2703, Subdivision (e)

8. Dr. Hepner had no problems in the practice of medicine from the mid-1960s until the mid-1980s. For 20 years, Dr. Hepner was a reputable medical researcher and a respected professor of medicine.

Five years after leaving academia, and almost immediately after he began specializing in the personal injury medicine, Dr. Hepner embarked on a criminal venture that lasted about

half a dozen years. His briefly flourishing, highly lucrative illegal enterprise was designed to enrich himself financially, with patient care being a secondary consideration. Dr. Hepner lived the lifestyle of the rich and famous to the detriment of the community. The nature and extent of Dr. Hepner's wrongdoing should not be understated and cannot be forgotten.

In October 1991, Dr. Hepner was convicted of 25 felonies including filing and attempting to file false insurance claims, grant theft, conspiracy, paying an unlawful referral fee, filing false state income tax returns and perjury. These offenses involved fraud, deception and outright theft. The convictions arose directly out of Dr. Hepner's medical practice. The offenses were and are substantially and adversely related to Dr. Hepner's qualifications and fitness to serve as a licensed physician and surgeon.

Dr. Hepner remained in custody in state prison from January 1992 through May 1996. Dr. Hepner was released on parole after his discharge from state prison. Dr. Hepner's parole was terminated in late May 1999.

Thus, the period in which the most credible evidence of rehabilitation should be viewed is from late May 1999 to the present, and that evidence of rehabilitation should be measured against the nature and extent of Dr. Hepner's misconduct occurring in the mid and late 1980s.

In late April 2001, ALJ Waxman issued a Proposed Decision granting Dr. Hepner's petition for reinstatement. The Medical Board did not adopt the Proposed Decision. In July 2002, Superior Court Judge Talmadge R. Jones remanded the matter and directing the Medical Board to grant the petition. In mid-November 2002, the Medical Board issued a Decision After Remand, grudgingly granting reinstatement upon several conditions including a preliminary finding by an independent psychiatrist that Dr. Hepner was fit to practice and, if that condition were fulfilled, the requirement Dr. Hepner pass the SPEX examination, pass an approved Ethics course, not engage in solo practice and comply with other standard terms and conditions of probation. The appeals process resulted in Dr. Hepner losing the ability to practice medicine under a probationary license for about two years.

Dr. Hepner has complied with all terms and conditions of probation since his license was reinstated and placed on probation. Dr. Hepner claims he has completely rehabilitated himself and poses no risk to the public if probation were terminated. He offered sworn testimony and letters from members of the community to support his claims. Dr. Hepner wants off probation because it would benefit him professionally and financially.

There are several problems that need to be discussed before probation can be terminated.

The first is the general opinion within the medical community that there is no known cure for a bipolar disorder, which is regarded as a chronic and recurring disorder. While Dr. Hepner currently has no symptoms of a bipolar disorder, he carries the diagnosis and remains at risk for relapse. That is the reason he continues to see Dr. Milgrim. How Dr. Hepner has managed to become and remain symptom-free without active medical treatment and without

psychotherapy is something of a mystery. The conclusions of several psychiatrists that Dr. Hepner does not currently need active treatment do not necessarily mean Dr. Hepner will not suffer a relapse. If an untreated bipolar disorder provides the explanation for Dr. Hepner's dishonesty and crime spree in the late 1980s, an untreated bipolar disorder should not be disregarded or minimized now.

The second problem is that no compelling need was shown to terminate probation at this time. While terminating probation would make Dr. Hepner feel better about himself and would validate his rehabilitative efforts (and would likely result in Dr. Hepner paying less for professional liability insurance and increase meaningful employment opportunities available to him), public safety is really what is at issue, not Dr. Hepner's well-being.

The third problem is that continuing probation at this point – given the evidence of Dr. Hepner's rehabilitation – is primarily penal and serves no real public interest. There is some truth to this claim, although probation permits the Medical Board to continue monitoring Dr. Hepner's progress.

It is concluded that the safest approach is to remain cautious but hopeful, and to modify terms and conditions of probation to permit the Medical Board and the public to see how Dr. Hepner performs on probation with fewer practice restrictions before terminating his probation altogether. Taking this approach permits the further evaluation of Dr. Hepner's psychiatric condition and permits a fresh evaluation of Dr. Hepner's response to greater freedoms in the practice of medicine. If Dr. Hepner continues to do well on probation, as modified, his next petition for termination of probation will likely be viewed more favorably.

The probationary conditions Dr. Hepner has completed should be vacated. To enable Dr. Hepner to treat patients at the Midnight Mission in his professional capacity (which he says he wants to do) and to enable Dr. Hepner to increase his economic potential through a solo practice, the probationary condition prohibiting Dr. Hepner from engaging in a solo practice shall be vacated. The probationary condition requiring a practice monitor shall be modified to require review by a practice monitor only for those patients Dr. Hepner sees or treats in solo practice.

Cause Exists to Modify Probation

9. Cause exists to deny the Petition for Termination of Probation, but to modify existing terms and conditions of probation pursuant to Business and Professions Code section 2307 based on all Factual Findings and all Legal Conclusions.

Probationary condition 1 (requiring a psychiatric evaluation), probationary condition 2 (requiring the taking an Ethics course), probationary condition 3 (requiring the passing of the SPEX examination), and probationary condition 6 (the prohibition from engaging in solo practice) shall be vacated. Probationary condition 4 shall be modified to require a practice monitor only to review those cases in which petitioner sees a patient in a solo practice.

ORDER

The Petition for Termination of Probation dated December 16, 2004, is denied.

However, Probationary condition 1 (requiring a psychiatric evaluation), probationary condition 2 (requiring the taking an Ethics course), probationary condition 3 (requiring the passing of the SPEX examination), and probationary condition 6 (the prohibition from engaging in solo practice) set forth in the Order contained in the Decision After Remand are vacated in their entirety.

Probationary condition 4 is modified as follows:

“Within 30 days of the effective date of the Decision in this Petition for Termination of Probation, Petitioner shall submit to the Division or its designee for its prior approval a plan of practice in which Petitioner’s solo practice shall be monitored by another physician in Petitioner’s field of practice, who shall provide periodic reports to the Division or its designee. The requirement of having a practice monitor shall not apply to any employment situation or professional association in which Petitioner is associated or affiliated with other licensed physicians in good standing.

If the practice monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval of by the Division or its designee.”

All other conditions of probation shall remain in effect.

Dr. Hepner shall be permitted to file a petition to termination probation within one year of the effective date of the Decision in this matter.

DATED: 7/14/05.



JAMES AHLER

Administrative Law Judge
Office of Administrative Hearings

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

**In the Matter of the Petition for Reinstatement
of Revoked Certificate of:**

GERSHON W. HEPNER

Respondent.

OAH No. L2000100316

Case No: 20-1999-99250

DECISION AFTER REMAND

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings, on April 6, 2001, at Los Angeles, California.

Petitioner, Gershon W. Hepner ("Petitioner") was present and was represented by Henry R. Fenton, Attorney at Law.

Pursuant to the provisions of Government Code Section 11152, the Attorney General of the State of California was represented by Robert McKim Bell, Deputy Attorney General.

At the hearing, Petitioner's counsel objected to the admissibility of Exhibit 3, an abstract regarding an article from the American Journal of Psychiatry, on grounds that the exhibit lacked foundation and contained inadmissible hearsay. The Administrative Law Judge took the ruling on the exhibit's admissibility under submission. The foundation objection was overruled. Foundation was laid by expert witness, James Rosenberg, M.D. Although the exhibit contains hearsay inadmissible outside of an administrative proceeding, it is admissible pursuant to Government Code section 11513(d) in that it supplements Dr. Rosenberg's testimony.

Oral and documentary evidence was received and the matter submitted.

The administrative law judge's proposed decision submitted on April 23, 2001, was not adopted by the board. After oral argument, the Panel issued its decision on October 25, 2001, which became effective on November 26, 2001.

Thereafter, respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 01CS01673, which was heard and granted by the court on July 3, 2002. On August 2, 2002, the court issued its decision in the matter. The Superior Court of the State of California, pursuant to its Judgment Granting Petition for Peremptory Writ of Mandamus dated August 2, 2002, commanded this board to set aside its decision in the above matter dated October 25, 2001, to grant reinstatement to Petitioner on appropriate terms and conditions in order to assure patient safety, and to take any further actions specially enjoined on it by law.

The board issued an order on September 25, 2002, setting aside its decision in this matter. Having reconsidered the matter in light of the court's ruling, the board makes the following Decision on Remand in compliance with the Peremptory Writ. A copy of the Peremptory Writ and Ruling on Submitted Matter is attached as Exhibit "A".

FACTUAL FINDINGS

1. On or about March 28, 1977, the Medical Board of California ("Board") issued Physician and Surgeon Certificate No. A30885 to Petitioner.

2. On August 7, 1992, Accusation No. D-4867 was filed against Petitioner alleging conviction of a crime, acts of dishonesty and corruption with patients, unlawful referral of patients, and sexual abuse and misconduct. In a stipulated Decision, effective March 31, 1995, Petitioner's certificate was revoked.

3. In the Stipulation and Disciplinary Order referenced in Paragraph 2, above, Petitioner admitted the following facts:

"A. On or about October 25, 1991, in the Superior Court of the State of California for the County of Los Angeles, in proceedings entitled *People of the State of California v. Gershon Hepner*, Case No. BA092582, the respondent was convicted, upon his plea of guilty, of the following crimes:

"(1) Fourteen counts of filing a false Insurance (sic) claim, a violation of Insurance Code §556(a), felonies;

“(2) Three counts of attempt to file a false insurance claim, a violation of Penal and Insurance Code §§664/556(a), felonies;

“(3) One count of grand theft over \$100,000.00, a violation of Penal Code §487(1), a felony;

“(4) One count of conspiracy to commit insurance fraud, a violation of Penal Code §182/556(a), a felony;

“(5) One count of grand theft, a violation of Penal Code §487(a), a felony;

“(6) One count of payment of unlawful referral fees to a doctor (‘capping’), a violation of Business and Professions Code §650, a felony;

“(7) Three counts of filing false personal income tax returns, a violation of Revenue and Taxation Code §19406, felonies. Respondent also admitted to a violation over \$100,000.00 pursuant to Penal Code §12022.6(b); and

“(8) One count of perjury under oath, a violation of Penal Code §118, a felony.”

4. Petitioner was sentenced to imprisonment for a period of 8 years, 4 months and was ordered to pay restitution in the sum of \$10,000. He was ordered to spend the initial portion of his sentence at Atascadero State Hospital where he was treated for Bipolar Disorder. He was at that facility for approximately 18 months before being transferred to California Men’s Colony at San Luis Obispo in December of 1993 where he spent the next approximately 2 ½ years. In total, he was in custody from January of 1992 until May 29, 1996, having served slightly over half of his sentence. He spent the following three years on parole without any violations. Parole was terminated on May 29, 1999.

5. The early stages of Petitioner’s medical career were far disparate from the latter stages. Born in Germany and raised in England, Petitioner earned his medical degree from the University of London in 1963. He became a Member of the Royal College of Physicians in 1965 (the English equivalent to board certification). Having received a research fellowship in gastroenterology from Mount Sinai Hospital in New York, he came to the United States in 1968. Two years later, he moved to Rochester, Minnesota where he performed research at the Mayo Clinic. From 1972 to 1976, he

served as an Assistant Professor of Medicine at Pennsylvania State University in Hershey, Pennsylvania. Then, from 1976 to 1980, he served as an Associate Professor of Medicine in the Division of Gastroenterology, Department of Medicine at the Harbor Campus of UCLA. That position involved his spending 75% of his time teaching and doing research, and 25% of his time seeing patients.

6. In 1980, Petitioner left UCLA to begin a private practice in internal medicine in Century City. He chose against a gastroenterology practice because he did not perform the procedures associated with that specialty. Although he did serve as a consultant for patients with gastroenterological disorders, he referred such patients to other physicians for necessary procedures.

7. In approximately 1985, Petitioner decided to change his practice to one primarily involving the care and treatment of personal injury patients. His practice was a great success and, between 1984 and 1989, he opened and operated satellite offices in Inglewood, Hollywood and Studio City, earning an average annual gross income of \$1,700,000. However, that income was not legitimately derived. He paid "cappers" to provide him with personal injury patients. He billed for more extensive examinations than those he actually performed. He prepared fraudulent medical reports for patients he had not seen. He charged for more patient visits than actually occurred and charged at a rate of \$500 per visit. He billed for other work he did not perform. Patients' signatures were often forged on sign-in sheets so as to increase the amount of their bills without their knowledge. Petitioner's inflated bills were paid by insurance companies in connection with patients' personal injury claims. Petitioner also evaded income taxes and attributed tens of thousands of dollars of personal expenses to his corporation on his income tax returns.

8. During the late 1980's, Petitioner's conduct and demeanor began to change. He went through alternating stages of euphoria and depression. His life-style became flamboyant, even to the point of purchasing a taxicab-yellow Rolls Royce and wearing bright red silk shirts to his Orthodox synagogue (something he was aware was grossly inappropriate for such a congregation).

9. In June of 1989, the Department of Insurance executed search warrants at Petitioner's office and residence. Those searches resulted in his arrest. It was then that Respondent recognized that his emotional condition had undergone some very significant changes. He became severely depressed and sought treatment with Franklin C. Milgrim, M.D., a psychiatrist specializing in forensic psychiatry. Dr. Milgrim initially believed Petitioner was suffering from a dysthymic disorder but quickly realized he also suffered from hypomania. Dr. Milgrim then changed his diagnosis to Bipolar Disorder, a diagnosis upon which the mental health care providers involved in this case all concur. Dr. Milgrim prescribed Lithium and

Depakote for the hypomania, and a number of antidepressants. That, or a similar regimen was continued at Atascadero State Hospital and the California Men's Colony during Petitioner's imprisonment.

10. Prior to his incarceration, Petitioner was able to maintain his medical practice while treating with Dr. Milgrim. However, his depression eventually reached the point that Dr. Milgrim became concerned about Petitioner's ability to concentrate and to make good judgments. On November 1, 1990, more than four years before his certificate was revoked, Petitioner followed Dr. Milgrim's recommendation and terminated his medical practice.

11. Petitioner did not see Dr. Milgrim during his incarceration (although they occasionally did speak by telephone). He returned to Dr. Milgrim's care in June of 1996 and has been treating with him since. Due to the unpredictable nature of his disorder, Petitioner intends to continue treating with Dr. Milgrim indefinitely.

12. Petitioner was severely depressed and withdrawn in 1996, and had difficulty interacting with others, including his family. He spent most of his time writing poetry and scholarly works on the Torah, avocations he had been pursuing for a number of years. Petitioner's symptoms waxed and waned and, in August of 1997, his depression had improved to the point that Dr. Milgrim discontinued the Zoloft he had prescribed. In December of 1998, Dr. Milgrim discontinued the Depakote because of physical side effects Petitioner was experiencing. Although he is no longer medicated, Petitioner has not had any recurrence of bipolar symptoms since that time. Dr. Milgrim considers the Bipolar Disorder to be in remission. He firmly believes Petitioner is ready to return to the practice of medicine and is able to practice medicine without a risk to the public.¹

13. Dr. Milgrim's opinion regarding Petitioner's fitness to return to medical practice was disputed by expert witness, James Rosenberg, M.D., another forensic psychiatrist. Dr. Rosenberg shares the commonly held opinion that Bipolar Disorder is unpredictable and that, since Petitioner is no longer medicated for it, his disorder is a "ticking bomb." Advancing age, change in season, lack of sleep, stress, change in routine (i.e., crossing time zones), and other medications can all trigger a relapse. Dr. Rosenberg believes that certain physicians who suffer from Bipolar Disorder can safely practice medicine. However, he also believes that Bipolar Disorder is a life-long disorder that medications may control but do not cure, and that the risk of relapse is increased by discontinuing medications. He further believes that a patient who

¹ The Deputy Attorney General produced evidence that a role conflict exists when a treating psychotherapist also serves as his/her patient's expert witness. Dr. Rosenberg, who wrote the ethics chapter in the well-respected treatise Textbook of Psychiatry, testified to that effect and described an article in the April, 1997, issue of the American Journal of Psychiatry which concludes that fundamental incompatibilities exist between a psychotherapist's clinical and legal functions and that therefore, from an ethical standpoint, such a dual role should be avoided whenever possible. The Panel concludes there is an inherent adverse effect from such a relationship.

suffers a recurrence can lose insight and fail to seek timely treatment, and that manic physicians can become sexually inappropriate, perform procedures for which they lack the requisite skill, and go beyond their area of expertise. Therefore, in order for Petitioner to return to practice, he should be returned to a regimen of proper medication, be supervised on a daily basis, have his charts regularly reviewed and remain in psychotherapy.

14. Although the Panel finds Dr. Rosenberg's expert opinion to be more persuasive than that of Dr. Milgrim the court did not. The Panel notes for the record that it has no confidence in Dr. Milgrim's expert opinions due to the dual relationship between Petitioner and Dr. Milgrim.

15. The Panel concludes there is sufficient evidence to suggest that Petitioner has other underlying personality disorders that have not been appropriately diagnosed or treated and which are likely to pose a risk to public health and safety.

16. Although it was not established to the Panel's satisfaction that Petitioner can practice medicine safely even with restrictions, the court has ordered that Petitioner be reinstated. The terms set forth in the Order are necessary and proper to protect the public.

17. Petitioner has been a prolific writer for most of his life. He began writing about the Bible when he was approximately 20-years-old. He has written a 7000-page commentary on the Torah which has raised the interest of several biblical scholars. He has written two other scholarly works on the Torah which focus on aspects of the longer work, including the issue of whether biblical narratives are to be taken at face value or are to be viewed as literary rather than actual truth. Petitioner values his biblical research and writing both because they have enhanced his knowledge of biblical literature and religion, and because they have increased his awareness of ethics.

18. Petitioner wrote poetry until he finished medical school. He gave it up after medical school and then resumed his poetry writing while in prison. He sent his children approximately 180 original poems from prison. Several of his 2500 poems have been published. He is the Poetry Manager of a local Barnes and Noble bookstore where he hosts a monthly poetry reading session.

19. Dr. Milgrim does not view Petitioner's prolific writing as indicative of manic behavior, but rather as a healthy way of remaining productive and avoiding depression. Petitioner views his writing as a source of great enjoyment and fulfillment.

20. Petitioner practices Orthodox Judaism. In addition to his writing, he studies the Talmud nearly every day and attends a weekly Talmud class. He also gives seminars on the Bible once every three weeks. Petitioner believes his biblical and Talmudic studies have helped him to “understand the gravity of [his] offenses and reinforce [his] determination never to commit any crimes again.”

21. Between March of 1998 and May of 1999, Petitioner performed volunteer work at the Museum of Tolerance in West Los Angeles. That work consisted primarily of research for the museum’s studies.

22. In December of 1998, Petitioner began performing volunteer work for the Midnight Mission in Los Angeles. For 18 months, he obtained food for the mission six days per week. He now assists in obtaining clothing for the mission’s denizens. He also intends to assist the mission medically should his license be reinstated.

23. Petitioner has continued to meet and exceed his CME requirements. He reads the New England Journal of Medicine every week. (He did so while he was incarcerated as well.) He has twice taken the journal’s self-assessment examination, earning an 88% for the first program and 74% for the second, each time receiving 50 Category 1 credits. In addition, he took the 11th Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians. That program addresses all aspects of internal medicine. He did very well in the program. However, Petitioner has not practiced medicine for over 12 years. A continuing education program does not demonstrate that Petitioner has the requisite skill after such a lengthy absence from the practice of medicine to practice safely and competently.

24. In addition, in October of 2000, Petitioner voluntarily enrolled in the Physician Assessment and Clinical Education Program (“PACE”) offered by the University of California, San Diego School of Medicine. The program involved a Clinical Skills and Knowledge Assessment, a physical examination and a psychiatric examination. On November 3, 2000, William A. Norcross, M.D., the Director of the PACE program, wrote to Petitioner advising him of his results. That letter read in part:

“The neuropsychologists who performed your Neuropsychological Assessment noted your history of bipolar affective disorder, but noted no significant mania or thought disorder at the time of your Assessment. However, given your history of bipolar affective disorder, they did recommend that you maintain a clinical relationship with a

psychiatrist, even if you are currently in remission and do not require treatment, because of the unpredictable nature of the disease. The results of your physical examination were completely normal.

“Your performance on the Clinical Skills and Knowledge Assessment was superior. In fact, Dr. Harrity, our PACE Faculty member in the Department of Internal Medicine and Director of the Medicine Residency Program, gave you a 93% score on her exam, the highest ever received in Internal Medicine in the history of the PACE Program. Dr. Harrity remarked that you had done a superb job in keeping abreast of advancing knowledge in the field of Internal Medicine and did not feel that you required any clinical remediation.

“In summary, a thorough assessment of your clinical skills and knowledge, as well as your physical and mental health, reveals that it is quite safe for you to re-enter medical practice (with the above caveat of intermittent follow-up with a psychiatrist). . . .”

The Panel does not find the PACE psychiatric evaluation to be dispositive of the issue of Petitioner’s safety to practice medicine. The Panel further believes that, with due regard to its highest priority of consumer protection, Petitioner must successfully complete the SPEX examination and a psychiatric evaluation before Petitioner resumes the practice of medicine.

25. Petitioner is almost 63-years-old. In 1995, he went through an amicable divorce from his wife. He continues to reside in her home with two of their four children. Petitioner believes that neither he nor his wife ever stopped loving each other, but that his wife sought the divorce because of the stress Petitioner’s Bipolar Disorder, his crimes and his conviction placed on her. He would like to reconcile with his wife. Petitioner’s children are grown and manage their own successful lives. One of his sons is a resident in internal medicine at UCLA.

26. Petitioner has not been gainfully employed since he closed his practice in 1990. However, since his release from prison, he has remained active and busy with his studies, his writing, and his volunteer work. On Dr. Milgrim’s recommendation, he received Social Security Disability Benefits for his Bipolar Disorder. However, in May of 1999, he informed the Social Security Administration that he no longer needed those benefits because he was no longer disabled. He stopped receiving the benefits 11 months thereafter notwithstanding his repeated attempts to terminate the benefits earlier. He has supported himself since then through loans and other types of support from his family members and former wife.

27. Petitioner owes \$10,000 in restitution. He has not been in a financial position to pay the restitution.

28. Petitioner submitted numerous letters supporting the reinstatement of his medical license. The letters' authors, both from within and outside of the medical profession, all portray Petitioner as an individual who, despite his past transgressions, is a paragon of intelligence, competence, piety, honesty, integrity, trustworthiness, and contrition. The Panel gives very little weight to these letters as the tenor of the letters suggests that the authors have a personal or family relationship with Petitioner and are therefore not objective.

ORDER

Pursuant to the Judgment Granting Peremptory Writ of Mandate dated August 2, 2002, the Panel makes the following order:

The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A 30885 is granted; provided, however, that the newly reinstated certificate is hereby revoked, the revocation is stayed and Petitioner is placed on probation for 6 years upon the following terms and conditions:

1. Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed psychiatrist, who shall furnish an evaluation report to the division or its designee. The respondent shall pay the cost of the psychiatric evaluation.

If respondent is required by the Division or its designee to undergo psychiatric treatment, respondent shall within 30 days of the requirement notice, submit to the Division for its prior approval the name and qualifications of a psychiatrist of respondent's choice. Respondent shall undergo and continue psychiatric treatment until further notice from the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly status reports to the Division or its designee indicating whether the respondent is capable of practicing medicine safely.

Respondent shall pay the cost of the evaluation and therapy.

Respondent shall not engage in the practice of medicine until notified by the Division or its designee of its determination that respondent is mentally fit to practice safely.

2. Within 60 days of the effective date of this decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

3. Within 60 days of the effective date of this Decision, or as soon thereafter as determined by the Board, respondent shall take and pass the Special Purpose Examination ("SPEX") of the Federation of State Medical Boards. Respondent shall not practice medicine until he has passed this examination and has been so notified by the Board in writing.

4. Within 30 days of the effective date of this decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee. If, however, the monitor informs the Board that respondent's files contain statement or billing irregularities, the Board in its discretion may extend the monitoring of respondent's practice.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the division or its designee.

5. Within thirty (30) days of the effective date of this decision, respondent shall also submit to the Division or its designee for its prior approval a plan in which respondent's billings for medical services shall be monitored by another physician, who shall provide periodic reports to the Division or its designee.

If the billing monitor resigns or is no longer available, respondent shall, within fifteen (15) days, move to have a new monitor appointed, through nomination by respondent and approval by the Division or its designee.

6. Respondent is prohibited from engaging in solo practice.

7. During probation, respondent is prohibited from supervising physician assistants.

8. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments and other orders.

9. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

10. Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his or her addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall, at all times, maintain a current and renewed physician's and surgeon's license.

Respondent shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

11. Respondent shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

12. In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary order.

13. Upon successful completion of probation, respondent's certificate shall be fully restored.

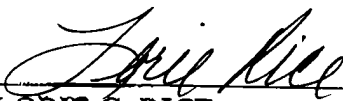
14. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Division reserves the right to evaluate the respondent's request and to

exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

16. The respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

IT IS SO ORDERED this 21st day of November, 2002.



LORIE G. RICE
Chairperson, Panel A
Division of Medical Quality
Medical Board of California

EXHIBIT A

1 HENRY R. FENTON, State Bar #45130
2 Law Offices of HENRY R. FENTON
3 11845 W. Olympic Blvd., Suite 775
4 Los Angeles, CA 90064
5 Telephone: (310) 444-5244

6 Attorneys for Petitioner
7 GERSHON W. HEPNER, M.D.

ENDORSED

AUG - 2 2002

By D. FULLER, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SACRAMENTO**

10
11 **GERSHON W. HEPNER, M.D.,**)

12 **Petitioner**)

13 **vs.**)

14 **MEDICAL BOARD OF CALIFORNIA,**)

15 **Respondent.**)
16)
17)

CASE NO. 01CS01673

**~~PROPOSED~~ JUDGMENT
GRANTING PEREMPTORY
WRIT OF MANDAMUS**

18
19 This matter came regularly before this court on June 7, 2002 for hearing. Henry
20 R. Fenton appeared as attorney for Petitioner; Robert McKim Bell appeared as attorney
21 for Respondent. The record of the administrative proceedings having been received into
22 evidence and examined by the court and no additional evidence having been received by
23 the court, arguments having been presented and the court having made a ruling on
24 submitted matter which has been signed and filed,
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED that:

1. A peremptory writ of mandamus shall issue from the court, remanding the proceedings to Respondent and commanding Respondent to set aside its decision of October 25, 2001, in the administrative proceedings titled, In the Matter of the Petition for Reinstatement of Revoked Certificate of: Gershon W. Hepner, Respondent, to reconsider its action in the light of this Court's Ruling On Submitted Matter, and to grant reinstatement to Petitioner on appropriate terms and conditions in order to assure patient safety, and to take any further actions specially enjoined on it by law; but nothing in this judgment or in that writ shall limit or control in any way the discretion legally vested in Respondent.

2. Petitioner shall recover costs in this proceeding in the amount of \$ _____.

Dated: AUG - 2 2002

THE HONORABLE TALMADGE JONES

TALMADGE R. JONES

Judge, Sacramento Superior Court



JUDGEMENT ENTERED ON AUG - 2 2002

By:

[Handwritten Signature]
Deputy Clerk

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11835 W. Olympic Boulevard, Suite 705, Los Angeles, California 90064-5020.

On July 26, 2002, I served on the interested parties in this action the foregoing document(s) as described as:

[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDAMUS

By placing ___ the original or X a true copy thereof enclosed in sealed envelope(s) address as follows:

**Robert McKim Bell, Deputy Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013**

X BY MAIL

X I caused such envelope to be deposited in the mail or Federal Express Drop Box at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

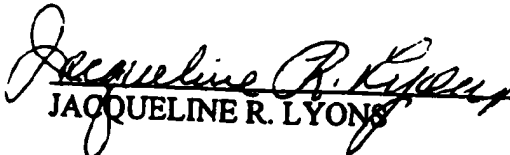
___ BY PERSONAL SERVICE

___ I caused such envelope to be delivered by hand via messenger service to the offices of the addressee.

Executed on _____ 20__ at _____

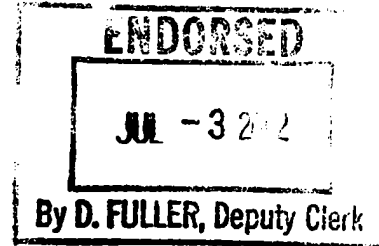
X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

___ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


JACQUELINE R. LYONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Superior Court of California
County of Sacramento**



GERSHON W. HEPNER, M.D.,
Petitioner,

NO. 01CS01673

v.

COURT'S RULING ON
SUBMITTED MATTER

MEDICAL BOARD OF
CALIFORNIA,
Respondent.

The Court heard oral argument on this matter on June 7, 2002 and took the matter under submission. In addition to the points raised during argument, the Court has read and considered the written filings of the parties and the entire administrative record. The Court now issues its ruling on the petition for writ of mandate.

This is a petition to review a decision of respondent Medical Board of California denying petitioner's application for reinstatement of his medical license after revocation. In its review of the Board's decision, the Court is limited to a determination of whether the Board's findings are supported by substantial evidence in the light of the whole record.

1 *Housman v. Board of Medical Examiners* (1948) 84 Cal. App. 2d 308, 315; *Flanzer v.*
2 *Board of Dental Examiners* (1990) 220 Cal. App. 3d 1392, 1396. Substantial evidence has
3 been defined as evidence of ponderable legal significance, reasonable in nature, credible and
4 of solid value; it is not synonymous with simply any evidence. (See, *Saks v. Charity*
5 *Mission Baptist Church* (2001) 90 Cal. App. 4th 1116, 1132.)
6

7 Having reviewed the entire record in this matter and evaluated all the evidence
8 therein in light of the whole record, the Court finds that the Board's decision is not
9 supported by substantial evidence. Accordingly, the petition for writ of mandate is
10 GRANTED.

11 The Board's decision rests primarily on two findings regarding petitioner's mental
12 condition. One is that petitioner's bipolar disorder renders him unfit to practice even with
13 restrictions. (Corrected Decision After Nonadoption, Factual Findings, paragraph 16.)
14

15 The other is that, in addition to bipolar disorder, petitioner has "other underlying
16 personality disorders that have not been appropriately diagnosed or treated and which are
17 likely to pose a risk to public health and safety." (*Id.*, Factual Findings, paragraph 15.)
18

19 Both findings are derived from the medical opinion of James E. Rosenberg, M.D., a
20 forensic psychiatrist who submitted a letter opinion regarding petitioner's condition
21 (Hearing Exhibit 7) and provided rebuttal testimony on behalf of respondent at the hearing.

22 The Court finds that Dr. Rosenberg's testimony is not substantial evidence in
23 support of either of the above-referenced findings. The Court notes at the outset that Dr.
24 Rosenberg did not examine petitioner in person or administer any tests to him, but limited
25 his review to three volumes of medical records provided by counsel for respondent. While
26 such limited review is not improper, it does, in the Court's view, significantly detract from
27 the value of Dr. Rosenberg's ultimate opinions regarding petitioner's mental condition.
28

1 On the first point, whether petitioner could safely practice medicine given his
2 bipolar disorder, Dr. Rosenberg testified at the hearing that he did not believe that
3 petitioner could do so even with significant monitoring and restrictions on his practice.
4 Although he acknowledged that petitioner's bipolar disorder was in remission, he described
5 it as a "ticking time bomb" that could put patients at risk in as little as 24 hours. (Hearing
6 Transcript, page 184.) The Board seems to have rested its decision primarily on this part
7 of Dr. Rosenberg's testimony.
8

9 From the Court's reading of the totality of Dr. Rosenberg's testimony, however, a
10 somewhat different picture emerges. Dr. Rosenberg's concern appears to the Court to be
11 not merely a matter of petitioner's bipolar disorder *per se*, but of the fact that petitioner's
12 treating psychiatrist had allowed petitioner to stop taking medication for the disorder,
13 thereby creating a significant risk of relapse. Dr. Rosenberg described the conditions under
14 which a relapse might occur without warning, including stress and fatigue. It was in this
15 context that he used the "ticking time bomb" analogy. (Hearing Transcript, pages 174-177,
16 179.)
17

18 In his written opinion, though, Dr. Rosenberg stated that petitioner could practice
19 safety if he remained on maintenance mood stabilizer medication and was monitored and
20 supervised on a daily basis. (Hearing Exhibit 7, page 2, paragraph 6.) At the hearing, Dr.
21 Rosenberg testified in some detail (albeit perhaps reluctantly) regarding the types of
22 conditions that should be imposed to insure that petitioner could practice safely. (Hearing
23 Transcript, pages 181-184.) And Dr. Rosenberg conceded that there were physicians with
24 bipolar disorder practicing safely in California while on regular medication, some of whom
25 he had personally evaluated. (Hearing Transcript, page 207.)
26
27
28

1 All of these points, taken as a whole, substantially undercut Dr. Rosenberg's clear-
2 cut statement that petitioner's bipolar disorder rendered him incapable of practicing
3 medicine safely under any circumstances. The Court thus finds Dr. Rosenberg's testimony
4 not to be substantial evidence in support of a finding that petitioner cannot practice safely
5 even with appropriate monitoring and conditions.

6 On the other finding, relating to petitioner's alleged "other underlying personality
7 disorders", the Court similarly finds that Dr. Rosenberg's testimony is not substantial
8 evidence to support the Board's decision. Dr. Rosenberg initially relied on the fact that
9 petitioner's criminal charges "...were not reduced or excused on the basis of a major
10 mental illness..." to support his conclusion that "...it remains an open issue as to how
11 much of his past criminal behavior was related to mental illness versus volitional antisocial
12 motivations." (Hearing Exhibit 7, page 1, paragraph 1.) The Court finds this statement to
13 be sheer speculation rather than any kind of definitive opinion and therefore of little value in
14 establishing the actual presence or absence of any "volitional antisocial motivations".
15

16 At the hearing, Dr. Rosenberg reiterated this point, and expanded on it with at least
17 two more. The first was that petitioner's criminal acts involved elements of persistence,
18 organization and "sequential thinking" that allegedly were incompatible with bipolar
19 symptoms. (Hearing Transcript, page 171.) This value of this statement as evidence is
20 substantially undercut by the fact that it is not seriously disputed that petitioner indeed
21 suffered from bipolar disorder at the time of his crimes. Moreover, Dr. Rosenberg simply
22 stated his conclusion without providing any explanation to support it. In the absence of any
23 such explanation, the Court finds this testimony wholly conclusionary, unpersuasive and
24 therefore not substantial evidence to support the Board's finding.
25
26
27
28

1 Dr. Rosenberg's remaining point was that the other documentation he had
2 reviewed, primarily petitioner's probation report and the medical reports generated during
3 petitioner's confinement at the Atascadero State Hospital, demonstrated that he displayed
4 antisocial personality traits. (Hearing Transcript, pages 172, 196.) The Court has
5 reviewed the Atascadero reports (Hearing Exhibit 4) in detail and finds that they are not
6 substantial evidence that would support such a conclusion. In the Court's view, those
7 documents reflected petitioner's understandable difficulties adjusting to conditions inside a
8 prison hospital, and his response to traumatic events such as a physical assault and the use
9 of anti-Semitic slurs by other patients, rather than evidence of petitioner's underlying bad
10 character.
11

12 Similarly, the Court does not find that the allegedly "self-serving" nature of
13 statements attributed to petitioner in the probation report (Hearing Exhibit 5) are
14 substantial evidence of petitioner's antisocial character. Such statements were petitioner's
15 attempt to explain, frankly and without evasion, why he did what he did. The Court notes
16 that even the author of the report found petitioner to be "cooperative" and "genuinely
17 remorseful" (Hearing Exhibit 5, page 41), traits that are inconsistent with a truly antisocial
18 personality.
19

20 Respondent also relies on petitioner's own testimony that acknowledged his
21 personality problems and "antisocial trait[s]" in relation to his crimes. (Hearing Transcript,
22 pages 66-67.) The Court finds such testimony to be petitioner's frank and candid
23 acknowledgment of his acts. Rather than substantial evidence of persistent bad character,
24 such words demonstrate petitioner's willingness to accept responsibility for his acts instead
25 of simply "hiding behind his disorder".
26
27
28

1 Accordingly, the Court finds no substantial evidence that petitioner possesses
2 antisocial personality traits or other underlying personality disorders that render him unfit
3 to practice medicine safely under any circumstances.

4 Of course, the fact that the evidence allegedly demonstrating a reinstatement
5 applicant's unfitness to practice is found not to be substantial is not by itself sufficient to
6 justify reinstatement. The applicant has the affirmative burden of demonstrating his or her
7 fitness and, as one court has stated, "...should not be reinstated in the ranks of
8 the...profession except on the most clear and convincing...proof of reform." *Housman v.*
9 *Board of Medical Examiners* (1948) 84 Cal. App. 2d 308, 316. Significant evidence of
10 rehabilitation is therefore necessary to support reinstatement.

11 In this case, the Court concurs with the finding of Administrative Law Judge H.
12 Stuart Waxman that petitioner's "...rehabilitation has been extraordinary. He has met and
13 exceeded the criteria set forth in Business and Professions Code section 2307, and in Title
14 16, California Code of Regulation, section 1657." (Proposed Decision, page 9.)
15 To summarize briefly what the record demonstrates, since his release from prison in 1996,
16 petitioner has not committed any further offenses. Beyond that, he was worked
17 assiduously to address the causes of his criminal acts and to reform and rehabilitate himself
18 through study and volunteer work. Petitioner has been active in religious studies and
19 practice, and through such studies has gained significant insight into ethics and his
20 behavior. Far from remaining idle during this difficult period in his life, petitioner has
21 engaged in significant volunteer work with the Midnight Mission and the Museum of
22 Tolerance. He is fully aware of the nature of his bipolar disorder, continues in treatment
23 with Dr. Milgrim, and is aware of the danger of a relapse.

1 Petitioner has also worked hard to maintain his professional skills even while being
2 unable to work as a doctor. He has kept up with current developments in medicine and has
3 scored very highly on continuing education self-assessment tests. In fact, petitioner
4 received the highest score ever received in Internal Medicine in the history of the Physician
5 Assessment and Clinical Education Program, a body on which respondent frequently relies
6 in determining the fitness of licensees. Significantly, the Director of the PACE program
7 stated that "...a thorough assessment of your clinical skills and knowledge, as well as your
8 physical and mental health, reveals that it is quite safe for you to re-enter medical practice
9 (with the above caveat of intermittent follow-up with a psychiatrist)." (Hearing Exhibit A.)
10

11 Finally, petitioner submitted a series of character reference letters from persons who
12 know him well attesting to his efforts at rehabilitation as described above. (Hearing
13 Exhibits D-L; N-O; Q.) Respondent should have given those letters more weight than it
14 did, as the letters demonstrate detailed knowledge of petitioner's activities and associates
15 and present positive evidence of particular activities indicating rehabilitation. (See,
16 *Housman v. Board of Medical Examiners* (1948) 84 Cal. App. 2d 308, 316-317.)
17

18 If, as was stated in *Housman v. Board of Medical Examiners* (1948) 84 Cal. App.
19 2d 308, 318, rehabilitation "would appear to require some positive action", petitioner
20 amply demonstrated that he has taken such action.
21

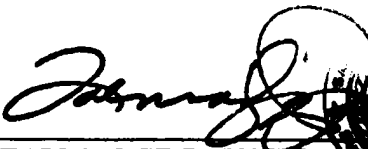

22 Because the record demonstrates petitioner's rehabilitation and because there is no
23 substantial evidence that he cannot practice safely with proper monitoring and conditions,
24 either by virtue of his bipolar disorder or some other underlying personality disorder, the
25 Board's decision denying reinstatement altogether was not supported by substantial
26 evidence. Accordingly, the petition for writ of mandate is granted.
27
28

1 The Court recognizes, however, that the evidence demonstrates that the nature of
2 petitioner's bipolar disorder, and the danger of a relapse if it is not properly monitored and
3 controlled, require that reinstatement be granted on appropriate terms and conditions in
4 order to insure patient safety. The matter is thus ordered remanded to the Board for
5 consideration of such terms and conditions. Nothing in this ruling is intended to control the
6 discretion of the Board in imposing such terms and conditions on petitioner's reinstatement
7 as, in its judgment, are necessary and proper under the circumstances.
8

9 Counsel for petitioner is directed to prepare an order and judgment granting the
10 petition, submit them to counsel for respondent for approval as to form, and submit them to
11 the Court for signature and entry.
12

13
14
15
16
17 Dated:

JUL - 3 2002

18  
19 TALMADGE R. JONES
20 Judge of the Superior Court
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

GERSHON W. HEPNER, M.D.,)
)
Petitioner,)
)
v)
MEDICAL BOARD OF)
CALIFORNIA)
Respondent.)
)
_____)

No. 01CSA01673

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that I am not a party to the cause and that on July 3, 2002, at Sacramento, California, I served copies of the Court's Ruling on Submitted Matter dated July 3, 2002, by placing said documents in an envelope addressed as follows:

Henry R. Fenton
11845 Olympic Blvd., Ste. 775
Los Angeles, CA 90064

Robert Mckim Bell
300 South Spring Street, Ste. 5000
Los Angeles, CA 90013

I further certify that the envelope was sealed and deposited in the mail with postage thereon fully prepaid.

DATED: July 3, 2002

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

By 
Debera Fuller, Deputy Clerk

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

**In the Matter of the Petition for Reinstatement
of Revoked Certificate of:**

GERSHON W. HEPNER

Respondent.

OAH No. L2000100316

Case No: 20-1999-99250

CORRECTED DECISION AFTER NONADOPTION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings, on April 6, 2001 at Los Angeles, California.

Petitioner, Gershon W. Hepner ("Petitioner") was present and was represented by Henry R. Fenton, Attorney at Law.

Pursuant to the provisions of Government Code Section 11152, the Attorney General of the State of California was represented by Robert McKim Bell, Deputy Attorney General.

At the hearing, Petitioner's counsel objected to the admissibility of Exhibit 3, an abstract regarding an article from the American Journal of Psychiatry, on grounds that the exhibit lacked foundation and contained inadmissible hearsay. The Administrative Law Judge took the ruling on the exhibit's admissibility under submission. The foundation objection is overruled. Foundation was laid by expert witness, James Rosenberg, M.D. Although the exhibit does contain hearsay inadmissible outside of an administrative proceeding, it is admissible pursuant to Government Code section 11513(d) in that it supplements Dr. Rosenberg's testimony.

Oral and documentary evidence was received and the matter submitted.

The proposed decision of the administrative law judge was submitted to the Division of Medical Quality, Medical Board of California (hereafter "division") on

April 23, 2001. After due consideration thereof, the division declined to adopt the proposed decision and thereafter on May 15, 2001, issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. On August 19, 2001, the division issued a Notice of Time for Oral Argument. Oral argument was heard on October 4, 2001. The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, Panel A of the division hereby makes the following decision and order:

FACTUAL FINDINGS

1. On or about March 28, 1977, the Medical Board of California ("Board") issued Physician and Surgeon Certificate No. A30885 to Petitioner.

2. On August 7, 1992, Accusation No. D-4867 was filed against Petitioner alleging conviction of a crime, acts of dishonesty and corruption with patients, unlawful referral of patients, and sexual abuse and misconduct. In a stipulated Decision, effective March 31, 1995, Petitioner's certificate was revoked.

3. In the Stipulation and Disciplinary Order referenced in Paragraph 2, above, Petitioner admitted the following facts:

"A. On or about October 25, 1991, in the Superior Court of the State of California for the County of Los Angeles, in proceedings entitled *People of the State of California v. Gershon Hepner*, Case No. BA092582, the respondent was convicted, upon his plea of guilty, of the following crimes:

"(1) Fourteen counts of filing a false Insurance (sic) claim, a violation of Insurance Code §556(a), felonies;

"(2) Three counts of attempt to file a false insurance claim, a violation of Penal and Insurance Code §§664/556(a), felonies;

"(3) One count of grand theft over \$100,000.00, a violation of Penal Code §487(1), a felony;

"(4) One count of conspiracy to commit insurance fraud, a violation of Penal Code §182/556(a), a felony;

“(5) One count of grand theft, a violation of Penal Code §487(a), a felony;

“(6) One count of payment of unlawful referral fees to a doctor (‘capping’), a violation of Business and Professions Code §650, a felony;

“(7) Three counts of filing false personal income tax returns, a violation of Revenue and Taxation Code §19406, felonies. Respondent also admitted to a violation over \$100,000.00 pursuant to Penal Code §12022.6(b); and

“(8) One count of perjury under oath, a violation of Penal Code §118, a felony.”

4. Petitioner was sentenced to imprisonment for a period of 8 years, 4 months and was ordered to pay restitution in the sum of \$10,000. He was ordered to spend the initial portion of his sentence at Atascadero State Hospital where he was treated for Bipolar Disorder. He was at that facility for approximately 18 months before being transferred to California Men’s Colony at San Luis Obispo in December of 1993 where he spent the next approximately 2 ½ years. In total, he was in custody from January of 1992 until May 29, 1996, having served slightly over half of his sentence. He spent the following three years on parole without any violations. Parole was terminated on May 29, 1999.

5. The early stages of Petitioner’s medical career were far disparate from the latter stages. Born in Germany and raised in England, Petitioner earned his medical degree from the University of London in 1963. He became a Member of the Royal College of Physicians in 1965 (the English equivalent to board certification). Having received a research fellowship in gastroenterology from Mount Sinai Hospital in New York, he came to the United States in 1968. Two years later, he moved to Rochester, Minnesota where he performed research at the Mayo Clinic. From 1972 to 1976, he served as an Assistant Professor of Medicine at Pennsylvania State University in Hershey, Pennsylvania. Then, from 1976 to 1980, he served as an Associate Professor of Medicine in the Division of Gastroenterology, Department of Medicine at the Harbor Campus of UCLA. That position involved his spending 75% of his time teaching and doing research, and 25% of his time seeing patients.

6. In 1980, Petitioner left UCLA to begin a private practice in internal medicine in Century City. He chose against a gastroenterology practice because he did not perform the procedures associated with that specialty. Although he did serve as a consultant for patients with gastroenterological disorders, he referred such patients to other physicians for necessary procedures.

7. In approximately 1985, Petitioner decided to change his practice to one primarily involving the care and treatment of personal injury patients. His practice was a great success and, between 1984 and 1989, he opened and operated satellite offices in Inglewood, Hollywood and Studio City, earning an average annual gross income of \$1,700,000. However, that income was not legitimately derived. He paid "cappers" to provide him with personal injury patients. He billed for more extensive examinations than those he actually performed. He prepared fraudulent medical reports for patients he had not seen. He charged for more patient visits than actually occurred and charged at a rate of \$500 per visit. He billed for other work he did not perform. Patients' signatures were often forged on sign-in sheets so as to increase the amount of their bills without their knowledge. Petitioner's inflated bills were paid by insurance companies in connection with patients' personal injury claims. Petitioner also evaded income taxes and attributed tens of thousands of dollars of personal expenses to his corporation on his income tax returns.

8. During the late 1980's, Petitioner's conduct and demeanor began to change. He went through alternating stages of euphoria and depression. His life-style became flamboyant, even to the point of purchasing a taxicab-yellow Rolls Royce and wearing bright red silk shirts to his Orthodox synagogue (something he was aware was grossly inappropriate for such a congregation).

9. In June of 1989, the Department of Insurance executed search warrants at Petitioner's office and residence. Those searches resulted in his arrest. It was then that Respondent recognized that his emotional condition had undergone some very significant changes. He became severely depressed and sought treatment with Franklin C. Milgrim, M.D., a psychiatrist specializing in forensic psychiatry. Dr. Milgrim initially believed Petitioner was suffering from a dysthymic disorder but quickly realized he also suffered from hypomania. Dr. Milgrim then changed his diagnosis to Bipolar Disorder, a diagnosis upon which the mental health care providers involved in this case all concur. Dr. Milgrim prescribed Lithium and Depakote for the hypomania, and a number of antidepressants. That, or a similar regimen was continued at Atascadero State Hospital and the California Men's Colony during Petitioner's imprisonment.

10. Prior to his incarceration, Petitioner was able to maintain his medical practice while treating with Dr. Milgrim. However, his depression eventually reached the point that Dr. Milgrim became concerned about Petitioner's ability to concentrate and to make good judgments. On November 1, 1990, more than four years before his certificate was revoked, Petitioner followed Dr. Milgrim's recommendation and terminated his medical practice.

11. Petitioner did not see Dr. Milgrim during his incarceration (although they occasionally did speak by telephone). He returned to Dr. Milgrim's care in June of 1996 and has been treating with him since. Due to the unpredictable nature of his disorder, Petitioner intends to continue treating with Dr. Milgrim indefinitely.

12. Petitioner was severely depressed and withdrawn in 1996, and had difficulty interacting with others, including his family. He spent most of his time writing poetry and scholarly works on the Torah, avocations he had been pursuing for a number of years. Petitioner's symptoms waxed and waned and, in August of 1997, his depression had improved to the point that Dr. Milgrim discontinued the Zoloft he had prescribed. In December of 1998, Dr. Milgrim discontinued the Depakote because of physical side effects Petitioner was experiencing. Although he is no longer medicated, Petitioner has not had any recurrence of bipolar symptoms since that time. Dr. Milgrim considers the Bipolar Disorder to be in remission. He firmly believes Petitioner is ready to return to the practice of medicine and is able to practice medicine without a risk to the public.¹

13. Dr. Milgrim's opinion regarding Petitioner's fitness to return to medical practice was disputed by expert witness, James Rosenberg, M.D., another forensic psychiatrist. Dr. Rosenberg shares the commonly held opinion that Bipolar Disorder is unpredictable and that, since Petitioner is no longer medicated for it, his disorder is a "ticking bomb." Advancing age, change in season, lack of sleep, stress, change in routine (i.e., crossing time zones), and other medications can all trigger a relapse. Dr. Rosenberg believes that certain physicians who suffer from Bipolar Disorder can safely practice medicine. However, he also believes that Bipolar Disorder is a life-long disorder that medications may control but do not cure, and that the risk of relapse is increased by discontinuing medications. He further believes that a patient who suffers a recurrence can lose insight and fail to seek timely treatment, and that manic physicians can become sexually inappropriate, perform procedures for which they lack the requisite skill, and go beyond their area of expertise. Therefore, in order for Petitioner to return to practice, he should be returned to a regimen of proper medication, be supervised on a daily basis, have his charts regularly reviewed and remain in psychotherapy.

14. The Panel finds Dr. Rosenberg's expert opinion to be more persuasive than that of Dr. Milgrim. The Panel has no confidence in Dr. Milgrim's expert opinions due to the dual relationship between Petitioner and Dr. Milgrim.

15. The Panel concludes there is sufficient evidence to suggest that Petitioner has other underlying personality disorders that have not been appropriately diagnosed or treated and which are likely to pose a risk to public health and safety.

¹ The Deputy Attorney General produced evidence that a role conflict exists when a treating psychotherapist also serves as his/her patient's expert witness. Dr. Rosenberg, who wrote the ethics chapter in the well-respected treatise Textbook of Psychiatry, testified to that effect and described an article in the April, 1997 issue of the American Journal of Psychiatry which concludes that fundamental incompatibilities exist between a psychotherapist's clinical and legal functions and that therefore, from an ethical standpoint, such a dual role should be avoided whenever possible. The Panel concludes there is an inherent adverse effect from such a relationship.

16. It was not established to the Panel's satisfaction that Petitioner can practice medicine safely even with restrictions.

17. Petitioner has been a prolific writer for most of his life. He began writing about the Bible when he was approximately 20-years-old. He has written a 7000-page commentary on the Torah which has raised the interest of several biblical scholars. He has written two other scholarly works on the Torah which focus on aspects of the longer work, including the issue of whether biblical narratives are to be taken at face value or are to be viewed as literary rather than actual truth. Petitioner values his biblical research and writing both because they have enhanced his knowledge of biblical literature and religion, and because they have increased his awareness of ethics.

18. Petitioner wrote poetry until he finished medical school. He gave it up after medical school and then resumed his poetry writing while in prison. He sent his children approximately 180 original poems from prison. Several of his 2500 poems have been published. He is the Poetry Manager of a local Barnes and Noble bookstore where he hosts a monthly poetry reading session.

19. Dr. Milgrim does not view Petitioner's prolific writing as indicative of manic behavior, but rather as a healthy way of remaining productive and avoiding depression. Petitioner views his writing as a source of great enjoyment and fulfillment.

20. Petitioner practices Orthodox Judaism. In addition to his writing, he studies the Talmud nearly every day and attends a weekly Talmud class. He also gives seminars on the Bible once every three weeks. Petitioner believes his biblical and Talmudic studies have helped him to "understand the gravity of [his] offenses and reinforce [his] determination never to commit any crimes again."

21. Between March of 1998 and May of 1999, Petitioner performed volunteer work at the Museum of Tolerance in West Los Angeles. That work consisted primarily of research for the museum's studies.

22. In December of 1998, Petitioner began performing volunteer work for the Midnight Mission in Los Angeles. For 18 months, he obtained food for the mission six days per week. He now assists in obtaining clothing for the mission's denizens. He also intends to assist the mission medically should his license be reinstated.

23. Petitioner has continued to meet and exceed his CME requirements. He reads the New England Journal of Medicine every week. (He did so while he was incarcerated as well.) He has twice taken the journal's self-assessment examination, earning an 88% for the first program and 74% for the second, each time receiving 50

Category 1 credits. In addition, he took the 11th Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians. That program addresses all aspects of internal medicine. He did very well in the program.

24. In addition, in October of 2000, Petitioner voluntarily enrolled in the Physician Assessment and Clinical Education Program ("PACE") offered by the University of California, San Diego School of Medicine. The program involved a Clinical Skills and Knowledge Assessment, a physical examination and a psychiatric examination. On November 3, 2000, William A. Norcross, M.D., the Director of the PACE program, wrote to Petitioner advising him of his results. That letter read in part:

"The neuropsychologists who performed your Neuropsychological Assessment noted your history of bipolar affective disorder, but noted no significant mania or thought disorder at the time of your Assessment. However, given your history of bipolar affective disorder, they did recommend that you maintain a clinical relationship with a psychiatrist, even if you are currently in remission and do not require treatment, because of the unpredictable nature of the disease. The results of your physical examination were completely normal.

"Your performance on the Clinical Skills and Knowledge Assessment was superior. In fact, Dr. Harrity, our PACE Faculty member in the Department of Internal Medicine and Director of the Medicine Residency Program, gave you a 93% score on her exam, the highest ever received in Internal Medicine in the history of the PACE Program. Dr. Harrity remarked that you had done a superb job in keeping abreast of advancing knowledge in the field of Internal Medicine and did not feel that you required any clinical remediation.

"In summary, a thorough assessment of your clinical skills and knowledge, as well as your physical and mental health, reveals that it is quite safe for you to re-enter medical practice (with the above caveat of intermittent follow-up with a psychiatrist). . . ."

The Panel did not find the PACE psychiatric evaluation to be dispositive of the issue of Petitioner's safety to practice medicine.

25. Petitioner is almost 63-years-old. In 1995, he went through an amicable divorce from his wife. He continues to reside in her home with two of their four children. Petitioner believes that neither he nor his wife ever stopped loving each other, but that his wife sought the divorce because of the stress Petitioner's Bipolar Disorder, his crimes and his conviction placed on her. He would like to reconcile with his wife. Petitioner's children are grown and manage their own successful lives. One of his sons is a resident in internal medicine at UCLA.

26. Petitioner has not been gainfully employed since he closed his practice in 1990. However, since his release from prison, he has remained active and busy with his studies, his writing, and his volunteer work. On Dr. Milgrim's recommendation, he received Social Security Disability Benefits for his Bipolar Disorder. However, in May of 1999, he informed the Social Security Administration that he no longer needed those benefits because he was no longer disabled. He stopped receiving the benefits 11 months thereafter notwithstanding his repeated attempts to terminate the benefits earlier. He has supported himself since then through loans and other types of support from his family members and former wife.

27. Petitioner owes \$10,000 in restitution. He has not been in a financial position to pay the restitution.

28. Petitioner submitted numerous letters supporting the reinstatement of his medical license. The letters' authors, both from within and outside of the medical profession, all portray Petitioner as an extraordinary individual who, despite his past transgressions, is a paragon of intelligence, competence, piety, honesty, integrity, trustworthiness, and contrition. The Panel gives very little weight to these letters as the tenor of the letters suggests that the authors have a personal or family relationship with Petitioner and are therefore not objective.

LEGAL CONCLUSIONS

Cause does not exist to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 14 through 16, 27 and 28.


ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A30885 is denied.

This decision shall become effective on November 26, 2001.

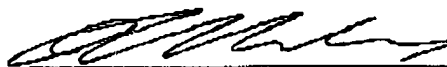
IT IS SO ORDERED this 25th day of October 2001.


HAZEM CHEHABI, M.D.
Chairman, Panel A
Division of Medical Quality
Medical Board of California

The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A30885 is denied.

This decision shall become effective on _____
2001.

IT IS SO ORDERED this _____ day of _____
2001.



HAZEM CHEHABI
Chairman, Panel A
Division of Medical Quality
Medical Board of California

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

**In the Matter of the Petition for Reinstatement
of Revoked Certificate of:**

GERSHON W. HEPNER

Respondent.

OAH No. L2000100316

File No: 20-1999-99250

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings, on April 6, 2001 at Los Angeles, California.

Petitioner, Gershon W. Hepner ("Petitioner") was present and was represented by Henry R. Fenton, Attorney at Law.

Pursuant to the provisions of Government Code Section 11152, the Attorney General of the State of California was represented by Robert McKim Bell, Deputy Attorney General.

At the hearing, Petitioner's counsel objected to the admissibility of Exhibit 3, an abstract regarding an article from the American Journal of Psychiatry, on grounds that the exhibit lacked foundation and contained inadmissible hearsay. The Administrative Law Judge took the ruling on the exhibit's admissibility under submission. The foundation objection is overruled. Foundation was laid by expert witness, James Rosenberg, M.D. Although the exhibit does contain hearsay inadmissible outside of an administrative proceeding, it is admissible pursuant to Government Code section 11513(d) in that it supplements Dr. Rosenberg's testimony.

Oral and documentary evidence was received and the matter submitted

The proposed decision of the administrative law judge was submitted to the Division of Medical Quality, Medical Board of California (hereafter "division") on

April 23, 2001. After due consideration thereof, the division declined to adopt the proposed decision and thereafter on May 15, 2001, issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. On August 19, 2001, the division issued a Notice of Time for Oral Argument. Oral argument was heard on October 4, 2001. The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, Panel A of the division hereby makes the following decision and order:

FACTUAL FINDINGS

1. On or about March 28, 1977, the Medical Board of California ("Board") issued Physician and Surgeon Certificate No. A30885 to Petitioner.

2. On August 7, 1992, Accusation No. D-4867 was filed against Petitioner alleging conviction of a crime, acts of dishonesty and corruption with patients, unlawful referral of patients, and sexual abuse and misconduct. In a stipulated Decision, effective March 31, 1995, Petitioner's certificate was revoked.

3. In the Stipulation and Disciplinary Order referenced in Paragraph 2, above, Petitioner admitted the following facts:

"A. On or about October 25, 1991, in the Superior Court of the State of California for the County of Los Angeles, in proceedings entitled *People of the State of California v. Gershon Hepner*, Case No. BA092582, the respondent was convicted, upon his plea of guilty, of the following crimes:

"(1) Fourteen counts of filing a false Insurance (sic) claim, a violation of Insurance Code §556(a), felonies;

"(2) Three counts of attempt to file a false insurance claim, a violation of Penal and Insurance Code §§664/556(a), felonies;

"(3) One count of grand theft over \$100,000.00, a violation of Penal Code §487(1), a felony;

"(4) One count of conspiracy to commit insurance fraud, a violation of Penal Code §182/556(a), a felony;

"(5) One count of grand theft, a violation of Penal Code §487(a), a felony;

“(6) One count of payment of unlawful referral fees to a doctor (‘capping’), a violation of Business and Professions Code §650, a felony;

“(7) Three counts of filing false personal income tax returns, a violation of Revenue and Taxation Code §19406, felonies. Respondent also admitted to a violation over \$100,000.00 pursuant to Penal Code §12022.6(b); and

“(8) One count of perjury under oath, a violation of Penal Code §118, a felony.”

4. Petitioner was sentenced to imprisonment for a period of 8 years, 4 months and was ordered to pay restitution in the sum of \$10,000. He was ordered to spend the initial portion of his sentence at Atascadero State Hospital where he was treated for Bipolar Disorder. He was at that facility for approximately 18 months before being transferred to California Men’s Colony at San Luis Obispo in December of 1993 where he spent the next approximately 2 ½ years. In total, he was in custody from January of 1992 until May 29, 1996, having served slightly over half of his sentence. He spent the following three years on parole without any violations. Parole was terminated on May 29, 1999.

5. The early stages of Petitioner’s medical career were far disparate from the latter stages. Born in Germany and raised in England, Petitioner earned his medical degree from the University of London in 1963. He became a Member of the Royal College of Physicians in 1965 (the English equivalent to board certification). Having received a research fellowship in gastroenterology from Mount Sinai Hospital in New York, he came to the United States in 1968. Two years later, he moved to Rochester, Minnesota where he performed research at the Mayo Clinic. From 1972 to 1976, he served as an Assistant Professor of Medicine at Pennsylvania State University in Hershey, Pennsylvania. Then, from 1976 to 1980, he served as an Associate Professor of Medicine in the Division of Gastroenterology, Department of Medicine at the Harbor Campus of UCLA. That position involved his spending 75% of his time teaching and doing research, and 25% of his time seeing patients.

6. In 1980, Petitioner left UCLA to begin a private practice in internal medicine in Century City. He chose against a gastroenterology practice because he did not perform the procedures associated with that specialty. Although he did serve as a consultant for patients with gastroenterological disorders, he referred such patients to other physicians for necessary procedures.

7. In approximately 1985, Petitioner decided to change his practice to one primarily involving the care and treatment of personal injury patients. His practice

was a great success and, between 1984 and 1989, he opened and operated satellite offices in Inglewood, Hollywood and Studio City, earning an average annual gross income of \$1,700,000. However, that income was not legitimately derived. He paid "cappers" to provide him with personal injury patients. He billed for more extensive examinations than those he actually performed. He prepared fraudulent medical reports for patients he had not seen. He charged for more patient visits than actually occurred and charged at a rate of \$500 per visit. He billed for other work he did not perform. Patients' signatures were often forged on sign-in sheets so as to increase the amount of their bills without their knowledge. Petitioner's inflated bills were paid by insurance companies in connection with patients' personal injury claims. Petitioner also evaded income taxes and attributed tens of thousands of dollars of personal expenses to his corporation on his income tax returns.

8. During the late 1980's, Petitioner's conduct and demeanor began to change. He went through alternating stages of euphoria and depression. His life-style became flamboyant, even to the point of purchasing a taxicab-yellow Rolls Royce and wearing bright red silk shirts to his Orthodox synagogue (something he was aware was grossly inappropriate for such a congregation).

9. In June of 1989, the Department of Insurance executed search warrants at Petitioner's office and residence. Those searches resulted in his arrest. It was then that Respondent recognized that his emotional condition had undergone some very significant changes. He became severely depressed and sought treatment with Franklin C. Milgrim, M.D., a psychiatrist specializing in forensic psychiatry. Dr. Milgrim initially believed Petitioner was suffering from a dysthymic disorder but quickly realized he also suffered from hypomania. Dr. Milgrim then changed his diagnosis to Bipolar Disorder, a diagnosis upon which the mental health care providers involved in this case all concur. Dr. Milgrim prescribed Lithium and Depakote for the hypomania, and a number of antidepressants. That, or a similar regimen was continued at Atascadero State Hospital and the California Men's Colony during Petitioner's imprisonment.

10. Prior to his incarceration, Petitioner was able to maintain his medical practice while treating with Dr. Milgrim. However, his depression eventually reached the point that Dr. Milgrim became concerned about Petitioner's ability to concentrate and to make good judgments. On November 1, 1990, more than four years before his certificate was revoked, Petitioner followed Dr. Milgrim's recommendation and terminated his medical practice.

11. Petitioner did not see Dr. Milgrim during his incarceration (although they occasionally did speak by telephone). He returned to Dr. Milgrim's care in June of 1996 and has been treating with him since. Due to the unpredictable nature of his disorder, Petitioner intends to continue treating with Dr. Milgrim indefinitely.

12. Petitioner was severely depressed and withdrawn in 1996, and had difficulty interacting with others, including his family. He spent most of his time writing poetry and scholarly works on the Torah, avocations he had been pursuing for a number of years. Petitioner's symptoms waxed and waned and, in August of 1997, his depression had improved to the point that Dr. Milgrim discontinued the Zoloft he had prescribed. In December of 1998, Dr. Milgrim discontinued the Depakote because of physical side effects Petitioner was experiencing. Although he is no longer medicated, Petitioner has not had any recurrence of bipolar symptoms since that time. Dr. Milgrim considers the Bipolar Disorder to be in remission. He firmly believes Petitioner is ready to return to the practice of medicine and is able to practice medicine without a risk to the public.¹

13. Dr. Milgrim's opinion regarding Petitioner's fitness to return to medical practice was disputed by expert witness, James Rosenberg, M.D., another forensic psychiatrist. Dr. Rosenberg shares the commonly held opinion that Bipolar Disorder is unpredictable and that, since Petitioner is no longer medicated for it, his disorder is a "ticking bomb." Advancing age, change in season, lack of sleep, stress, change in routine (i.e., crossing time zones), and other medications can all trigger a relapse. Dr. Rosenberg believes that certain physicians who suffer from Bipolar Disorder can safely practice medicine. However, he also believes that Bipolar Disorder is a life-long disorder that medications may control but do not cure, and that the risk of relapse is increased by discontinuing medications. He further believes that a patient who suffers a recurrence can lose insight and fail to seek timely treatment, and that manic physicians can become sexually inappropriate, perform procedures for which they lack the requisite skill, and go beyond their area of expertise. Therefore, in order for Petitioner to return to practice, he should be returned to a regimen of proper medication, be supervised on a daily basis, have his charts regularly reviewed and remain in psychotherapy.

14. The Panel finds Dr. Rosenberg's expert opinion to be more persuasive than that of Dr. Milgrim. The Panel has no confidence in Dr. Milgrim's expert opinions due to the dual relationship between Petitioner and Dr. Milgrim.

15. The Panel concludes there is sufficient evidence to suggest that Petitioner has other underlying personality disorders that have not been appropriately diagnosed or treated and which are likely to pose a risk to public health and safety.

¹ The Deputy Attorney General produced evidence that a role conflict exists when a treating psychotherapist also serves as his/her patient's expert witness. Dr. Rosenberg, who wrote the ethics chapter in the well-respected treatise Textbook of Psychiatry, testified to that effect and described an article in the April, 1997 issue of the American Journal of Psychiatry which concludes that fundamental incompatibilities exist between a psychotherapist's clinical and legal functions and that therefore, from an ethical standpoint, such a dual role should be avoided whenever possible. The Panel concludes there is an inherent adverse effect from such a relationship.

16. It was not established to the Panel's satisfaction that Petitioner can practice medicine safely even with restrictions.

17. Petitioner has been a prolific writer for most of his life. He began writing about the Bible when he was approximately 20-years-old. He has written a 7000-page commentary on the Torah which has raised the interest of several biblical scholars. He has written two other scholarly works on the Torah which focus on aspects of the longer work, including the issue of whether biblical narratives are to be taken at face value or are to be viewed as literary rather than actual truth. Petitioner values his biblical research and writing both because they have enhanced his knowledge of biblical literature and religion, and because they have increased his awareness of ethics.

18. Petitioner wrote poetry until he finished medical school. He gave it up after medical school and then resumed his poetry writing while in prison. He sent his children approximately 180 original poems from prison. Several of his 2500 poems have been published. He is the Poetry Manager of a local Barnes and Noble bookstore where he hosts a monthly poetry reading session.

19. Dr. Milgrim does not view Petitioner's prolific writing as indicative of manic behavior, but rather as a healthy way of remaining productive and avoiding depression. Petitioner views his writing as a source of great enjoyment and fulfillment.

20. Petitioner practices Orthodox Judaism. In addition to his writing, he studies the Talmud nearly every day and attends a weekly Talmud class. He also gives seminars on the Bible once every three weeks. Petitioner believes his biblical and Talmudic studies have helped him to "understand the gravity of [his] offenses and reinforce [his] determination never to commit any crimes again."

21. Between March of 1998 and May of 1999, Petitioner performed volunteer work at the Museum of Tolerance in West Los Angeles. That work consisted primarily of research for the museum's studies.

22. In December of 1998, Petitioner began performing volunteer work for the Midnight Mission in Los Angeles. For 18 months, he obtained food for the mission six days per week. He now assists in obtaining clothing for the mission's denizens. He also intends to assist the mission medically should his license be reinstated.

23. Petitioner has continued to meet and exceed his CME requirements. He reads the New England Journal of Medicine every week. (He did so while he was incarcerated as well.) He has twice taken the journal's self-assessment examination, earning an 88% for the first program and 74% for the second, each time receiving 50 Category 1 credits. In addition, he took the 11th Medical Knowledge Self-Assessment

Program (MKSAP) offered by the American College of Physicians. That program addresses all aspects of internal medicine. He did very well in the program.

24. In addition, in October of 2000, Petitioner voluntarily enrolled in the Physician Assessment and Clinical Education Program ("PACE") offered by the University of California, San Diego School of Medicine. The program involved a Clinical Skills and Knowledge Assessment, a physical examination and a psychiatric examination. On November 3, 2000, William A. Norcross, M.D., the Director of the PACE program, wrote to Petitioner advising him of his results. That letter read in part:

"The neuropsychologists who performed your Neuropsychological Assessment noted your history of bipolar affective disorder, but noted no significant mania or thought disorder at the time of your Assessment. However, given your history of bipolar affective disorder, they did recommend that you maintain a clinical relationship with a psychiatrist, even if you are currently in remission and do not require treatment, because of the unpredictable nature of the disease. The results of your physical examination were completely normal.

"Your performance on the Clinical Skills and Knowledge Assessment was superior. In fact, Dr. Harrity, our PACE Faculty member in the Department of Internal Medicine and Director of the Medicine Residency Program, gave you a 93% score on her exam, the highest ever received in Internal Medicine in the history of the PACE Program. Dr. Harrity remarked that you had done a superb job in keeping abreast of advancing knowledge in the field of Internal Medicine and did not feel that you required any clinical remediation.

"In summary, a thorough assessment of your clinical skills and knowledge, as well as your physical and mental health, reveals that it is quite safe for you to re-enter medical practice (with the above caveat of intermittent follow-up with a psychiatrist). . . ."

The Panel did not find the PACE psychiatric evaluation to be dispositive of the issue of Petitioner's safety to practice medicine.

25. Petitioner is almost 63-years-old. In 1995, he went through an amicable divorce from his wife. He continues to reside in her home with two of their four children. Petitioner believes that neither he nor his wife ever stopped loving each other, but that his wife sought the divorce because of the stress Petitioner's Bipolar Disorder, his crimes and his conviction placed on her. He would like to reconcile with his wife. Petitioner's children are grown and manage their own successful lives. One of his sons is a resident in internal medicine at UCLA.

26. Petitioner has not been gainfully employed since he closed his practice in 1990. However, since his release from prison, he has remained active and busy with his studies, his writing, and his volunteer work. On Dr. Milgrim's recommendation, he received Social Security Disability Benefits for his Bipolar Disorder. However, in May of 1999, he informed the Social Security Administration that he no longer needed those benefits because he was no longer disabled. He stopped receiving the benefits 11 months thereafter notwithstanding his repeated attempts to terminate the benefits earlier. He has supported himself since then through loans and other types of support from his family members and former wife.

27. Petitioner owes \$10,000 in restitution. He has not been in a financial position to pay the restitution.

28. Petitioner submitted numerous letters supporting the reinstatement of his medical license. The letters' authors, both from within and outside of the medical profession, all portray Petitioner as an extraordinary individual who, despite his past transgressions, is a paragon of intelligence, competence, piety, honesty, integrity, trustworthiness, and contrition. The Panel gives very little weight to these letters as the tenor of the letters suggests that the authors have a personal or family relationship with Petitioner and therefore not objective.

LEGAL CONCLUSIONS

Cause does not exist to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 14 through 16, 27 and 28.

The evidence did not establish whether Petitioner committed his crimes because of his bipolar disorder, anti-social personality traits, or both. However, the fact that Petitioner enjoyed an exemplary and distinguished career as a researcher, professor, and internist for many years before beginning to engage in conduct completely inconsistent with his high standards and ethics, tends to weigh in favor of the former. Regardless of the source of his criminal conduct, Petitioner has shown outstanding rehabilitation and has taken appropriate steps to ensure continued monitoring of his psychiatric condition in order to adequately protect the public.

Although no patients were harmed while Petitioner was going through the worst phases of his Bipolar Disorder, the analysis of his fitness to practice must go beyond that fact. The public in general was harmed by Petitioner's abuse of the insurance system. However, at some point, Petitioner recognized that something about his mental state was very wrong, and he ceased his illegal activity. Thereafter, he sought professional assistance for his Bipolar Disorder and began a long road toward rehabilitation. Even in the early stages of recovery, years before his license

was revoked, Petitioner cared enough about his patients' well being that he voluntarily ceased practicing medicine when his psychiatrist expressed concerns that Petitioner's concentration and judgment could be compromised by his psychiatric condition.

Petitioner's Bipolar Disorder is presently in remission. Although a relapse of Bipolar Disorder cannot be predicted, that is not an adequate reason to proscribe an otherwise highly qualified physician from practicing medicine. Surely a great many physicians with diseases and disorders in remission are presently practicing medicine without inordinate risk to the public, and the requisites of the Medical Practices Act are not so harsh as to preclude them from doing so. In this case, no evidence was offered to prove that Petitioner would relapse, only that he might. It would be a tremendous waste of an excellent medical talent to prohibit Petitioner from practicing solely because of that possibility.

To the extent that Petitioner's crimes may have been caused by his own criminality rather than by a debilitating mental disorder, his rehabilitation has been extraordinary. He has met and exceeded the criteria set forth in Business and Professions Code section 2307, and in Title 16, California Code of Regulations, section 1657. He has shown a sincere interest in assisting the less fortunate and intends to continue in that work should his medical certificate be reinstated. In the 9½ years since his conviction, Petitioner has not had any other negative contact with the criminal justice system.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A30885 is denied.

This decision shall become effective on November 16, 2001,

IT IS SO ORDERED this 17th day of October 2001



HAZEM CHEHABI, M.D.
Chairperson, Panel A
Division of Medical Quality
Medical Board of California

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


In the Matter of the)	
Petition for Reinstatement of:)	
)	MBC No. 20-1999-99250
GERSHON WALTER HEPNER)	
)	OAH No. L-2000100316
)	
)	
)	
_____ Petitioner.)	

ORDER DELAYING DECISION

Pursuant to Business & Professions Code Section 2335 and Section 11517 of the Government Code, the Division of Medical Quality, finding that a further delay is required by special circumstances, hereby issues this order delaying the decision for no more than 30 days from **October 13, 2001**, (when the 100 day period expires) to **November 12, 2001**.

The reason for the delay is as follows: Due to a national terrorist attack on September 11, 2001, the Oral Argument scheduled for **September 12, 2001**, was canceled. Another meeting is scheduled for October 4, 2001, for the Panel to discuss and consider written and oral arguments by the parties, re-draft the decision and to serve the parties.

DATED: October 3, 2001



David T. Thornton
Chief of Enforcement
Division of Medical Quality

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

**In the Matter of the Petition for Reinstatement
of Revoked Certificate of:**

GERSHON W. HEPNER

Respondent.

OAH No. L2000100316

MBC Case No. 20-1999-99250

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings, on April 6, 2001 at Los Angeles, California.

Petitioner, Gershon W. Hepner ("Petitioner") was present and was represented by Henry R. Fenton, Attorney at Law.

Pursuant to the provisions of Government Code Section 11152, the Attorney General of the State of California was represented by Robert McKim Bell, Deputy Attorney General.

At the hearing, Petitioner's counsel objected to the admissibility of Exhibit 3, an abstract regarding an article from the American Journal of Psychiatry, on grounds that the exhibit lacked foundation and contained inadmissible hearsay. The Administrative Law Judge took the ruling on the exhibit's admissibility under submission. The foundation objection is overruled. Foundation was laid by expert witness, James Rosenberg, M.D. Although the exhibit does contain hearsay inadmissible outside of an administrative proceeding, it is admissible pursuant to Government Code section 11513(d) in that it supplements Dr. Rosenberg's testimony.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Factual Findings:

///

1. On or about March 28, 1977, the Medical Board of California ("Board") issued Physician and Surgeon Certificate No. A30885 to Petitioner.

2. On August 7, 1992, Accusation No. D-4867 was filed against Petitioner alleging conviction of a crime, acts of dishonesty and corruption with patients, unlawful referral of patients, and sexual abuse and misconduct. In a stipulated Decision, effective March 31, 1995, Petitioner's certificate was revoked.

3. In the Stipulation and Disciplinary Order referenced in Paragraph 2, above, Petitioner admitted the following facts:

"A. On or about October 25, 1991, in the Superior Court of the State of California for the County of Los Angeles, in proceedings entitled *People of the State of California v. Gershon Hepner*, Case No. BA092582, the respondent was convicted, upon his plea of guilty, of the following crimes:

"(1) Fourteen counts of filing a false Insurance (sic) claim, a violation of Insurance Code §556(a), felonies;

"(2) Three counts of attempt to file a false insurance claim, a violation of Penal and Insurance Code §§664/556(a), felonies;

"(3) One count of grand theft over \$100,000.00, a violation of Penal Code §487(1), a felony;

"(4) One count of conspiracy to commit insurance fraud, a violation of Penal Code §182/556(a), a felony;

"(5) One count of grand theft, a violation of Penal Code §487(a), a felony;

"(6) One count of payment of unlawful referral fees to a doctor ('capping'), a violation of Business and Professions Code §650, a felony;

"(7) Three counts of filing false personal income tax returns, a violation of Revenue and Taxation Code §19406, felonies. Respondent also admitted to a violation over \$100,000.00 pursuant to Penal Code §12022.6(b); and

"(8) One count of perjury under oath, a violation of Penal Code §118, a felony."

4. Petitioner was sentenced to imprisonment for a period of 8 years, 4 months and was ordered to pay restitution in the sum of \$10,000. He was ordered to spend the initial portion of his sentence at Atascadero State Hospital where he was treated for Bipolar Disorder. He was at that facility for approximately 18 months before being transferred to California Men's Colony at San Luis Obispo in December of 1993 where he spent the next approximately 2 ½ years. In total, he was in custody from January of 1992 until May 29, 1996, having served slightly over half of his sentence. He spent the following three years on parole without any violations. Parole was terminated on May 29, 1999.

5. The early stages of Petitioner's medical career were far disparate from the latter stages. Born in Germany and raised in England, Petitioner earned his medical degree from the University of London in 1963. He became a Member of the Royal College of Physicians in 1965 (the English equivalent to board certification). Having received a research fellowship in gastroenterology from Mount Sinai Hospital in New York, he came to the United States in 1968. Two years later, he moved to Rochester, Minnesota where he performed research at the Mayo Clinic. From 1972 to 1976, he served as an Assistant Professor of Medicine at Pennsylvania State University in Hershey, Pennsylvania. Then, from 1976 to 1980, he served as an Associate Professor of Medicine in the Division of Gastroenterology, Department of Medicine at the Harbor Campus of UCLA. That position involved his spending 75% of his time teaching and doing research, and 25% of his time seeing patients.

6. In 1980, Petitioner left UCLA to begin a private practice in internal medicine in Century City. He chose against a gastroenterology practice because he did not perform the procedures associated with that specialty. Although he did serve as a consultant for patients with gastroenterological disorders, he referred such patients to other physicians for necessary procedures.

7. In approximately 1985, Petitioner decided to change his practice to one primarily involving the care and treatment of personal injury patients. His practice was a great success and, between 1984 and 1989, he opened and operated satellite offices in Inglewood, Hollywood and Studio City, earning an average annual gross income of \$1,700,000. However, that income was not legitimately derived. He paid "cappers" to provide him with personal injury patients. He billed for more extensive examinations than those he actually performed. He prepared fraudulent medical reports for patients he had not seen. He charged for more patient visits than actually occurred and charged at a rate of \$500 per visit. He billed for other work he did not perform. Patients' signatures were often forged on sign-in sheets so as to increase the amount of their bills without their knowledge. Petitioner's inflated bills were paid by insurance companies in connection with patients' personal injury claims. Petitioner also evaded income taxes and attributed tens of thousands of dollars of personal expenses to his corporation on his income tax returns.

///

8. During the late 1980's, Petitioner's conduct and demeanor began to change. He went through alternating stages of euphoria and depression. His life-style became flamboyant, even to the point of purchasing a taxicab-yellow Rolls Royce and wearing bright red silk shirts to his Orthodox synagogue (something he was aware was grossly inappropriate for such a congregation).

9. In June of 1989, the Department of Insurance executed search warrants at Petitioner's office and residence. Those searches resulted in his arrest. It was then that Respondent recognized that his emotional condition had undergone some very significant changes. He became severely depressed and sought treatment with Franklin C. Milgrim, M.D., a psychiatrist specializing in forensic psychiatry. Dr. Milgrim initially believed Petitioner was suffering from a dysthymic disorder but quickly realized he also suffered from hypomania. Dr. Milgrim then changed his diagnosis to Bipolar Disorder, a diagnosis upon which the mental health care providers involved in this case all concur. Dr. Milgrim prescribed Lithium and Depakote for the hypomania, and a number of antidepressants. That, or a similar regimen was continued at Atascadero State Hospital and the California Men's Colony during Petitioner's imprisonment.

10. Prior to his incarceration, Petitioner was able to maintain his medical practice while treating with Dr. Milgrim. During that period of time, he did not engage in any fraudulent practices, and his patients were not adversely affected by his Bipolar Disorder. However, his depression eventually reached the point that Dr. Milgrim became concerned about Petitioner's ability to concentrate and to make good judgments. On November 1, 1990, more than four years before his certificate was revoked, Petitioner followed Dr. Milgrim's recommendation and terminated his medical practice.

11. Petitioner did not see Dr. Milgrim during his incarceration (although they occasionally did speak by telephone). He returned to Dr. Milgrim's care in June of 1996 and has been treating with him since. Due to the unpredictable nature of his disorder, Petitioner intends to continue treating with Dr. Milgrim indefinitely.

///

///

///

///

///

///

12. Petitioner was severely depressed and withdrawn in 1996, and had difficulty interacting with others, including his family. He spent most of his time writing poetry and scholarly works on the Torah, avocations he had been pursuing for a number of years. Petitioner's symptoms waxed and waned and, in August of 1997, his depression had improved to the point that Dr. Milgrim discontinued the Zoloft he had prescribed. In December of 1998, Dr. Milgrim discontinued the Depakote because of physical side effects Petitioner was experiencing. Although he is no longer medicated, Petitioner has not had any recurrence of bipolar symptoms since that time. Dr. Milgrim considers the Bipolar Disorder to be in remission. He firmly believes Petitioner is ready to return to the practice of medicine and is able to practice medicine without a risk to the public.¹

13. Dr. Milgrim's opinion regarding Petitioner's fitness to return to medical practice was partially disputed by expert witness, James Rosenberg, M.D., another forensic psychiatrist. Dr. Rosenberg shares the commonly held opinion that Bipolar Disorder is unpredictable and that, since Petitioner is no longer medicated for it, his disorder is a "ticking bomb." Advancing age, change in season, lack of sleep, stress, change in routine (i.e., crossing time zones), and other medications can all trigger a relapse. Dr. Rosenberg believes that certain physicians who suffer from Bipolar Disorder can safely practice medicine. However, he also believes that Bipolar Disorder is a life-long disorder that medications may control but do not cure, and that the risk of relapse is increased by discontinuing medications. He further believes that a patient who suffers a recurrence can lose insight and fail to seek timely treatment, and that manic physicians can become sexually inappropriate, perform procedures for which they lack the requisite skill, and go beyond their area of expertise. Therefore, in order for Petitioner to return to practice, he should be returned to a regimen of proper medication, be supervised on a daily basis, have his charts regularly reviewed and remain in psychotherapy.

///

///

///

///

¹ The Deputy Attorney General produced evidence that a role conflict exists when a treating psychotherapist also serves as his/her patient's expert witness. Dr. Rosenberg, who wrote the ethics chapter in the well-respected treatise Textbook of Psychiatry, testified to that effect and described an article in the April, 1997 issue of the American Journal of Psychiatry which concludes that fundamental incompatibilities exist between a psychotherapist's clinical and legal functions and that therefore, from an ethical standpoint, such a dual role should be avoided whenever possible. However, no competent evidence was offered to the effect that Dr. Milgrim's dual role in this case had any adverse effect on his judgment or credibility.

14. Petitioner has been a prolific writer for most of his life. He began writing about the Bible when he was approximately 20-years-old. He has written a 7000-page commentary on the Torah which has raised the interest of several biblical scholars. He has written two other scholarly works on the Torah which focus on aspects of the longer work, including the issue of whether biblical narratives are to be taken at face value or are to be viewed as literary rather than actual truth. Petitioner values his biblical research and writing both because they have enhanced his knowledge of biblical literature and religion, and because they have increased his awareness of ethics.

15. Petitioner wrote poetry until he finished medical school. He gave it up after medical school and then resumed his poetry writing while in prison. He sent his children approximately 180 original poems from prison. Several of his 2500 poems have been published. He is the Poetry Manager of a local Barnes and Noble bookstore where he hosts a monthly poetry reading session.

16. Dr. Milgrim does not view Petitioner's prolific writing as indicative of manic behavior, but rather as a healthy way of remaining productive and avoiding depression. Petitioner views his writing as a source of great enjoyment and fulfillment.

17. Petitioner practices Orthodox Judaism. In addition to his writing, he studies the Talmud nearly every day and attends a weekly Talmud class. He also gives seminars on the Bible once every three weeks. Petitioner believes his biblical and Talmudic studies have helped him to "understand the gravity of [his] offenses and reinforce [his] determination never to commit any crimes again."

18. Between March of 1998 and May of 1999, Petitioner performed volunteer work at the Museum of Tolerance in West Los Angeles. That work consisted primarily of research for the museum's studies.

19. In December of 1998, Petitioner began performing volunteer work for the Midnight Mission in Los Angeles. For 18 months, he obtained food for the mission six days per week. He now assists in obtaining clothing for the mission's denizens. He also intends to assist the mission medically should his license be reinstated.

20. Petitioner has continued to meet and exceed his CME requirements. He reads the New England Journal of Medicine every week. (He did so while he was incarcerated as well.) He has twice taken the journal's self-assessment examination, earning an 88% for the first program and 74% for the second, each time receiving 50 Category 1 credits. In addition, he took the 11th Medical Knowledge Self-Assessment Program (MKSAP) offered by the American College of Physicians. That program addresses all aspects of internal medicine. He did very well in the program.

///

21. In addition, in October of 2000, Petitioner voluntarily enrolled in the Physician Assessment and Clinical Education Program ("PACE") offered by the University of California, San Diego School of Medicine. The program involved a Clinical Skills and Knowledge Assessment, a physical examination and a psychiatric examination. On November 3, 2000, William A. Norcross, M.D., the Director of the PACE program, wrote to Petitioner advising him of his results. That letter read in part:

"The neuropsychologists who performed your Neuropsychological Assessment noted your history of bipolar affective disorder, but noted no significant mania or thought disorder at the time of your Assessment. However, given your history of bipolar affective disorder, they did recommend that you maintain a clinical relationship with a psychiatrist, even if you are currently in remission and do not require treatment, because of the unpredictable nature of the disease. The results of your physical examination were completely normal.

"Your performance on the Clinical Skills and Knowledge Assessment was superior. In fact, Dr. Harrity, our PACE Faculty member in the Department of Internal Medicine and Director of the Medicine Residency Program, gave you a 93% score on her exam, the highest ever received in Internal Medicine in the history of the PACE Program. Dr. Harrity remarked that you had done a superb job in keeping abreast of advancing knowledge in the field of Internal Medicine and did not feel that you required any clinical remediation.

"In summary, a thorough assessment of your clinical skills and knowledge, as well as your physical and mental health, reveals that it is quite safe for you to re-enter medical practice (with the above caveat of intermittent follow-up with a psychiatrist). . . ."

22. Petitioner is almost 63-years-old. In 1995, he went through an amicable divorce from his wife. He continues to reside in her home with two of their four children. Petitioner believes that neither he nor his wife ever stopped loving each other, but that his wife sought the divorce because of the stress Petitioner's Bipolar Disorder, his crimes and his conviction placed on her. He would like to reconcile with his wife. Petitioner's children are grown and manage their own successful lives. One of his sons is a resident in internal medicine at UCLA.

///

///

///

23. Petitioner has not been gainfully employed since he closed his practice in 1990. However, since his release from prison, he has remained active and busy with his studies, his writing, and his volunteer work. On Dr. Milgrim's recommendation, he received Social Security Disability Benefits for his Bipolar Disorder. However, in May of 1999, he informed the Social Security Administration that he no longer needed those benefits because he was no longer disabled. He stopped receiving the benefits 11 months thereafter notwithstanding his repeated attempts to terminate the benefits earlier. He has supported himself since then through loans and other types of support from his family members and former wife.

24. Petitioner recently became aware that he owed \$10,000 in restitution. With approximately \$1000 in the bank from his prior disability benefits, he is not in a financial position to pay the restitution. However, he fully intends to do so as soon as he is able.

25. If his license is reinstated, Petitioner does not intend to have a solo practice or to practice internal medicine, gastroenterology or personal injury medicine. He also does not intend to be involved in billing for rendered medical services. He would prefer to obtain an administrative position where he can perform chart reviews and oversee patient care for a large company. He would also like to work directly with patients in an urgent care setting. In any event, he desires to work in a facility in which he can interact with colleagues rather than work alone.

26. Petitioner submitted numerous letters supporting the reinstatement of his medical license. The letters' authors, both from within and outside of the medical profession, all portray Petitioner as an extraordinary individual who, despite his past transgressions, is a paragon of intelligence, competence, piety, honesty, integrity, trustworthiness, and contrition. He comports himself in a respectful manner toward others and no longer manifests any of the symptoms consistent with Bipolar Disorder, as he did before his arrest.

LEGAL CONCLUSIONS

Cause exists to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 2 through 21, 24 and 26, provided the newly reinstated certificate is accompanied by a probationary Order requiring satisfaction of specific terms and conditions.

///

///

///

The evidence did not establish whether Petitioner committed his crimes because of his bipolar disorder, anti-social personality traits, or both. However, the fact that Petitioner enjoyed an exemplary and distinguished career as a researcher, professor, and internist for many years before beginning to engage in conduct completely inconsistent with his high standards and ethics, tends to weigh in favor of the former. Regardless of the source of his criminal conduct, Petitioner has shown outstanding rehabilitation and has taken appropriate steps to ensure continued monitoring of his psychiatric condition in order to adequately protect the public.

Although no patients were harmed while Petitioner was going through the worst phases of his Bipolar Disorder, the analysis of his fitness to practice must go beyond that fact. The public in general was harmed by Petitioner's abuse of the insurance system. However, at some point, Petitioner recognized that something about his mental state was very wrong, and he ceased his illegal activity. Thereafter, he sought professional assistance for his Bipolar Disorder and began a long road toward rehabilitation. Even in the early stages of recovery, years before his license was revoked, Petitioner cared enough about his patients' well being that he voluntarily ceased practicing medicine when his psychiatrist expressed concerns that Petitioner's concentration and judgment could be compromised by his psychiatric condition.

Petitioner's Bipolar Disorder is presently in remission. Although a relapse of Bipolar Disorder cannot be predicted, that is not an adequate reason to proscribe an otherwise highly qualified physician from practicing medicine. Surely a great many physicians with diseases and disorders in remission are presently practicing medicine without inordinate risk to the public, and the requisites of the Medical Practices Act are not so harsh as to preclude them from doing so. In this case, no evidence was offered to prove that Petitioner would relapse, only that he might. It would be a tremendous waste of an excellent medical talent to prohibit Petitioner from practicing solely because of that possibility.

To the extent that Petitioner's crimes may have been caused by his own criminality rather than by a debilitating mental disorder, his rehabilitation has been extraordinary. He has met and exceeded the criteria set forth in Business and Professions Code section 2307, and in Title 16, California Code of Regulations, section 1657. He has shown a sincere interest in assisting the less fortunate and intends to continue in that work should his medical certificate be reinstated. In the 9½ years since his conviction, Petitioner has not had any other negative contact with the criminal justice system.

///

///

///

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Gershon W. Hepner for reinstatement of his revoked Physician's and Surgeon's Certificate No. A30885 is granted on the following terms and conditions:

The newly reinstated certificate is hereby revoked. However, the revocation is stayed and Petitioner is placed on probation for six (6) years upon the following terms and conditions:

1. Within 15 days after the effective date of this decision, Petitioner shall provide the Division, or its designee, proof of service that Petitioner has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Petitioner or where Petitioner is employed to practice medicine, and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to Petitioner.
2. Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.
3. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
4. Petitioner shall comply with the Division's probation surveillance program. Petitioner shall, at all times, keep the Division informed of his addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.
5. Petitioner shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.
6. Petitioner shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

///

///

7. In the event Petitioner should leave California to reside or to practice outside the State or for any reason should Petitioner stop practicing medicine in California, Petitioner shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which Petitioner is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

8. If Petitioner violates probation in any respect, the Division, after giving Petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Following the effective date of this decision, if Petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate Petitioner's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, Petitioner will no longer be subject to the terms and conditions of probation.

10. Petitioner shall pay the costs associated with probation monitoring each and every year of probation. Those costs shall be paid at the current rate but may be adjusted on an annual basis. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

11. Within 60 days of the effective date of this decision, Petitioner shall enroll in a course in Ethics approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

12. Within 60 days of the effective date of this Decision, or as soon thereafter as determined by the Board, Petitioner shall take and pass the Special Purpose Examination ("SPEX") of the Federation of State Medical Boards. Petitioner shall not practice medicine until he has passed this examination and has been so notified by the Board in writing.

///

13. Within 60 days of the effective date of this decision, Petitioner shall submit to the Division or its designee for its prior approval the name and qualifications of a psychotherapist of Petitioner's choice. Upon approval, Petitioner shall undergo and continue treatment until the Division or its designee deems that no further psychotherapy is necessary. Petitioner shall have the treating psychotherapist submit quarterly status reports to the Division or its designee. The Division or its designee may require Petitioner to undergo psychiatric evaluations by a Division-appointed psychiatrist. Petitioner shall pay the cost of therapy and evaluations.


14. Within 30 days of the effective date of this decision, Petitioner shall submit to the Division or its designee for its prior approval a plan of practice in which Petitioner's practice shall be monitored by another physician in Petitioner's field of practice, who shall provide periodic reports to the Division or its designee.

If the monitor resigns or is no longer available, Petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by Petitioner and approval by the Division or its designee.

15. Petitioner is prohibited from engaging in solo practice.

16. Upon successful completion of probation, Petitioner's certificate shall be fully restored.

DATED: April 23, 2001



H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings