

MEDICAL BOARD OF CALIFORNIA

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Title Custodian of records  
Date 7-10-18

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

In the Matter of the Petition for )  
Reinstatement of Revoked Certificate )  
of: )  
BRUCE E. FISHMAN ) NO. L-49870  
Petitioner. )

DECISION

This matter came on regularly for hearing before a Panel of District 12 Medical Quality Review Committee, at West Los Angeles, California on 5 April 1990. Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings presiding.

Panel members present were:

- Guy Hartman, M.D., Chairman
- Ronald Bangasser, M.D.
- Maurice Mulville, M.D. - (District 13)
- James Holman, M.D. - (District 11)
- Mary Lynch, RN
- Brian Carroll, (PM)
- Bernice Watkins, (PM) - (District 11)

Earl Plowman, Deputy Attorney General, represented the Attorney General. Petitioner appeared in person, and was represented by Edward Masry, Attorney at Law. Documentary and oral evidence and evidence by way of official notice and stipulation was introduced, the matter argued and submitted, and the members of the Panel proceeded to consider the matter. The Administrative Law Judge was present during the Panel's consideration of the case. The Panel finds, determines, and orders as follows:

FINDINGS OF FACT

1.

Bruce E. Fishman, M.D., petitioner, was first licensed in California as a physician and surgeon on February 3, 1983 under Certificate No. G-49562.

2.

Effective February 26, 1985 in case no. D-3204, petitioner's California certificate was revoked based upon petitioner's stipulation to accusation charges of having been convicted in 1983 in the U.S. District Court, Eastern District of Michigan (case no. 83-60055-01), on his guilty plea of violating Title 21, United States Code, Section 846 (conspiracy to distribute narcotic and non-narcotic controlled substances).

3.

On July 14, 1983 respondent was sentenced to three and one-half years in prison on the narcotic offense and fined \$25,000. Petitioner spent about 23 months incarcerated first in Texas, then at Boron, California. He was transferred to Boron in April 1984 and was released on parole in July 1985. On August 31, 1986, his sentence was completed and he was discharged from parole supervision.

4.

Petitioner graduated in 1979 from the Wayne State University School of Medicine at Detroit, Michigan. In 1980, he began a five (5) year orthopaedic residency at Henry Ford Hospital at Detroit, and at the time of being charged with the offense leading to his conviction was at the beginning of the fourth year of his residency.

5.

While incarcerated at Boron, petitioner performed capably and cooperatively as a member of a fire crew, and upon his release in 1985 was employed by a Los Angeles area law firm as a consultant.

6.

(A) Upon his parole discharge in August 1986, petitioner filed a prior petition (case No. OAH L-40352) with the Board of Medical Quality Assurance requesting reinstatement. At the time of filing the petition, petitioner's certificate had been revoked approximately one year and six months. At time of hearing, the elapsed time was approximately two years and four months.

(B) In said petition the Board, by and through District 14 Medical Quality Review Committee, denied respondent's then petition for reinstatement effective 31 August 1987. The Board then found:

"Petitioner's evidence is insufficient to establish rehabilitation at this time:

a. The elapsed time from his discharge from parole to date has been less than one year. The elapsed time from his revocation in February 1985 overlaps his sentence time.

b. Petitioner's volunteer activity at Valley Community Clinic was inadequately guided, supervised, and controlled. Petitioner took no responsibility for making certain that his work was supervised and performed within the restraints on an unlicensed assistant."

7.

In or about August 1989 petitioner filed subject petition for reinstatement of revoked certificate (license).

8.

Since the time of the denial of the prior petition petitioner has achieved the following rehabilitation:

(A) He has been "aggressive" in keeping himself current. Prior to his last petition he had completed 115 hours of continuing medical education (CME). Thereafter he has kept current by attending seminars and courses offered in California at UCSD, UCLA, Cedars-Sinai Med Ctr, USC, and the American College of Emergency Physicians Assembly in San Francisco. Additionally, he watches Lifetime Medical Television to obtain CME credits by answering test questions and sending them to the University of Texas Health Science Center at Houston. He routinely receives and reads the New England Journal of Medicine, Journal of Bone and Joint Surgery and Clinical Orthopaedics and Related Research and peruses several non-peer review journals as well.

(B) Presently he has a stable family life which includes an eight year old daughter and is achieving fulfillment of parental and familial responsibilities.

(C) He now has conscientious involvement in community and religious programs.

(D) He has had a change in attitude from that which existed at the time of his previous criminal conduct.

(E) On 22 March 1990 respondent underwent a "batterss of psychological measures" (objective examination)" by a competent and licensed professional (examiner). Based on said objective testing said examiner, subjectively, opined:

While there can be no guarantees regarding the prediction of anyone's behavior, given the results of the current psychological assessment, there is a high probability that Dr. Fishman will conscientiously conform his behavior and his standards of practice to given law, rules and regulations.

Said opinion is a competent and a credible opinion supported by reasonable inferences from the whole of the evidence.

\* \* \* \* \*

#### DETERMINATION OF ISSUES

Petitioner has established that he is sufficiently rehabilitated so that it would not be adverse to the public interest to restore petitioner's certificate in a probationary status.

\* \* \* \* \*

#### ORDER

The petition for reinstatement of the revoked certificate of Bruce E. Fishman, to practice medicine and surgery in the State of California, is hereby granted; provided, however, that said petitioner is placed on probation to the Board of Medical Quality Assurance for a period of five (5) years from the effective date of this decision, upon the following terms and conditions:

1. Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

2. Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Division for its prior approval an educational program or course related to the prescribing of controlled substances, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of continuing medical education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division.
3. Respondent shall take and complete a course in Medical Ethics. Within 60 days of the effective date of this decision, respondent shall select and submit a course to the Division for its prior approval.
4. Within 60 days of the effective date of this Decision, respondent shall take and pass an oral and written clinical examination, in a subject to be designated, to be administered by the Division or its designee. If respondent fails this examination, respondent must take and pass a re-examination consisting of a written as well as an oral clinical examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved. The Division shall pay the cost of the first examination and respondent shall pay the cost of any subsequent re-examinations. Respondent shall not practice medicine until respondent has passed the required examination and has been so notified by the Division in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.
5. 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 by a Division-appointed psychiatrist who shall furnish a psychiatric report to the Division or its designee.

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. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Division. Respondent shall have the treating psychiatrist submit quarterly status reports to the Division.

6. Within 30 days of the effective date of this Decision, respondent shall submit to the Division 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. If the monitor quits, or is no longer available, respondent shall not practice until a new monitor has been substituted, through nomination by the respondent and approval by the Division.
7. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
8. 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.
9. Respondent shall comply with the Division's probation surveillance program.
10. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
11. The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction

of California to reside or practice elsewhere; respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

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

This Decision shall become effective on the 6th day of June, 1990.

IT IS SO ORDERED this 7th day of May, 1990.

PANEL OF DISTRICT 12  
MEDICAL QUALITY REVIEW COMMITTEE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By Guy Hartman MD  
GUY HARTMAN, M.D., Chairman

RLJ:mh