

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:)

DAVID N. MICHELSON, M.D.)
31567 Lindero Canyon Rd., #4)
Westlake Village, CA 91361)

No. L-54661

..... Respondent.)

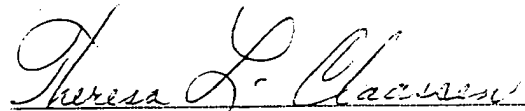
DECISION

The attached Proposed Decision of the Medical Quality Review Committee is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on December 18, 1991.

IT IS SO ORDERED November 18, 1991.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA



THERESA L. CLAASSEN
Secretary/Treasurer

FINDINGS OF FACT

1.

In 1976 petitioner was first licensed by the State Board of Medical Examiners as a physician and surgeon.

2.

(A) By Board Decision No. D-3359 pursuant to stipulation effective 4 March 1987, the license of petitioner to practice as a physician and surgeon in the State of California was revoked. Further the Board ordered compliance with certain specified conditions prior to reinstatement of his license and, additionally, ordered that any reinstatement would be for a minimum five year probationary term on minimum specified terms and conditions.

(B) Petitioner became addicted to certain controlled substances in 1978. Cause for discipline involved distribution of cocaine and other dangerous substances. As a result thereof petitioner suffered a criminal conviction on 31 January 1986 with a five year sentence and imprisonment suspended and petitioner placed on court-ordered probation. One term thereof was participation in a treatment program for narcotic addiction and drug dependency.

3.

On or about 31 January 1991 petitioner filed subject petition.

4.

Since the time of subject revocation to the present petitioner has achieved the following rehabilitation:

(A) In 1983, he stopped using cocaine. He entered the Physician Diversion program in 1984 and remained in the program until 1986. Between 1986 and 1988, he was a participant in the Federal Drug Program (Correctional Service Associates), a behavior modification program, and successfully completed same. He has been subject to random drug testing since completion of the program and has remained drug-free.

(B) Since 1986, he has participated in group psychotherapy at least twice per week. He has been in Cocaine Anonymous since 1984 and attend meetings twice per week. He is a sponsor and has been a panel member. He has advised Los Angeles County Probation, Narcotics Testing Units on the effects of drug-screening on recovery.

(C) Over the past five years, he has rendered over 2000 hours of community service counselling substance abusers-- adolescents and adults, victims of rape and other violent crimes. He has also assisted quadriplegic adults in their attempts to maximize function through physical exercise.

(D) He has accumulated 179.5 Category I CME credits and 127 Category 2 credit hours at Family practice, Emergency Medicine, Acute Cardiac Care, and Endocrine seminars. In addition, he has taken 9 credit hours at California State University Northridge, Department of Sociology in Psychodrama and has successfully completed the training course with the California Institute of Psychodrama.

(E) Since 1986, he has earned a living as a medical equipment broker and salesman for West Coast Medical Services; and has operated as a medical management consultant, assisting physicians in their billing and collections.

5.

(A) The evidence as a whole established that, with due regard to the public safety and welfare, petitioner's license should be reinstated at this time. Petitioner has established the rehabilitation set forth in Finding 4. In view of the severity of the acts which caused revocation of petitioner's license, petitioner had the burden of establishing a record of clear and convincing and substantial rehabilitation. He has done so.

(B) Petitioner, clearly and convincingly, by his own testimony and the testimony of others, established a change in attitude from that which existed at the time of said criminal conduct. A number of witnesses, with knowledge of respondent and his past, representing a wide spectrum of petitioner's community, testified in his behalf and expressed opinions concerning petitioner's present good character and reputation and his integrity. Said opinions are credible opinions supported by reasonable inferences from the whole of the evidence. That evidence and other evidence did establish that, at present, petitioner is a socially responsible person.

* * * * *

DETERMINATION OF ISSUES

Petitioner has established good cause to reinstate his certificate consistent with the mandatory requirements set forth in the Board's Order set forth in Decision D-3359.

* * * * *

ORDER

The petition of David N. Michelson, M.D. for reinstatement of revoked certificate is hereby granted; provided however that said grant is pursuant to the requirements of the Disciplinary Order set forth in Board Decision D-3359, line 10 page 11 to line 2 page 19, to wit:

(A) Respondent shall comply with the following conditions prior to the actual reinstatement of his license and prior to engaging in the practice of medicine:

- (1) Respondent shall take and pass an oral clinical and/or written examination to be administered by the Division or its designee. The test shall include a determination of respondent's general competence in the area of General Medicine, and Emergency Medicine. If respondent fails these examinations, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary examination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations. Respondent shall not practice medicine until respondent has passed this examination and has been so notified in writing.
- (2) Respondent shall submit to the Division for its prior approval an educational program or course related to General Medicine and Medical Therapeutics which shall not be less than 40 hours per year for each year of a probationary/restricted license. This program shall be in addition to the continuing medical education requirements for relicensure. 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 submit 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 provide documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Respondent shall not have prescribed, administered, dispensed, ordered or possessed any controlled substances as defined in the California Uniform Controlled Substances Act.
- (4) Respondent shall have obeyed all federal, state and local laws and all rules and regulations substantially related to the practice of medicine including the prescribing and furnishing of controlled substances and dangerous drugs.

(B) If respondent's license is actually reinstated, it shall be reinstated on a restricted/probationary basis for a period of five (5) years. During the probationary term, respondent shall comply with the following terms and conditions:

- (1) Respondent shall comply with the continuing education course requirements on an annual basis for each year of probationary status as set forth hereinabove in paragraph 17(A)(2).
- (2) Respondent is prohibited from engaging in solo practice. Respondent shall not practice medicine until a supervised structured environment has been approved in writing. Respondent shall submit to the Division in writing and receive its prior approval in writing for a plan of practice limited to a supervised structured environment in which respondent's practice will be supervised and monitored by a physician duly licensed to engage in the practice of medicine in the State of California and whose qualifications to supervise the respondent are approved by the Division. The approval shall be based upon respondent's submittal of a written agreement by the respondent and supervising physician. Said agreement shall contain, among others, the following terms and conditions:

(a) At a minimum, the supervision should consist of weekly review of patient's charts for each patient examined by respondent; the supervisor shall meet with respondent at regular intervals but no less than once a week.

(b) Supervisors shall submit regular monthly progress reports to the Division.

Respondent shall not be allowed to practice medicine until respondent has been notified in writing that his plan of practice has been approved. If the supervising physician withdraws from his agreement or changes the terms of the agreement, respondent shall cease all practice until a suitable replacement is found and approved by the Division.

(3) Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Respondent shall not prescribe, administer, dispense, order or possess any controlled substance as defined in the California Uniform Controlled Substances Act for a period of five years from the effective date of reinstatement, or earlier if permitted in writing by the Division. Respondent shall inform the Division prior to reapplication for a new DEA permit. As part of respondent's proposal for a supervised structured environment, respondent may request a waiver from this paragraph as follows: Respondent may request at the time of reinstatement, or at any time thereafter, to have authority to write an order for the administration of a controlled substance for a patient in a hospital setting (if justified by the patient's condition) by entering said order on the patient's chart or by issuing said order verbally and later entering said order on the patient's chart in accordance with accepted hospital practice.

However, respondent shall not handle, touch, or personally administer said controlled substances. Respondent shall have such authority only if so permitted by the Division in writing and only if so permitted by law.

- (4) Should respondent obtain a new DEA permit, respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during his probationary period showing all the following: 1) The name and address of the patient, 2) The date, 3) The character and quantity of controlled substances involved, and 4) The pathology and purpose for which the controlled substance was furnished. Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Division or its designee, upon request.
- (5) Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription; except, however medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.
- (6) Respondent shall immediately submit to biological fluid testing at respondent's cost, upon request of the Division or its designee.
- (7) Respondent shall submit to the Division for its prior approval and enter a drug rehabilitation program in which respondent shall participate weekly during his probationary status and for a period of time to be determined by the Division. Respondent shall provide documentary evidence of continuing participation in this program. The Division may, in its discretion, allow respondent to enroll in the Diversion Program of the Board of Medical Quality Assurance and to participate fully therein as compliance with this paragraph.

- (8) Respondent shall obey all federal, state and local laws and all rules and regulations substantially related to the practice of medicine including the prescribing and furnishing of controlled substances and dangerous drugs.
- (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.
- (11) Respondent shall appear in person for interviews with the Division Medical Consultant upon request at various intervals and with reasonable notice.
- (12) Respondent shall exercise proper professional judgement prior to prescribing, dispensing or furnishing any drug. Specifically, respondent shall determine prior to prescribing, dispensing or furnishing any drug whether respondent has provided a good faith prior examination and a bona fide medical condition is indicated for the patient.
- (13) Respondent shall exercise proper professional judgement and shall not prescribe or administer drugs or treatment in clearly excessive amounts (either dosages or quantities).
- (14) Respondent is prohibited from becoming a supervisor of physician assistants in the State of California.
- (15) Respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for a least 4 hours a month for the first 12 months of probation.

- (16) Respondent is prohibited from engaging in or treating patients in the area of obstetrics and gynecology except as permitted by the Division in writing. The Division may require respondent to take and pass an oral/clinical and/or written examination to be administered by the Division or its designee in the area of obstetrics and gynecology.
- (17) In the event respondent should leave California to reside or practice out of state, respondent must notify the Division in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period, except as permitted by the Board.
- (18) Should respondent violate probation in any respect the board after giving respondent notice and opportunity to be heard may revoke probation and set aside that stay order, any modify or change the terms and period of probation, or may take any other or further action as it deems proper. If a petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final.

This Decision shall become effective on
the _____ of _____ 1991.

IT IS SO ORDERED this _____ day of _____,
1991.

PANEL OF DISTRICT 10
MEDICAL QUALITY REVIEW COMMITTEE
DIVISION OF MEDICAL QUALITY ASSURANCE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

RJL:myg