

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:

MARK KAPLAN

No: 20-2004-154979

\_\_\_\_\_  
Petitioner


**DECISION**

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

This Decision shall become effective at 5:00 p.m. on November 1, 2004.

IT IS SO ORDERED September 30, 2004

By: \_\_\_\_\_

  
**RONALD L. MOY, M.D.**  
Chair - Panel B  
Division of Medical Quality

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

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

MARK KAPLAN, M.D.

Respondent.

Case No. 20-2004-154979

OAH No. N2004070461

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on August 18, 2004.

Adrian K. Panton, Supervising Deputy Attorney General, represented the Department of Justice.

Respondent Mark Kaplan, M.D. was present and represented himself.

The matter was submitted on August 18, 2004.

**FACTUAL FINDINGS**

1. Mark Kaplan, M.D. (respondent) signed a petition for penalty relief, reinstatement of revoked certificate on November 22, 2003. On March 31, 1995, respondent entered into a stipulation for surrender of license with the Medical Board to become effective August 18, 1995. The stipulation agreement made it clear that should respondent file an application for reinstatement that his application would be treated as a petition for reinstatement. The stipulation stated that respondent's surrender was based on his physical and psychiatric problems brought on by the criminal proceedings against him. The Board accepted his surrender in lieu of filing an accusation against him.

2. On December 29, 1994, respondent was convicted in Los Angeles County Superior Court of a violation of Penal Code section 182, subdivision (a)(1) (conspiracy to commit a crime) and Penal Code section 12022.6, subdivision (b) (enhancement for damaging property exceeding \$150,000). He also was convicted of three (3) counts of violating Insurance Code section 1871.1, subdivision (a)(1) (insurance fraud). Respondent was involved in a conspiracy from November 1991 to July 1993 to defraud insurance

companies and their client employers of more than 30 million dollars in Workers Compensation benefits.

3. Respondent was sentenced to imprisonment in the State Prison for eight (8) years and ordered to pay a fine of \$5,000. Respondent was given almost three years credit for time served and it was recommended that he serve his sentence in a low-security facility near his home. Respondent has met all the terms and conditions of his criminal parole and has been discharged. Over 10 years have elapsed since respondent's criminal offenses and almost ten years have elapsed since his criminal conviction.

4. On June 5, 2000, respondent filed a petition for penalty relief. On June 4, 2001, a decision was rendered denying respondent's petition in that respondent failed to demonstrate rehabilitation from his convictions.

5. Respondent has now demonstrated that he is sufficiently rehabilitated to have his certificate reinstated on a probationary basis. The Deputy Attorney General proposed that respondent's certificate be reinstated upon terms and conditions including the requirement to take an ethics course and to be evaluated by PACE or a similar program and follow the recommendations of the program. Respondent's field of practice was psychiatry.

6. Respondent presented letters of recommendation from Dr. Dusovich, Dr. Emert, Dr. Stern, Dr. Heifets, Dr. Lyubashevsky and Dr. Sherman. The medical board investigator contacted each of these physicians except Dr. Sherman who was deceased. They all agreed that respondent was a "changed man." They found that respondent now sincerely regrets his past actions and understands the serious nature of his past behavior.

7. Respondent has continued to participate in medical training. He demonstrated that he took almost 40 hours of continuing medical education in June 2004, alone. The medical Board investigator reported that respondent has completed about 400 hours of continuing medical education in the past four years. Respondent has been working as a volunteer for Gateways Beit T'Shuvah and the Autism Society of America. His volunteer work has been mostly helping addicts overcome their addiction.

8. Respondent has continued to participate in counseling with his religious advisors. He has vowed never to repeat any wrong-doing and to uphold the highest moral and ethical standards. The Deputy Attorney General also affirmed that respondent has undergone a significant transformation. Respondent has accepted the seriousness of his past conduct. It is extremely unlikely that respondent will engage in any criminal conduct in the future. It would not be against the public interest to allow respondent's license to be reinstated under terms and conditions of probation.

#### LEGAL CONCLUSIONS

Pursuant to the Findings set forth above, respondent has demonstrated good cause to grant respondent's petition for penalty relief under Business and Professions Code section

2307 and Government Code section 11522 in that he has demonstrated that he is sufficiently rehabilitated and fit to practice medicine and that he no longer represents a threat to the public health and safety provided he complies with the probationary terms and conditions ordered below.

### ORDER

The petition for reinstatement of revoked certificate is hereby granted upon the following terms and conditions. The certificate is immediately revoked. The revocation is stayed for a period of seven (7) years upon the following terms and conditions of probation.

1. **Ethics Course** - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

2. **Clinical training program** - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program").

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting

respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Division or its designee in writing, except that respondent may practice in a clinical training program approved by the Division or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

3. **Notification** - Prior to engaging in the practice of medicine the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

4. **Supervision of Physician Assistants** - During probation, respondent is prohibited from supervising physician assistants.

5. **Obey All Laws** - 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.

6. **Quarterly Declarations** - 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. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

7. **Probation Unit Compliance** - Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. 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 not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

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

8. **Interview with the Division or its Designee** - Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

9. **Residing or Practicing Out-of- State** - In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar 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 outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. 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 will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and Probation Unit Compliance.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

10. **Failure to Practice Medicine – California Resident** - In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar 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 which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

11. **Completion of Probation** - Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

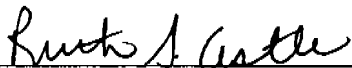
12. **Violation of Probation** - Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order 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.

13. **License Surrender** - 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 request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. **Probation Monitoring** - 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 Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: September 10, 2004

  
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RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings