

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

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|---|---|-----------------------------|
| In the Matter of the Petition for Penalty Relief of: |) | |
| |) | OAH No. L-2000020426 |
| |) | |
| JESUS R. JUAREZ |) | MBC File No. 20-1999-101270 |
| 2105 North Cornelia Avenue |) | |
| Fresno, California 93722 |) | |
| |) | |
| Physician and Surgeon's |) | |
| Certificate No. A-43595 |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

DECISION AFTER NONADOPTION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on March 15, 2000. The Medical Board of California was represented by Richard Avila, Deputy Attorney General. Respondent Jesus R. Juarez was present and represented by Carlo Coppo, Attorney at Law.

Oral and documentary evidence was received and the matter submitted for decision.

The proposed decision of the administrative law judge was submitted to the Division of Medical Quality, Medical Board of California (hereafter "division") on May 31, 2000. After due consideration thereof, the division declined to adopt the proposed decision and thereafter on August 1, 2000 issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. On October 2, 2000 the division issued a Notice of Time for Oral Argument. Oral argument was heard on November 3, 2000. 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 August 21, 1999, Jesus Reyna Juarez (hereinafter respondent) filed a Petition for Penalty Relief with the Division of Medical Quality, Medical Board of California. In his petition, respondent requests reinstatement of his revoked medical certificate.

2. On or about April 27, 1987, respondent was issued physician's and surgeon's certificate no. A-43595 by the Medical Board of California. Said certificate is currently revoked and not in effect.

3. (A) Effective on August 9, 1996, in the Matter of the Accusation Against Jesus R. Juarez, M.D., Case No. 08-93-33106, respondent's medical certificate was revoked for unprofessional conduct for having been convicted of the crime of distributing a controlled substance, administered the controlled substances Vicodin and marijuana to himself, distributed controlled substances of dangerous drugs, and possessed marijuana in unauthorized manner.

(B) On June 13, 1994, before the United States District Court for the Eastern District of California, respondent was convicted of felony distribution of a controlled substance. In July 1993, he sold 100 tablets of Vicodin and 31 tablets of Desyrel for \$200 to an undercover narcotics officer who had come to respondent's office with one of his patients. Subsequently, respondent gave 77 tablets of Tylenol with codeine and 16 tablets of Desyrel to the undercover officer in the hope of acquiring marijuana. In August 1993, respondent gave 100 tablets of hydrocodone bitartrate to the undercover officer as a deposit for purchasing a large quantity of marijuana. In December 1993, respondent exchanged 100 tablets of hydrocodone and \$2,500 cash for one pound of marijuana. He was arrested thereafter.

(C) As a result of his conviction, respondent was sentenced to three years of probation on condition, in part, that he participate in a drug and alcohol treatment program with drug testing, maintain records of prescriptions, participate in mental health counseling, and complete 350 hours of community service within the first two years of probation.

(D) At the time of his offense, respondent was addicted to using marijuana. He began using marijuana in college in 1971 and continued to do so on a regular but infrequent basis for 20 years. He also had used other drugs before his arrest and conviction.

(E) Soon after his arrest, respondent began participating in regular meetings of Alcoholics Anonymous, a program for impaired physicians, individual psychotherapy, and religious bible studies, as described hereinbelow.

4. On or about February 14, 1997, the United States Probation Officer recommended that respondent's three-year term of probation be terminated early. Respondent had complied with all of the conditions and special conditions of his probation, had not been involved in any further criminal activity, and had an excellent attitude and behavior. The probation officer opined that respondent had derived maximum benefit from probation supervision and was not in need of continued supervision. On or about March 12, 1997, the United States District Judge ordered that respondent be discharged from probation and that the proceedings in his federal case be terminated.

5. Respondent does not have any other convictions and has not violated any law since the underlying offense in 1993 which led to his conviction in 1994. His conviction is now six years old and it has been three years since he has been discharged from probation for his offense.

6. Respondent has not used illegal drugs or alcohol since December 1993. He has been drug-free and sober now for over six years. Respondent has been screened for drugs and alcohol on a random and frequent basis with negative results. He has submitted results of laboratory drug screening from August 25, 1999, through February 24, 2000, all of which corroborate he has not used marijuana, methamphetamine, alcohol, and other drugs. [Exh. B] In addition, the Medical Board's investigator reviewed 51 toxicology reports for the years 1997 through 1999 and found that these reports further corroborate respondent has not abused drugs or alcohol since his arrest in December 1993. [Exh. 2]

7. (A) In January 1994, respondent entered a medical profession diversion and recovery program. He attended weekly individual and group therapy meetings and was subject to random drug testing. Beginning in February 1994, respondent attended meetings of Alcoholics Anonymous three to four times weekly and later obtained an AA sponsor.

(B) In January 1994, respondent also began an eleven-week outpatient drug treatment program with the Alcohol Rehabilitation Center in Fresno under the care of Raymond Deutsch, M.D. Afterwards, he participated in an aftercare recovery program for one and one-half years.

(C) In addition, in or about 1995, respondent joined a Bible study and fellowship group, which included three other psychiatrists or psychologists and their spouses. Respondent considers his religious study group to be his main support group where he has been able to talk about his life and the loss of his medical license. Respondent has been open and forthright about his past drug addiction with this study group and has obtained emotional and spiritual support and enrichment from his participation with the group.

(D) From 1994 through 1995, respondent continued receiving individual and group therapy and monitoring through said diversion program and aftercare program, continued attending meetings of AA, and continued to maintain his religious study group. He became an officer of his AA therapy group. He also obtained marriage counseling for about three months. In October 1995, respondent entered the physician's diversion program of the Medical Board. He continued his participation in the Medical Board's diversion program until his license was revoked. Later, he was given informal permission to resume participation in the physician's diversion program for several more months.

(E) In or about 1998, respondent helped to organize and start a physician's alcohol and drug recovery and support group in Fresno. Respondent meets with this physician's group on a weekly basis.

8. (A) Presently, respondent continues to participate in his religious study and support group and attends meetings of Alcoholics Anonymous. For the past few months, he has attended weekly meetings of the physician's diversion program in Fresno. Respondent has submitted letters of recommendation from members of his weekly religious study group, including a clinical professor and assistant dean from UC San Francisco and an elementary school principal, who attest to his rehabilitation from drug abuse, positive life changes, and religious faith.

(B) In addition, respondent has provided community service lectures in the areas of mental health and leadership issues. He helped to create a HIV/AIDS support group for the Spanish-speaking community in the San Joaquin Valley. He is an active volunteer for the Institute of Latino Leadership Education and Development in Fresno.

9. Since his offense, respondent has been receiving treatment from Francisco E. Montalvo, M.D., Ph.D., a psychiatrist in Fresno. Respondent has been diagnosed with bipolar disorder and polysubstance dependency and, for the past year, has been taking the medication Zoloft at 50 milligrams daily for depression and anxiety. Respondent now sees Dr. Montalvo once monthly for treatment and his psychiatric condition is said to be in full remission. Despite several family and personal tragedies and difficulties in the past five years, Dr. Montalvo states respondent has not suffered a relapse in his condition and has continued to maintain his sobriety. Respondent is said to have acknowledged his past offense and substance abuse and has gained insight and personal growth which will improve his clinical skills as a physician.

10. From March 1995 until the present time, respondent has completed 236.5 hours of continuing medical education. In the last few months, for example, he completed three hours in a medical futility program at the Fresno Madera Medical Society in November 1999, a six hour course in neurologic issues in the primary care setting provided by the UCLA School of Medicine in Oxnard in September 1999, and 12 hours of continuing medical education classes at the meeting of the American Society of

Addiction Medicine in Arizona in August 1999. He was recently awarded a scholarship to attend a five-day conference in addiction medicine to be held in Pittsburgh, Pennsylvania, later this year in August. Respondent has submitted numerous certificates and letters demonstrating he has diligently completed said hours of continuing medical education over the past five years.

11. (A) Respondent was born in Texas to migrant farmworker parents. He graduated from Occidental College in 1977. After working as an aerospace engineer for a few years, he entered medical school and obtained his medical degree from Medical College of Wisconsin in 1985. From 1985 until 1989, he was an intern and resident in psychiatry at the University of California at San Francisco School of Medicine program in Fresno. In 1988 and 1989, he was a fellow in forensic psychiatry with the UCSF program at Atascadero State Hospital. Respondent received certification from the American Board of Psychiatry and Neurology in April 1994.

(B) From 1989 until 1992, respondent was employed as a staff psychiatrist with the Atascadero State Hospital and also worked as a psychiatric witness evaluator for the San Luis Obispo Superior Court. For three months in the summer of 1992, he was a staff psychiatrist at the Central California Women's correctional facility in Chowchilla. In September 1992, respondent entered the private practice of medicine by joining a counseling group in Fresno. In 1993, he became a partner and medical director of the counseling group. In February 1992, he started his own private psychiatric practice in Fresno. For the next three or four years, respondent practiced general and forensic psychiatry. He was a qualified medical examiner for workers' compensation insurance cases.

12. Respondent has not practiced medicine now for over four years. He has helped support his family of three children by working part-time in a slaughterhouse. His spouse is employed as a teacher. His present financial ability is uncertain in that he has debts and hopes to discharge them in bankruptcy.

13. If his medical certificate is reinstated, respondent wants to stay in Fresno and work as a psychiatrist for a substance abuse and recovery center or teach. He would also like to work with Dr. Montalvo in the latter's psychiatric and counseling practice. From his past medical training and practice as well as his own personal experience, respondent believes he has learned a great deal about medications, their side effects, and substance abuse and recovery.

14. Respondent demonstrates remorse and an enlightened outlook on his past offense. He sincerely believes he has benefited from the revocation of his medical certificate because he has been able to reflect on his life and his past substance abuse and to change his attitude and lifestyle. He relies on several support groups to help him

to continue his recovery, and realizes that there will concomitant stress and challenges in his life if he is allowed to practice medicine again. Respondent testified in a forthright manner and was credible.

15. Respondent has presented impressive letters of recommendation and testimony of several physicians who attest to his recovery from substance abuse, his moral character, and his attitude and life style changes. For example, the medical director of the Aetna network would recommend that respondent, if licensed, be part of his organization of physicians. A number of those same physicians believe it would be prudent to monitor respondent if his license were to be reinstated. Respondent's letters and witnesses were credible and persuasive.

* * * * *

LEGAL CONCLUSIONS

Grounds exist to reinstate respondent's revoked medical certificate under Government Code Section 11522 and Business and Professions Code Section 2307 in that respondent has demonstrated he is sufficiently rehabilitated from his single conviction and would not represent a threat to the public health and safety under certain conditions, based on Findings 3(E) - 15 above.

Respondent successfully completed his criminal probation after his probation officer took the unusual step of recommending early termination of probation. He has participated and continues to participate in substance abuse recovery and treatment for several years now without having had any kind of relapse. He has not used drugs or alcohol for over five years. Through counseling and support group participation, he has gained insight into his past drug abuse and demonstrates remorse for his misconduct. Respondent has significantly improved his attitude and outlook on life and has shown by letters and testimony that he has, in fact, changed his life and may be considered to have excellent moral character. He has strong ties to his Fresno community, both personal and professional, which bode well for his continued recovery and compliance with the law.

Since respondent had not practiced medicine in over four years, the division must assure itself that he still retains the ability to practice medicine safely. The terms and conditions of this order are intended to address the division's concerns in this area.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

The Petition for Penalty Relief for Reinstatement of Revoked Certificate filed by respondent Jesus R. Juarez, is granted; provided, however, respondent's certificate shall be revoked; said order of revocation shall be stayed, and his medical certificate placed on probation for five (5) years on the following terms and conditions:

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

2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division of Medical Quality, stating whether he has complied with all of the terms and conditions of probation.

3. Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his addresses of residence and business, both of which shall serve as his addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall respondent use a post office box as an address of record.

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.

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

5. In the event that respondent leaves California to reside or practice outside this State or ceases to practice medicine in California for any reason, respondent shall notify the Division of Medical Quality, or its designee, in writing within ten (10) 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 (30) days during which respondent is not engaging in any activities defined in Business and Professions Code Sections 2051 and 2052. 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 suspension of practice ordered by the Medical Board will not be considered as a period of non-practice.

Periods of temporary or permanent residence or practice outside of California or of non-practice within California, as defined in this condition, shall not apply to the reduction of the probationary period.

6. Respondent shall pay the costs associated with probation monitoring each and every year of probation. 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. The failure to pay such probation monitoring costs within 30 days shall be considered a violation of probation.

7. Respondent's failure to pay, prior to the conclusion of probation, the cost recovery award contained in the order that led to revocation of his license shall constitute a violation of probation.

8. Respondent shall provide the Division of Medical Quality, or its designee, proof of service that respondent has served a true copy of this Decision on the chief of staff or chief executive officer at every hospital where respondent has or obtains privileges or membership or where respondent is employed or obtains employment to practice medicine. In addition, respondent shall serve a true copy of this Decision on the chief executive officer of every insurance carrier with whom respondent has or obtains medical malpractice insurance coverage.

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

10. Following the effective date of this Decision, and in the event he ceases practicing medicine due to retirement, health reasons, or inability to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Medical Board for surrender. The Division of Medical Quality expressly reserves the right to evaluate any such request of respondent and to exercise its discretion whether to accept or grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered certificate, respondent would no longer be subject to the terms and conditions of probation.

11. 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 Business and Professions Code Section 4211, or any drugs requiring a prescription. This prohibition does not apply to medications

lawfully prescribed to respondent for a bonafide illness or condition by another physician or medical practitioner.

12. Respondent shall maintain a record of all controlled substances prescribed, dispensed, or administered by him during probation. Said record shall contain all of the following information: (a) the name and address of each patient; (b) the date of prescription, dispensing, or administration; (c) the character and quantity of controlled substance(s) involved; and (d) the indications and diagnoses for which the controlled substance(s) was furnished.

Respondent shall keep this record in a separate file or ledger, and in chronological order, and shall make the record available for inspection and copying by the Division or its designee, upon its request.

13. Respondent shall abstain completely from the use of alcoholic beverages.

14. Respondent shall immediately submit to biological fluid testing, at his own cost, upon the request of the Division or its designee. With approval of the Division or its designee, respondent may comply with this condition by submitting or utilizing the results of any biological fluid testing ordered or administered by his physician.

15. Within thirty (30) days of the effective date of this Decision, respondent shall enroll and participate in the Division's Diversion Program until the Division determines that further treatment and rehabilitation are no longer necessary. The failure to complete the program without permission of the Division or an expulsion from the program shall constitute a violation of probation.

16. Respondent shall take and pass an oral clinical exam or written exam in a subject to be designated and administered by the Division or its designee. This examination shall be taken within 60 days after the effective date of this decision. If respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of a written as well as an oral examination. The waiting period between the first and second examinations shall be at least three months. If respondent fails to pass the first and second examinations, respondent may take a third and final examination after waiting a period of one year. Failure to pass the oral clinical examination within 18 months after the effective date of this decision shall constitute a violation of probation. The respondent shall pay the costs of all examinations. For purposes of this condition, if respondent is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or equivalent examination as determined by the Division or its designee.

Respondent shall not practice medicine until respondent has passed the required examination and has been so notified by the Division or its designee in writing. This prohibition shall not bar respondent from practicing 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.

17. 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 not practice medicine until respondent has undergone the psychiatric evaluation and has been notified by the Division, or its designee, in writing of the evaluator's conclusion that respondent is able to practice medicine safely.

18. Within sixty (60) days of the effective date of this Decision, respondent shall submit to the Division or its designee for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Division or its designee deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee.

The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist. If, at any time prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions.

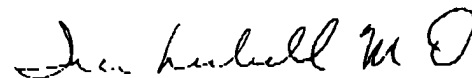
19. Within thirty (30) days of the effective date of this Decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which his practice will be monitored by another physician in respondent's field of practice. Said physician-monitor shall provide periodic reports to the Division or its designee. If the physician-monitor resigns or is no longer available to monitor respondent's practice,

respondent shall within fifteen (15) days request to have a new monitor appointed for him. Respondent shall nominate a physician-monitor and obtain approval of the nomination by the Division or its designee.

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

This decision shall become effective on January 22, 2001.

IT IS SO ORDERED this 21st day of December 2000.



IRA LUBELL, 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)
Penalty Relief of :)
)
JESUS R. JUAREZ)
)
)
)
)
)
_____)
Petitioner)

Case No.: 20-1999-101270

**NOTICE OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. The Medical Board of California, Division of Medical Quality, will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including in particular, argument directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

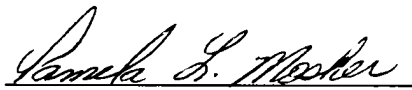
To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, at 320 West Fourth Street, 6th Floor, Suite 630, Los Angeles, CA 90013 or (213) 576-7200.

In addition to written argument, oral argument will be scheduled if any party files with the Division within 20 days from the date of this notice a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality
MEDICAL BOARD OF CALIFORNIA
1426 Howe Avenue
Sacramento, CA 95825-3236
(916) 263-2419

Dated: August 1, 2000



Enforcement Legal Unit

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

In the Matter of the Petition for
Penalty Relief of:

JESUS R. JUAREZ, M.D.
2105 North Cornelia Avenue
Fresno, California 93722,

Physician and Surgeon's
Certificate No. A-43595,

Respondent.

OAH No. L-2000020426

MBC File Number 20-1999-101270

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles on March 15, 2000. The Medical Board of California was represented by Richard Avila, Deputy Attorney General. Respondent Jesus R. Juarez, M.D., was present and represented by Carlo Coppo, Attorney at Law.

Oral and documentary having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On or about August 21, 1999, Jesus Reyna Juarez, M.D. (hereinafter respondent) filed a Petition for Penalty Relief with the Division of Medical Quality, Medical Board of California. In his petition, respondent requests reinstatement of his revoked medical certificate.

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10. From March 1995 until the present time, respondent has completed 236.5 hours of continuing medical education. In the last few months, for example, he completed three hours in a medical futility program at the Fresno Madera Medical Society in November 1999, a six hour course in neurologic issues in the primary care setting provided by the UCLA School of Medicine in Oxnard in September 1999, and 12 hours of continuing medical education classes at the meeting of the American Society of Addiction Medicine in Arizona in August 1999. He was recently awarded a scholarship to attend a five-day conference in addiction medicine to be held in Pittsburgh, Pennsylvania, later this year in August. Respondent has submitted numerous certificates and letters demonstrating he has diligently completed said hours of continuing medical education over the past five years.

11. (A) Respondent was born in Texas to migrant farmworker parents. He graduated from Occidental College in 1977. After working as an aerospace engineer for a few years, he entered medical school and obtained his medical degree from Medical College of Wisconsin in 1985. From 1985 until 1989, he was an intern and resident in psychiatry at the University of California at San Francisco School of Medicine program in Fresno. In 1988 and 1989, he was a fellow in forensic psychiatry with the UCSF program at Atascadero State Hospital. Respondent received certification from the American Board of Psychiatry and Neurology in April 1994.

(B) From 1989 until 1992, respondent was employed as a staff psychiatrist with the Atascadero State Hospital and also worked as a psychiatric witness evaluator for the San Luis Obispo Superior Court. For three months in the summer of 1992, he was a staff psychiatrist at the Central California Women's correctional facility in Chowchilla. In September 1992, respondent entered the private practice of medicine by joining a counseling group in Fresno. In 1993, he became a partner and medical director of the counseling group. In February 1992, he started his own private psychiatric practice in Fresno. For the next three or four years, respondent practiced general and forensic psychiatry. He was a qualified medical examiner for workers' compensation insurance cases.

12. Respondent has not practiced medicine now for over three and one-half years. He has helped support his family of three children by working part-time in a slaughterhouse. His spouse is employed as a teacher. His present financial ability is uncertain in that he has debts and hopes to discharge them in bankruptcy.

13. If his medical certificate is reinstated, respondent wants to stay in Fresno and work as a psychiatrist for a substance abuse and recovery center or teach. He would also like to work with Dr. Montalvo in the latter's psychiatric and counseling practice. From his past medical training and practice as well as his own personal experience, respondent believes he has learned a great deal about medications, their side effects, and substance abuse and recovery.

14. Respondent demonstrates remorse and an enlightened outlook on his past offense. He sincerely believes he has benefited from the revocation of his medical certificate because he has been able to reflect on his life and his past substance abuse and to change his attitude and lifestyle. He relies on several support groups to help him to continue his recovery, and realizes that there will concomitant stress and challenges in his life if he is allowed to practice medicine again. Respondent testified in a forthright manner and was credible.

15. Respondent has presented impressive letters of recommendation and testimony of several physicians who attest to his recovery from substance abuse, his moral character, and his attitude and life style changes. For example, the medical director of the Aetna network would recommend that respondent, if licensed, be part of his organization of physicians. A number of those same physicians believe it would be prudent to monitor respondent if his license were to be reinstated. Respondent's letters and witnesses were credible and persuasive.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

Grounds exist to reinstate respondent's revoked medical certificate under Government Code Section 11522 and Business and Professions Code Section 2307 in that respondent has demonstrated he is rehabilitated from his single conviction and would not represent a threat to the public health and safety under certain conditions, based on Findings 3(E) - 15 above.

Respondent successfully completed his criminal probation after his probation officer took the unusual step of recommending early termination of probation. He has participated and continues to participate in substance abuse recovery and treatment for several years now without having had any kind of relapse. He has not used drugs or alcohol for over five years. Through counseling and support group participation, he has gained insight into his past drug abuse and demonstrates remorse for his misconduct. Respondent has significantly improved his attitude and outlook on life and has shown by letters and testimony that he has, in fact, changed his life and may be considered to have excellent moral character. He has strong ties to his Fresno community, both personal and professional, which bode well for his continued recovery and compliance with the law.

Given his continued recovery from substance abuse and remission in his mental condition, respondent's certificate will be reinstated but subject to certain terms and conditions. However, contrary to the argument of complainant's counsel, it is not necessary that respondent first complete a physician assessment and clinical training program before practicing again. As stated in the decision to revoke respondent's certificate, there was no issue as to respondent's capacity to practice medicine competently. Rather, it was respondent's conviction and substance abuse that caused his certificate to be revoked in the first place.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

The Petition for Penalty Relief for Reinstatement of Revoked Certificate filed by respondent Jesus R. Juarez, M.D., is granted; provided, however, respondent's certificate shall be reinstated in revoked status, said order of revocation shall be stayed, and his medical certificate placed on probation for three (3) years on the following terms and conditions:

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

2. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division of Medical Quality, stating whether he has complied with all of the terms and conditions of probation.

3. Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his addresses of residence and business, both of which shall serve as his addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall respondent use a post office box as an address of record.

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.

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

5. In the event that respondent leaves California to reside or practice outside this State or ceases to practice medicine in California for any reason, respondent shall notify the Division of Medical Quality or its designee in writing within ten (10) 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 (30) days during which respondent is not engaging in any activities defined in Business and Professions Code Sections 2051 and 2052. 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 suspension of practice ordered by the Medical Board will not be considered as a period of non-practice.

Periods of temporary or permanent residence or practice outside of California or of non-practice within California, as defined in this condition, shall not apply to the reduction of the probationary period.

6. Respondent shall pay the costs associated with probation monitoring each and every year of probation. 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. The failure to pay such probation monitoring costs within 30 days shall be considered a violation of probation.

7. Respondent shall provide the Division of Medical Quality, or its designee, proof of service that respondent has served a true copy of this Decision on the chief of staff or chief executive officer at every hospital where respondent has or obtains privileges or membership or where respondent is employed or obtains employment to practice medicine. In addition, respondent shall serve a true copy of this Decision on the chief executive officer of every insurance carrier with whom respondent has or obtains medical malpractice insurance coverage.

8. If respondent violates probation in any respect, the Division of Medical Quality, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the stayed disciplinary order. If an accusation or petition to revoke probation is

filed against respondent during probation, the Division will have continuing jurisdiction until the matter is final. The period of probation shall also be extended until the matter is final.

9. Following the effective date of this Decision, and in the event he ceases practicing medicine due to retirement, health reasons, or inability to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Medical Board for surrender. The Division of Medical Quality expressly reserves the right to evaluate any such request of respondent and to exercise its discretion whether to accept or grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered certificate, respondent would no longer be subject to the terms and conditions of probation.

10. 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 Business and Professions Code Section 4211, or any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent for a bonafide illness or condition by another physician or medical practitioner.

11. Respondent shall maintain a record of all controlled substances prescribed, dispensed, or administered by him during probation. Said record shall contain all of the following information: (a) the name and address of each patient; (b) the date of prescription, dispensing, or administration; (c) the character and quantity of controlled substance(s) involved; and (d) the indications and diagnoses for which the controlled substance(s) was furnished.

Respondent shall keep this record in a separate file or ledger, and in chronological order, and shall make the record available for inspection and copying by the Division or its designee, upon its request.

12. Respondent shall abstain completely from the use of alcoholic beverages.

13. Respondent shall immediately submit to biological fluid testing, at his own cost, upon the request of the Division or its designee. With approval of the Division or its designee, respondent may comply with this condition by submitting or utilizing the results of any biological fluid testing ordered or administered by his physician.

14. Within thirty (30) days of the effective date of this Decision, respondent shall enroll and participate in the Division's Diversion Program until the Division determines that further treatment and rehabilitation are no longer necessary. The failure to complete the program without permission of the Division or an expulsion from the program shall constitute a violation of probation.

15. Within sixty (60) days of the effective date of this Decision, respondent shall submit to the Division or its designee for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and

continue treatment until the Division or its designee deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee.

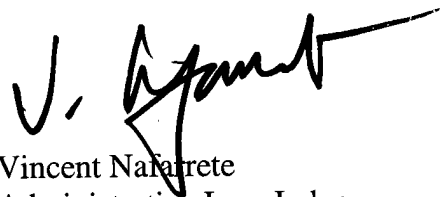
The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist. If, at any time prior to the termination of probation, respondent is found not to be mentally fit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions.

16. Within thirty (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 his practice will be monitored by another physician in respondent's field of practice. Said physician-monitor shall provide periodic reports to the Division or its designee. If the physician-monitor resigns or is no longer available to monitor respondent's practice, respondent shall within fifteen (15) days request to have a new monitor appointed for him. Respondent shall nominate a physician-monitor and obtain approval of the nomination by the Division or its designee.

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

Dated:

05-31-00



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings