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

In the Matter of the Petition for Reduction of Penalty of:

Dennis G. Hooper, M.D.

Petitioner.

File No: 26-2008-194707
OAH No: 2009090522

DECISION

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

This Decision shall become effective at 5:00 p.m. on March 1, 2010.

DATED January 28, 2010

MEDICAL BOARD OF CALIFORNIA

Shelton Durval centered, Panel A Chair
In the Matter of the Petition for Reduction of Penalty:

DENNIS G. HOOPER, M.D.,

Petitioner.

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 1, 2009.

Deputy Attorney General Lawrence Mercer represented the Office of the Attorney General.

Petitioner Dennis G. Hooper, M.D., appeared on his own behalf.

The matter was submitted on December 1, 2009.

FACTUAL FINDINGS

1. On March 25, 1985, the Medical Board of California (board) issued Physician’s and Surgeon’s Certificate Number G 54464 to petitioner Dennis G. Hooper, M.D. The certificate expired on November 30, 2008.

2. Petitioner is a board certified pathologist. In 2000 and 2001, petitioner practiced as a pathologist at Martin Luther King, Jr./Charles R. Drew Medical Center (King/Drew) in Los Angeles.

3. On January 11, 2006, following an administrative hearing, the board revoked petitioner’s certificate, but the revocation was stayed and petitioner was placed on probation for five years upon certain terms and conditions. (Case No. 06-2001-120995.) In its decision, the board found that petitioner was repeatedly negligent, grossly negligent, and incompetent in failing to diagnose cancer, or mistakenly diagnosing cancer, in four patients at King/Drew. The terms and conditions of petitioner’s probation include the following:1

   1 The term “respondent” in the conditions of probation refers to petitioner.
1. Clinical Training/Assessment 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, Accusation, and any other information that the Division [the Division of Medical Quality of the board] 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.
If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of pathology within 72 hours after being notified by the Division or its designee that respondent failed to complete the clinical training program.

After respondent has successfully completed the clinical training program, respondent shall participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California – San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent’s expense during the term of probation, or until the Division or its designee determines that further participation is no longer necessary.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

7. Probation Unit Compliance. Respondent shall maintain a current and renewed California physician’s and surgeon’s license.

9. Residence or Practice Outside of California. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term.

13. Cost Recovery. Within 180 calendar days from the effective date of the Decision or other period agreed to by the Division or its designee, respondent shall reimburse the Division the amount of $22,844.62 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent of his obligation to reimburse the Division for its costs.
4. Petitioner has not enrolled in PACE or in an equivalent clinical training and assessment program. Petitioner has not maintained a current and renewed California physician’s and surgeon’s license. The five-year probationary term has not been reduced by even a day since the board’s decision in January 2006, because petitioner has resided in Texas since then. Petitioner has paid approximately $3,100 toward his cost recovery obligation.

5. On September 8, 2008, petitioner signed and then submitted to the board a petition for penalty relief. Included with his petition, among other documents, is a letter from Dennis Medrick, Compliance Officer with the Texas Medical Board. By virtue of the California disciplinary action, petitioner’s Texas medical license was placed on probation. Medrick states that petitioner is in compliance with the order of the Texas board. Also included are letters from two physicians in Texas, Dan O. Harper, M.D., and Kaye H. Kilburn, M.D., both of whom support petitioner’s petition.

6. At hearing in this matter, petitioner was candid regarding his failure to comply with several conditions of his probation. He states, “I would deny my petition if I were the board.” The reason he filed the petition is that he was told he cannot participate in PACE because he is not a California resident. Petitioner feels that he is in a “loop”: he cannot complete his California probation because he is not a California resident, and he cannot get off probation in Texas until he completes his probation in California. He felt that the only way to bring his situation to the board’s attention was by filing this petition.

7. The evidence presented at hearing, however, established that petitioner was misinformed about his eligibility for PACE. PACE accepts non-residents. In addition, the terms of petitioner’s probation do not require that he attend PACE: he can satisfy his probation by enrolling in an equivalent program. Petitioner has not looked into equivalent programs. He understands that the PACE program costs about $20,000 to $25,000. He cannot afford such a program, nor can he afford to pay cost recovery. Petitioner states that the California disciplinary action has been financially devastating to him.

LEGAL CONCLUSIONS

Petitioner has the burden of proof to show cause for termination of probation. He has not met his burden. Petitioner is not in compliance with the terms of his probation. Of fundamental concern is that petitioner has not satisfied the terms that are intended to assure the board that he is competent to practice: he has not enrolled in a clinical assessment and training program and, although he has been on probation for almost four years, he has not completed a day of probation because of his continuous residency in Texas. Now that the misunderstanding about admission to PACE or its equivalent has been clarified, it is hoped that petitioner will be able to get his probation program back on track. At this time, however, petitioner has not demonstrated cause to terminate his probation.
ORDER

The petition of Dennis G. Hooper, M.D., for termination of probation is denied.

DATED: December 29, 2009

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings