

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

In the Matter of the Accusation Against:

ENRICO ANTONIO MELSON, M.D.
Physician and Surgeon Certificate
No. G 59473

Respondent.

Agency Case No. 17-2011-212848

OAH Case No. 2012080946

DECISION AFTER RECONSIDERATION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on January 22, 2013, in Los Angeles, California.

Cindy M. Lopez, Deputy Attorney General, represented Linda K. Whitney (Complainant), Executive Director of the California Medical Board (Board).

Knox and Ross Law Group, and Jason Ross, Attorney at Law represented Enrico Antonio Melson, M.D. (Respondent). Respondent was present.

The ALJ left the record open to allow Complainant to offer evidence of Respondent's licensure and for Respondent to object to the proposed evidence. Complainant submitted such evidence timely and Respondent did not object. Evidence of Respondent's licensure was marked for identification and admitted into the record.

The parties submitted the matter for decision on February 5, 2013.

The Board adopted the proposed decision on March 27, 2013 which was to become effective on April 26, 2013. Pursuant to Government Code Section 11521, Respondent timely filed a Petition for Reconsideration. The Board stayed the decision and granted the petition on April 24, 2013. Oral arguments were presented by both parties on July 18, 2013 in Sacramento, California before a Panel of Board with ALJ Karl S. Engeman presiding over the proceedings. After having considering the arguments of both parties, the Panel reviewed the entire record including the transcript, exhibits from the hearing, and written argument submitted by both parties on reconsideration, the Board hereby issues the following decision in this matter.

FACTUAL FINDINGS

1. Complainant, in her official capacity, filed the Accusation on May 25, 2012. On or about July 13, 2012, Respondent filed a Notice of Defense.

2. The Board issued physician and surgeon certificate number G 59473 to Respondent on January 20, 1987; it expired on February 1, 2013, unless it was renewed. At the time of hearing the evidence did not establish whether Respondent renewed his license. The Board nevertheless retains jurisdiction over Respondent's medical license, pursuant to Business and Professions Code section 118.

3. Respondent received his medical degree from the University of California at Irvine in 1982. From 1987 to 1994, Respondent was an adjunct clinical professor at the University of Iowa's Department of Environmental and Preventative Medicine. He is significantly involved in holistic medicine, including ayurvedic medicine, traditional Chinese medicine, Maori and other indigenous healing practices. He describes his area of expertise as global integrative medicine. He has special credentials in family medicine, public health in general preventative medicine, and holistic medicine and pain management. Since at least 2004, Respondent frequently traveled to other countries in his pursuit of these alternative practices, particularly New Zealand where Respondent lived for an extended period including during 2006. He continued such international endeavors at the time of hearing.

4. At the time of hearing, Respondent practiced at Centro Medico Clinic, a primary care clinic in the MacArthur Park area of Los Angeles, serving indigent patients.

5. On January 28, 2011, following Respondent's guilty plea, the Los Angeles County Superior Court, in case number BA360948, convicted Respondent of violating Revenue and Taxation Code section 19706 (failure to file income tax return with the intent to evade payment of taxes), a felony. The court released Respondent on his own recognizance and granted him permission to leave the country. The evidence did not establish the particulars surrounding this action by the court, but as noted in Factual Finding 3, Respondent traveled frequently to other countries.

6. On March 8, 2012, the court suspended execution of sentence (which was four years in the county jail), and placed Respondent on formal probation for five years under various terms and conditions. The terms and conditions of probation included paying \$70 in fines and fees, and paying \$139,000 in restitution to the Franchise Tax Board at a rate of \$500 per month.

7. The facts underlying the conviction were that Respondent failed to file his 2005 federal and state tax returns timely. Through his accountant, Neil B. Elias (Elias), Certified Public Accountant, Respondent filed his federal return in November 2010. Due to an error on Elias' part, Respondent did not file his state return until April 2011. Respondent's 2005 federal

tax return required a tax payment of \$126.78 to the Internal Revenue Service. His 2005 state tax return required no tax payment to the Franchise Tax Board.

8. Respondent took responsibility for his crime, although he asserted at hearing that he never intended to avoid paying his taxes. Respondent explained that he has frequently filed late tax returns because he has spent so much time outside of the United States. Respondent explained that at the time the returns were due, he was living in New Zealand. He received a warrant and returned to the United States approximately six months later. During the time he was outside of the United States, he cooperated with the tax investigation and was given time to prepare his returns. He did not adequately explain why he did not file his 2005 returns until 2010 and 2011.

9. He conceded that he has failed to place the proper importance on his tax obligations, noting his failure as a “character flaw.” Respondent also explained the nominal tax obligations for 2005. Respondent has had a very modest income for most of his medical career due to his regular pursuit of these alternative, indigenous, and natural medicine practices.

10. In a letter dated January 21, 2013, Elias asserted that Respondent did not intend to evade his 2005 tax payment, but that Respondent often filed late returns due to his international work.

11. Respondent testified during oral arguments on July 18, 2013 that he has been recruited for several positions as a primary care physician but that he believes the probationary prohibition against supervising physician assistants prevents him from being hired. He acknowledged that his being on probation may also be a deterrent, but he believes that his vast experience working in underserved communities might allow for some consideration and improve his chances of being gainfully employed.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2234 states in part:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating . . . directly . . . any provisions of this chapter.

2. Business and Professions Code section 2236 states in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct

within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

[¶]. . . [¶]

(c) . . . The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty . . . is deemed to be a conviction within the meaning of this section The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

3. California Code of Regulations, title 16, section 1360 states in part:

For the purposes of . . . suspension or revocation of a license, certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare

4. Complainant must prove his case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is “so clear as to leave no substantial doubt” and is “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

5. Respondent’s felony evidences his potential unfitness to perform his duties as a physician in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1360.) Respondent’s crime is substantially related to the qualifications, functions, and duties of a physician and surgeon in that his failure to follow federal law by not timely filing taxes evidences a propensity to not follow rules and regulations. The practice of medicine compels strict compliance with many federal, state and local laws and regulations. Additionally physicians and surgeons must timely and consistently make documentation in patients’ medical records and must make timely filings for insurance purposes. The failure to timely file taxes shows a disregard or unwillingness to follow rules, an essential requirement for the practice of medicine. Respondent’s actions additionally reflect poorly on his professional judgment which is equally essential to the practice of medicine and tends to undermine public confidence and respect for the practice of medicine.

6. Cause exists to discipline Respondent's medical license, pursuant to Business and Professions Code, section 2227, for a violation of Business and Professions Code, section 2236, for unprofessional conduct, namely the felony conviction of a substantially related crime, as set forth in Factual Findings 1-5, and Legal Conclusions 1-5.

7. California Code of Regulations, title 16, section 1360.1 states in part:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his . . . eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

8. Respondent is currently on formal criminal probation. Since the criminal court requires him to obey all laws, his current lawful behavior is of limited value in assessing his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent's crime is recent. (Cal. Code Regs., tit. 16, § 1360.1, subd. (c).) The nature and severity of his felony crime is moderate. (Cal. Code Regs., tit. 16, § 1360.1, subd. (a).) The instant conviction is the only evidence of criminal misconduct. (Cal. Code Regs., tit. 16, § 1360.1, subd. (b).) He took responsibility for his crime. (Cal. Code Regs., tit. 16, § 1360.1, subd. (f).) There was no evidence that he has been non-compliant with his criminal probation. There was no evidence that he has endangered the public through his practice of medicine.

9. In order to safeguard the public, it is appropriate to discipline Respondent's physician and surgeon certificate by placing Respondent on probation for some time after his criminal probation concludes to ensure Respondent remains on his current path of lawful behavior.

10. The Board has considered the arguments of the parties on reconsideration, and grants Respondent's request to remove the proposed condition of probation which would have prohibited him from supervising physician assistants. This deviation from the Disciplinary Guidelines is appropriate because Respondent's conviction does not involve patient related unprofessional conduct and because his extensive background of working in underserved communities suggests that his chances of obtain work while on probation might be improved if this provision were removed. Additionally, removal of the condition will increase the chances that Respondent can remain compliant with the provisions of his criminal probation.

ORDER

Physician and Surgeon Certificate No. G 59473, issued to Respondent Enrico Antonio Melson, is revoked, however, revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions.

1. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation 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 Board or its designee within 15 calendar days. This condition shall apply to any change(s) in hospitals, other facilities, or insurance carrier.

2. 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.

3. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, 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.

4. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board 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).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

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

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

5. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

6. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice 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 General Probation Requirements.

7. Completion of Probation

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

8. 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 Board, 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 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining 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 Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This decision shall become effective at 5 p.m. on **September 13, 2013**.

IT IS SO ORDERED this 16th day of August, 2013.



DEV GNANADEV, M.D., Vice-Chair
Panel B

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

In the Matter of the Accusation)	
Against:)	
)	MBC File No. 17-2011-212848
ENRICO ANTONIO MELSON, M.D.)	
)	OAH No: 2012080946
Physician's and Surgeon's)	
Certificate No. G-59473)	
)	
_____ Respondent)	

ORDER GRANTING RECONSIDERATION

The proposed decision of the administrative law judge in the above captioned matter was adopted by the Board on March 27, 2013, and was to become effective on April 26, 2013. A Petition for Reconsideration under Government Code Section 11521 was filed in a timely manner by respondent.

The petition for reconsideration having been read and considered, the Board hereby orders reconsideration. The Board itself will reconsider the case based upon the entire record of the proceeding, including the transcript. Both complainant and respondent will be afforded the opportunity to present written argument to the Board. You will be notified of the time for submitting written argument. **In addition to written argument, oral argument may be scheduled if any party files with the Board, a written request for oral argument within 20 days from the date of this notice.** If a timely request is filed, the Board will serve all parties with written notice of the time, date and place of oral arguments. The Board directs the parties attention to Title 16 of the California Code of Regulations, Sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Your right to argue any matter is not limited, however, no new evidence will be heard. The Board is particularly interested in the reconsideration of the penalty order.

The decision with an effective date of April 26, 2013 is stayed. This stay shall remain in effect until the Board issues its decision after reconsideration. For its own use, the Board has ordered a copy of the hearing transcript and exhibits. At your own expense, you may order a copy of the transcript by contacting the transcript clerk at:

Kelli Norden & Associates
Court Reporters
11726 San Vicente Boulevard, Suite 205
Los Angeles, CA 90049
(310) 820-7733

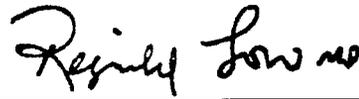
To order a copy of the exhibits, please submit a written request to this Board.

The address for serving written argument on the Board is:

Richard M. Acosta, Discipline Coordination Unit
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

Please submit an original and 1 copy.

IT IS SO ORDERED: April 24, 2013

A handwritten signature in black ink that reads "Reginald Low MD". The signature is written in a cursive style with a horizontal line underneath the name.

Reginald Low, M.D., Chair
Panel B

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

In the Matter of the Accusation)	
Against:)	
)	
)	
ENRICO ANTONIO MELSON, M.D.)	Case No. 17-2011-212848
)	
Physician's and Surgeon's)	OAH Case No. 2012080946
Certificate No. G-59473)	
)	
Respondent)	
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DECISION

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

This Decision shall become effective at 5:00 p.m. on April 26, 2013.

IT IS SO ORDERED: March 27, 2013.

MEDICAL BOARD OF CALIFORNIA



**Reginald Low, M.D., Chair
Panel B**

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

In the Matter of the Accusation Against:

ENRICO ANTONIO MELSON, M.D.

Physician and Surgeon Certificate
No. G 59473

Respondent.

Agency Case No. 17-2011-212848

OAH Case No. 2012080946

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on January 22, 2013, in Los Angeles, California.

Cindy M. Lopez, Deputy Attorney General, represented Linda K. Whitney (Complainant), Executive Director of the California Medical Board (Board).

Knox and Ross Law Group, and Jason Ross, Attorney at Law, represented Enrico Antonio Melson, M.D. (Respondent). Respondent was present.

The ALJ left the record open to allow Complainant to offer evidence of Respondent's licensure and for Respondent to object to the proposed evidence. Complainant submitted such evidence timely and Respondent did not object. Evidence of Respondent's licensure was marked for identification and admitted into the record.

The parties submitted the matter for decision on February 5, 2013.

STATEMENT OF THE CASE

Complainant seeks to discipline Respondent's medical license because he was convicted of failing to file an income tax return, a felony.

Respondent conceded the conviction and argued that when all the evidence is considered, the discipline warranted is something less than revocation of his license.

FACTUAL FINDINGS

1. Complainant, in her official capacity, filed the Accusation on May 25, 2012. On or about July 13, 2012, Respondent filed a Notice of Defense.
2. The Board issued physician and surgeon certificate number G 59473 to Respondent on January 20, 1987; it expired on February 1, 2013, unless it was renewed. The evidence did not establish whether Respondent renewed his license since the submission of this matter. The Board nevertheless retains jurisdiction over Respondent's medical license, pursuant to Business and Professions Code section 118.
3. Respondent received his medical degree from the University of California at Irvine in 1982. From 1987 to 1994, Respondent was an adjunct clinical professor at the University of Iowa's Department of Environmental and Preventative Medicine. He is significantly involved in holistic medicine, including ayurvedic medicine, traditional Chinese medicine, Maori and other indigenous healing practices. Since at least 2004, Respondent frequently traveled to other countries in his pursuit of these alternative practices, particularly New Zealand where Respondent lived for an extended period including during 2006. He continues such international endeavors.
4. At the present, Respondent practices at Centro Medico Clinic, a primary care clinic in the MacArthur Park area of Los Angeles, serving indigent patients.
5. On January 28, 2011, following Respondent's guilty plea, the Los Angeles County Superior Court, in case number BA360948, convicted Respondent of violating Revenue and Taxation Code section 19706 (failure to file income tax return with the intent to evade payment of taxes), a felony. The court released Respondent on his own recognizance and granted him permission to leave the country. The evidence did not establish the particulars surrounding this action by the court, but as noted in Factual Finding 3, Respondent traveled frequently to other countries.
6. On March 8, 2012, the court suspended execution of sentence (which was four years in the county jail), and placed Respondent on formal probation for five years under various terms and conditions. The terms and conditions of probation included paying \$70 in fines and fees, and paying \$139,000 in restitution to the Franchise Tax Board at a rate of \$500 per month.
7. The facts underlying the conviction were that Respondent failed to file his 2005 federal and state tax returns timely. Through his accountant, Neil B. Elias (Elias), Certified Public Accountant, Respondent filed his federal return in November 2010. Due to an error on Elias' part, Respondent did not file his state return until April 2011. Respondent's 2005 federal tax return required a tax payment of \$126.78 to the Internal Revenue Service. His 2005 state tax return required no tax payment to the Franchise Tax Board.

8. Respondent took responsibility for his crime, although he asserted at hearing that he never intended to avoid paying his taxes. Respondent explained that he has frequently filed late tax returns because he has spent so much time outside of the United States. Respondent explained that at the time the returns were due, he was living in New Zealand. He received a warrant and returned to the United States approximately six months later. During the time he was outside of the United States, he cooperated with the tax investigation and was given time to prepare his returns. He did not adequately explain why he did not file his 2005 returns until 2010 and 2011.

9. He conceded that he has failed to place the proper importance on his tax obligations, noting his failure as a “character flaw.” Respondent also explained the nominal tax obligations for 2005. Respondent has had a very modest income for most of his medical career due to his regular pursuit of these alternative, indigenous, and natural medicine practices.

10. In a letter dated January 21, 2013, Elias asserted that Respondent did not intend to evade his 2005 tax payment, but that Respondent often filed late returns due to his international work.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2234 states in part:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating . . . directly . . . any provisions of this chapter.

2. Business and Professions Code section 2236 states in part:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

¶ . . . ¶

(c) . . . The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty . . . is deemed to be a conviction within the meaning of this section The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

3. California Code of Regulations, title 16, section 1360 states in part:

For the purposes of . . . suspension or revocation of a license, certificate or permit . . . a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare

4. Complainant must prove his case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is “so clear as to leave no substantial doubt” and is “sufficiently strong to command the unhesitating assent of every reasonable mind.” (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

5. Respondent’s felony evidences his potential unfitness to perform his duties as a physician in a manner consistent with the public health, safety, and welfare. (Cal. Code Regs., tit. 16, § 1360.) Respondent’s crime is substantially related to the qualifications, functions, and duties of a physician and surgeon. (*Ibid.*)

6. Cause exists to discipline Respondent’s medical license, pursuant to Business and Professions Code, section 2227, for a violation of Business and Professions Code, section 2236, for unprofessional conduct, namely the felony conviction of a substantially related crime, as set forth in Factual Findings 1-5, and Legal Conclusions 1-5.

7. California Code of Regulations, title 16, section 1360.1 states in part:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his . . . eligibility for a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

8. Respondent is currently on probation. Since the criminal court requires him to obey all laws, his current lawful behavior is of limited value in assessing his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Respondent's crime is recent. (Cal. Code Regs., tit. 16, § 1360.1, subd. (c).) The nature and severity of his felony crime is moderate. (Cal. Code Regs., tit. 16, § 1360.1, subd. (a).) The instant conviction is the only evidence of criminal misconduct. (Cal. Code Regs., tit. 16, § 1360.1, subd. (b).) He took responsibility for his crime. (Cal. Code Regs., tit. 16, § 1360.1, subd. (f).) There was no evidence that he has been non-compliant with his criminal probation. There was no evidence that he has endangered the public through his practice of medicine.

9. In order to safeguard the public, it is appropriate to discipline Respondent's medical license by placing Respondent on probation for some time after his criminal probation concludes to ensure Respondent remains on his current path of lawful behavior.

ORDER

Physician and Surgeon Certificate No. G 59473, issued to Respondent Enrico Antonio Melson, is revoked, however, revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions.

1. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation 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 Board or its designee within 15 calendar days.

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

2. Supervision of Physician Assistants

During probation, Respondent is prohibited from supervising physician assistants.

3. 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.

4. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, 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.

5. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board 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).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

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

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

6. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

7. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice 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 General Probation Requirements.

8. Completion of Probation

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

9. 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 Board, 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 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

10. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining 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 Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

11. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

Dated: March 6, 2013



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings