

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: )  
)  
)  
VALENTINE G. BIRDS, M.D. )  
)  
Physician's and Surgeon's )  
Certificate No. A 28695 )  
)  
Respondent. )  
\_\_\_\_\_ )

File No. 11-1996-62071

OAH No. L2004060534

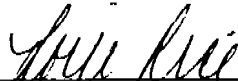
DECISION

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

This Decision shall become effective at 5:00 p.m. on October 25, 2004.

IT IS SO ORDERED September 24, 2004.

MEDICAL BOARD OF CALIFORNIA

By:   
Lorie G. Rice, Chair  
Panel A  
Division of Medical Quality

BEFORE THE  
MEDICAL BOARD  
DIVISION OF MEDICAL QUALITY  
STATE OF CALIFORNIA

In the Matter of the Petition  
for Penalty Relief of:

VALENTINE G. BIRDS, M.D.  
8515 Spanish Bay Drive  
Bakersfield, CA 93312

Physician and Surgeon's  
Certificate No. A 28695

Petitioner.

Case No. L2004060534

**PROPOSED DECISION**

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on July 20, 2004.

David J. O'Keefe, Attorney at Law, represented Petitioner.

Aleksandra C. Sachowicz, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner filed a Petition for Penalty Relief ("Petition"), seeking early termination of probation. Deputy Attorney General Sachowicz opposes the Petition on the basis that respondent is not fully rehabilitated.

Oral and documentary evidence was received at the hearing. The record was left open for the filing of written closing argument. Petitioner filed an initial argument on August 3, 2004, and a reply argument on August 12, 2004, which documents have been marked for identification as Exhibits B and C, respectively. Deputy Attorney General Sachowicz filed her closing argument on August 2, 2004, which document has been marked for identification as Exhibit 14. The matter was submitted for decision on August 12, 2004.

## FACTUAL FINDINGS

1. Petitioner graduated from the California College of Osteopathic Medicine in 1960. On July 5, 1961, petitioner was issued Osteopathic Physician and Surgeon Certificate No. 20A2663. He participated in a rotating internship at the Monte Sano Hospital in Los Angeles and at the University of California at Irvine College of Medicine in 1961 and 1962. In 1962, when petitioner elected to use the designation "M.D." rather than "D.O." he came under the jurisdiction of the Medical Board of California ("Board"). On March 21, 1975, the Board issued petitioner Physician's and Surgeon's Certificate No. A 28695.

2. The Board revoked petitioner's certificate, effective June 14, 1978, for unprofessional conduct in violation of Business and Professions Code sections 490, 2141, and 2392. The revocation was stayed and petitioner's certificate was placed on probation for five years on terms and conditions that included an actual suspension of 60 days. The discipline was based on petitioner's use of two unlicensed physician assistants in 1974 and 1975. The Board terminated probation on December 28, 1980, based on evidence of rehabilitation, including compliance with the probation order.

3. On April 26, 1991, petitioner's certificate was suspended pending a hearing on an accusation. The certificate was revoked, effective December 19, 1991 for gross negligence, incompetence, and acts of dishonesty. The disciplinary action was based on petitioner's care and treatment of patients with AIDS or AIDS-related conditions in late 1989; his administration of Viroxan, a drug not approved by the Federal Drug Administration; his failure to perform adequate physical examinations or to obtain adequate medical histories; his failure to develop adequate treatment plans; and his creation of false preoperative chart entries to justify the implantation of Hickman catheters.

4. On June 3, 1997, the Board reinstated petitioner's certificate, revoked the certificate, and stayed the revocation for ten years subject to certain terms and conditions. In addition to standard terms and conditions, the order directed completion of a prescribing practices course, maintenance of specified controlled substance records, completion of an additional 40 hours per year of continuing medical education, completion of an ethics course, completion of a clinical training program, passage of a clinical examination, and monitoring of his practice. The Board adopted the following factual findings:

"The conduct which led to the license revocation was not done for pecuniary gain, nor due to lack of concern over the welfare of his patients. Rather it was Petitioner's well-meaning but negligent conduct which resulted in the discipline. At all times Petitioner was a caring practitioner and engaged in the treatment of AIDS patients at first as an extension of his general practice, then as a major part of it. At a time when treatment for the disease was highly experimental, and the patient

population was expanding at an alarming rate, Petitioner failed to use sound medical judgement in the use of Viroxan. While it was an egregious medical failing, it was done in the name of true compassion to afford his condemned patients some hope.

Petitioner has been described by other doctors as 'honest, trusting and trusted', 'very caring' and one 'who has always shown a conscientious concern for his patient's physical and emotional problems.' By his testimony, Petitioner established his rehabilitation from the conduct that led to the discipline. He fully understands the nature and gravity of his conduct and demonstrated convincingly that it would not recur."

5. Petitioner sought a reduction of the probationary period on December 1, 1999. The petition was denied by Administrative Law Judge James Ahler on January 17, 2001, which denial became the Board's decision effective March 12, 2001. Judge Ahler made the following legal conclusion:

"Cause was not established under Business and Professions Code section 2307 to the petition for termination of probation. Doing so would not be in the public interest at this time.

In reaching this conclusion, consideration was given to petitioner's prior disciplinary record, the nature of petitioner's prior misconduct which included unprofessional conduct, gross negligence, repeated acts of negligence and dishonesty, petitioner's stubborn refusal to acknowledge any impropriety which resulted in the revocation of his license other than his use of a non-FDA approved drug, the fact that petitioner has evidently done rather well while on probation and the probability that he will continue to do so if he remains on probation, all of which was balanced against the less than compelling reasons petitioner offered to terminate probation."

6. Petitioner is in compliance with all terms and conditions of probation. He completed the prescribing practices course on September 16, 1997. He completed the Ethics course on August 16, 1997. He completed the clinical training program on January 16, 1998, and passed the oral clinical examination on January 15, 1998. He has completed all additional continuing education requirements, taking approximately 100 units per year. He maintains controlled substance records as required. His practice has been monitored.

7. Petitioner is engaged in the practice of family medicine at Budget Medical Clinic in Bakersfield, California. He acquired the practice from Dale Stewart, M.D., in January 1999. Petitioner works approximately 4½ days per week and employs Gonzalo Ruiz, M.D., on a part-

time basis. He provides low-cost medical care, often on a sliding scale based on ability to pay. He does not accept insurance payments. He is one of the few physicians in Bakersfield who accepts medical referrals of county mental health patients, and has been recognized by Kern County Mental Health for his efforts.

8. Since the discipline was based, in part, on recordkeeping shortcomings, petitioner has improved the transparency and detail of his charting, primarily through the use of additional forms and checklists.

9. Dr. Stewart, who occasionally fills in for respondent in providing care to clinic patients, has been petitioner's practice monitor since May 2003. Dr. Stewart reviews petitioner's patient charts on a monthly basis, conducts two to three unannounced office visits per month, and discusses the files and any concerns with petitioner as needed, at least once a month. In a letter dated November 25, 2003, submitted with the Petition, Dr. Stewart states that petitioner demonstrates excellent clinical skills, conducts thorough examinations, prescribes appropriate medications, and demonstrates compassion. In his opinion, petitioner is conservative in his treatment of patients. Petitioner is familiar with the medical literature and discusses interesting cases with Dr. Stewart.

10. Petitioner submitted two letters of reference with the Petition. In addition to Dr. Stewart's letter, he submitted one from Dr. Ruiz dated November 25, 2003. Dr. Ruiz has known petitioner since May 2002. He provides care to some of the same patients as respondent and is familiar with their charts. He writes that petitioner demonstrates excellent clinical skills and provides appropriate, compassionate treatment to his patients.

11. Petitioner acknowledges he made mistakes in his practice, and has learned from them.

12. He would like to terminate probation early in order to obtain hospital staff privileges and to become a provider under insurance plans. Although he has not actually applied for hospital privileges or for membership in an insurance plan, petitioner believes, based on conversations with prominent local physicians, that he would be unsuccessful because of the continuing probation. Participation in insurance plans and receipt of staff privileges will enable petitioner to expand the network of patients and to provide better care to current patients.

13. Deputy Attorney General Sachowicz objects to termination of probation and cites concerns regarding petitioner's rehabilitation. In part, she relies on an arbitration award dated November 18, 1997 against petitioner and his business consulting firm. The arbitrator ordered petitioner and others to pay \$53,951 in compensatory damages and \$90,496 in attorney's fees. The award arose from a business dispute between two commercial entities and did not involve patient care. The arbitrator did not make a finding of fraudulent conduct by

petitioner and the alleged misconduct occurred prior to the imposition of discipline. In the existing circumstances, including the lack of evidence regarding collection efforts, neither the award nor other assertions regarding petitioner's character are sufficient to detract from petitioner's substantial and sustained rehabilitation.

14. By reason of the foregoing, Petitioner has established his rehabilitation and continued probation is no longer warranted for the protection of the public.

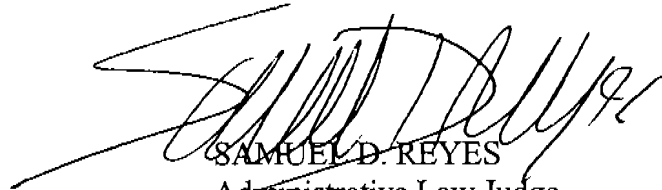
#### LEGAL CONCLUSIONS

Cause exists pursuant to Business and Professions Code section 2307 to terminate Petitioner's probation, by reason of factual finding numbers 1 through 14. Despite the severity of petitioner's actions, the violations that led to the discipline occurred approximately fifteen years ago and petitioner has been on probation for more than seven years. He has complied with all terms and conditions of probation and has otherwise established his rehabilitation.

#### ORDER

Petitioner's probation is terminated and Physician and Surgeon's Certificate number A 28695 is fully restored.

DATED: 9/3/04

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings