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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-Early Termination of Probation of:

DALE ROBERT STEMPLER, M.D.,  
P.O. Box 2969  
211 Glen Road  
Weaverville, California 96093

Physician and Surgeon's  
Certificate No. C-36399

Respondent.

Case No. 12-1995-46029

OAH No. N2002040114

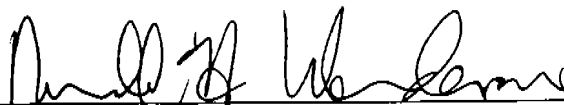
**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby  
adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on September 26, 2002 at 5:00 p.m.

IT IS SO ORDERED August 27, 2002

MEDICAL BOARD OF CALIFORNIA



Ronald H. Wender, M.D.  
Chair, Panel B

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**PROPOSED DECISION**

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on May 21, 2002.

Daniel Turner, Deputy Attorney General, Department of Justice, Health Quality Enforcement Unit, State of California, represented the Medical Board of California.

Dale Robert Stemple, M.D. appeared and represented himself.

The Petition and supporting exhibits were admitted into evidence, oral argument was made and the matter was submitted for Decision on May 21, 2002.

**FACTUAL FINDINGS**

1. The Administrative Law Judge was assigned by the Division of Medical Quality (hereafter "the Division"), Medical Board of California (hereafter "the Board") to hear and decide this matter pursuant to Business and Professions Code section 2307(c). The Administrative Law Judge is duly designated in accordance with the provisions of Government Code section 11371.

2. The Board issued Dale Robert Stemple, M.D. Certificate number C-36399 to practice as a physician and surgeon in the State of California on March 24, 1975. Dr. Stemple has been previously licensed as a physician and surgeon in the States of Maryland and Ohio. Dr. Stemple was licensed as a physician and surgeon by the State of Maryland on August 18, 1973. The license expired on September 30, 1979 and was not renewed. Dr. Stemple was licensed in the State of Ohio as a physician and surgeon on June 6, 1977. The license expired on December 31, 1979 and has not been renewed.

3. The Board caused an Accusation to be filed against Dr. Stemple on July 14, 1998. The Accusation alleged 10 counts of gross negligence, repeated acts of negligence, incompetence and unprofessional conduct regarding Dr. Stemple's invasive cardiological care of 10 patients at Queen of the Valley Hospital, Napa, California. Nine of the cases occurred between January 1994 and January 1995, with another case from 1992. All the allegations alleged failures in the use of high risk invasive cardiological procedures, including cardiac catheterization, percutaneous transluminal coronary angioplasty ("PTCA"), placement of COOK and other stents and balloon angioplasty. There were also allegations that Dr. Stemple did not have approval and privileges at Queen of the Valley Hospital for some of the procedures he performed there, and was not properly trained in those procedures, such as placement of the COOK stents.

4. Dr. Stemple and the Board entered into a Stipulation and Waiver on June 18, 1999. In the Stipulation and Waiver, Dr. Stemple gave up his right to contest the allegations and agreed to the imposition of a disciplinary Order, in which the Board revoked Dr. Stemple's Certificate effective August 11, 1999, but stayed the revocation and Dr. Stemple was placed on probation to the Board for a period of five (5) years, subject to a number of terms and conditions, repayment of costs of investigation and prosecution of \$13,000 and the payment of costs of probation.

5. Three of the terms and conditions of probation were specifically related to the practice of invasive cardiology. Satisfaction of the requirements of these three terms are conditions precedent to Dr. Stemple practicing invasive cardiology while on probation. These three terms require Dr. Stemple to undergo a psychiatric examination, arrange and have approved in advance a monitored practice, and to have a plan approved in advance to have 30 cardiac catheterization cases proctored, all before Dr. Stemple may practice invasive cardiology.

6. Dr. Stemple filed a Petition for Penalty Relief-Early Termination of Probation with the Division on approximately September 27, 2001. The Petition was timely filed. This is the first Petition for Penalty Relief filed by Dr. Stemple since probation became effective. Dr. Stemple is just past the halfway point in his probation. Probation has 2 years and 3 months to run as of the evidentiary hearing. The Division's staff reviewed the Petition and its attachments and found the Petition met the statutory time and contents prerequisites for seeking penalty relief. The Petition included the required two verified letters of reference

from practicing physicians.<sup>1</sup> The Division's investigation also confirmed that Dr. Stemple is in compliance with most of his probationary obligations to the Division, with the exception of the conditions relating to the practice of invasive cardiology. Dr. Stemple has fully repaid all of the \$13,000 assessed costs of investigation and prosecution agreed to in the Stipulated Order, and is current in his probationary costs obligation.

7. Dr. Stemple obtained full-time employment as a physician with the Veterans Administration Medical Clinic in Redding, California in 1997, before the effective date of the Stipulated Order imposing probation. Dr. Stemple was highly regarded at the VA for his significant skills and abilities, and was instrumental in drafting clinical practice guidelines for cardiological practice at the clinic. He made substantial efforts to upgrade the noninvasive cardiological treatment regimen at the clinic. In recognition of his skills and his efforts, he was ultimately appointed to serve as the physician manager of the clinic and received an award for the outstanding clinician in Northern California VA clinics.

8. Dr. Stemple was terminated from his position with the VA when he advised the VA that he was placed on probation, as required by the Stipulated Order. Dr. Stemple invested considerable effort in attempting to work around the VA policy of not employing a physician with a "restricted" license. Dr. Stemple commenced efforts to satisfy the conditions precedent to practicing invasive cardiology of his probation order. He submitted to a psychiatric evaluation in 1999, but had exceptional difficulty in arranging for satisfaction of the other conditions that he ultimately abandoned the effort. The results of the psychiatric evaluation are confidential, except that it was revealed the psychiatrist was concerned that Dr. Stemple has not taken any real responsibility for the acts and omissions that resulted in the imposition of the disciplinary action against him beyond "having too many irons in the fire and not being political enough with his colleagues".

9. Dr. Stemple has made considerable effort to keep his Continuing Medical Education up to date and to meet the educational requirements of his probation. He has undertaken considerable retraining education to upgrade his knowledge and practice skills in noninvasive cardiology and to add more education and skill in geriatrics, internal medicine, emergency care and critical care. These skills and education are a natural corollary to his present practice setting, in a small rural county that is gravely underserved.

10. Dr. Stemple struggled after losing the position at the VA. He finally found his niche in Weaverville, Trinity County, where he met a couple of physicians who were very supportive and appreciative of his skills and abilities. Dr. Stemple was warmly welcomed to join small but thriving practices in Weaverville and Hayfork, where he has found a home and a population seriously in need of his skills and abilities. Dr. Stemple is the only cardiologist in the County. He has developed a growing noninvasive cardiological and internal medicine practice and has recently been appointed the Chief of Staff at the Trinity Hospital, the only acute care facility in the County. The hospital does not have a cardiac catheterization laboratory and it is not possible to perform invasive cardiological procedures there due to

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<sup>1</sup> Business and Professions Code section 2307(a).

lack of equipment and inadequate facilities. Patients in need of such procedures must be transported to Redding, more than an hour away over a daunting mountain road.

11. Dr. Stemple's letters of reference demonstrated that he is held in very high regard personally and professionally in the small medical community where he practices. Dr. Stemple has very impressive education, credentials and skills and he is very much appreciated in a County that has only six physicians and no cardiologist until Dr. Stemple came along. In an impressive show of support, one of the writers of a letter of reference in support of the Petition traveled to Sacramento to appear on behalf of Dr. Stemple and offer testimony. The former Chief of Staff of Trinity hospital, Dr. Harwood has shared a practice with Dr. Stemple for 2 years and 2 months, during which time he has served as Dr. Stemple's practice monitor. He offered his opinion that Dr. Stemple is a "God-send" to their community, a cutting edge cardiologist educated in the finest institutions now practicing in their small community. He sees further monitoring of Dr. Stemple's practice as entirely unnecessary. Dr. Harwood expressed gratitude that Dr. Stemple has shared a good deal of his knowledge, experience and skills with Dr. Harwood and other physicians in the area, which has resulted in significantly improved care for their patients. Dr. Harwood very strongly supports termination of Dr. Stemple's probation. He pointed out that large health insurers such as Blue Cross and Blue Shield will not reimburse for Dr. Stemple's services, because he is on probation, which results in a cash flow problem for their small practice and particularly for the Trinity Hospital, which is not in good shape financially. He believes that if Dr. Stemple can obtain HMO reimbursements, it might make the difference in keeping the hospital open.

12. There are two problems with Dr. Stemple's Petition. Dr. Stemple does not dispute the fact that he has not complied with the three conditions precedent of his probation regarding invasive cardiology, but he points out that the conditions only apply if he intends to practice invasive cardiology. The second is more problematic. Dr. Stemple's responses to the question of "what went wrong" in the 10 cases for which he found himself accused and disciplinary action taken has been troublingly superficial, lacks insight and takes little personal responsibility for the deficiencies that led to the action. Dr. Stemple has consistently blamed working too hard, financial and marital problems, failure to keep physically and mentally fit and failure to cultivate political allies in the workplace that could have helped deflect or defend the allegations against him. Dr. Stemple has consistently attributed those charges to the work of other competitive cardiologists seeking to discredit or destroy his practice. Dr. Stemple has consistently placed most of the blame for the actions upon factors and people external to himself. There has not been any acknowledgement, until the evidentiary hearing, that any error or omission by Dr. Stemple in the practice of invasive cardiology with any of the 10 patients played a role in producing the actions.

13. Dr. Stemple contends that he never again intends to practice invasive cardiology, and that therefore satisfaction of the three conditions precedent in his probation is not necessary. He contends there are several significant obstacles to his returning to an invasive cardiology practice he cannot surmount, even if he were so inclined. Dr. Stemple pointed out that he has not been in a cardiac catheterization laboratory for more than seven

years, and he could not get approval to perform an invasive procedure in a cardiac lab without significant retraining. After suffering a disciplinary action for his performance of such procedures, he points out that even if he obtained the training, in today's risk averse environment, approval from a hospital or clinic for privileges to perform the procedures is more than unlikely. Additionally, Dr. Stemple pointed out that he has developed problems with his spine and can no longer tolerate the physical demands or the stress of performing such procedures. He contends the probationary conditions apply if and only if he seeks to practice invasive cardiology, and since he does not, he has not failed to comply with the conditions.

14. Dr. Stemple's presentation on the issue of the three invasive cardiology conditions was persuasive. His testimony was supported by that of Dr. Harwood, who echoed Dr. Stemple's testimony that the obstacles to reentry into an invasive cardiology practice under these circumstances are insurmountable. Dr. Stemple correctly points out that the conditions are applicable only if he intends to practice cardiology. However, the Deputy Attorney General's contention was also persuasive, that if probation is terminated early, Dr. Stemple would be free to pursue retraining and reentry into invasive cardiological practice, should he change his mind, more than 2 years earlier than he would if probation expired by its own terms. The Deputy Attorney General does not dispute the contention that if Dr. Stemple never commences invasive cardiology practice during the probationary term, probation will expire and Dr. Stemple need not ever have bothered to try to meet the three conditions precedent. But there is a problem with ignoring the conditions, contending full compliance with probation and obtaining an early termination of probation including these three conditions precedent, which would permit reentry into this practice area well in advance of what was contemplated by probation, without the required advance proofs of competence and skill, should Dr. Stemple change his mind, which he is obviously free to do.

15. It has been a concern that Dr. Stemple has not exhibited much insight or accepted personal responsibility for professional errors and omissions that led to the 10 cases filed against him, at least two of which resulted in fatalities. His response to the question "what did you do wrong?" has been uniformly to blame the externals of his life, as detailed above. Dr. Stemple's responses to "what did you do wrong" have troubled the physician performing the psychiatric evaluation, the Board's investigator monitoring Dr. Stemple's probation, the Deputy Attorney General, who actively opposed the Petition and now this ALJ. Dr. Stemple repeated the explanation set forth above in response to that key question in writing in his "Appeal for termination of Probation" (Exhibit B). At the evidentiary hearing, the Deputy Attorney General asked Dr. Stemple the "what did you do wrong?" question three times before he obtained an answer that really addressed the question and went beyond the explanation set forth above. Dr. Stemple attributed the failure to have obtained permission and privileges from the hospital to perform the procedures he undertook in the ten cases as an oversight caused by being too busy, leaving the impression that obtaining the privileges and permission was perfunctory and ministerial. Dr. Stemple testified that he realized that the procedures he undertook without privileges or permission were inappropriate to the hospital where he performed them, and many of the procedures probably should have been not undertaken on such high risk patients at all or transferred to a

university hospital with more services and supports available for such very high risk procedures and more tolerance for such high risk procedures existed. But then he added that he had the cases reviewed by an expert at O'Connor Hospital in Oakland, California and that "85% of the charges were easily defensible". Dr. Stemple characterized his behavior with these 10 cases as "injudicious". He noted he should have gotten more consults and should have discussed the pros and cons of his chosen approach with others, but qualified that by testifying that it would not have changed the outcomes. The implication remained that consults that attempted to dissuade from his chosen approach would not have been heeded. He noted he should have used a better stent in some of the cases, and in others, it would have been better to have done nothing at all.

16. Dr. Stemple's additional explanations at the evidentiary hearing reveal Dr. Stemple has offered a bit more insight into his role and culpability for the acts and omissions that led to the disciplinary action, but still leaves much unanswered. If the procedures were too high risk for the hospital where he performed them, and he knew that before undertaking the procedures, then obtaining privileges from the hospital for such procedures would have been more than problematic; more like impossible. This leaves the question of whether Dr. Stemple failed to obtain the privileges because he knew privileges and permission for such high risk procedures would not be granted, and he placed his view of the suitability of the procedures and his ability to safely perform them above the hospital privilege reviewing and granting authority. Certainly realizing at the time that the hospital had neither the services or supports necessary to lower the risk profile of the procedures undertaken on the particular patients, in light of their conditions, to a level the hospital would find acceptable, and yet undertaking the procedures regardless, raises serious concerns, particularly for patient welfare and safety and for willingness to cooperate with the structure and limitations of the hospital and its governance. The Accusation repeatedly alleges that Dr. Stemple had not received adequate training in the use of the COOK stent before he used it. The privilege and permission system at the hospital that Dr. Stemple ignored is supposed to prevent employment of a procedure without proof of adequate training and to protect patient safety and welfare by permitting only procedures with risk profiles suitable to the institution and its facilities. Commenting that he should have used a "better" stent really does not address a more fundamental issue of either poor professional judgment or arrogance. Finally, Dr. Stemple has repeatedly commented that his failure to cultivate his colleagues socially, and thus to develop political allies, was a key factor in the actions against him. The implication has consistently been that political allies provide some measure of cover for errors and to assist in blunting allegations of misconduct. Cover does not address the core issue of how the errors and omissions occurred and what can be changed or corrected to make certain the errors never recur. "Injudicious" is not a very accurate description of these circumstances.

17. On balance, and under these circumstances, terminating the probation is not warranted. Dr. Stemple has done a remarkable and praiseworthy job of bringing his considerable skills and abilities to benefit a small rural community desperately in need of his expertise. He has found a niche and is making a significant difference. It is an unintended detriment of probation and a real impediment that large HMO's will not reimburse for his noninvasive cardiology and other medical services he furnishes that are in areas of medicine

where Dr. Stemple is more than qualified and competent. The financial burden on the small hospital is a matter that requires redress if possible. It cannot be ordered that HMO's reimburse Dr. Stemple for services performed while still on this probation, but it is strongly encouraged, for there is considerable evidence that he is quite skillful and competent in performing the medical services he offers.

18. Dr. Stemple is rehabilitated in all areas of medical practice saving and excepting invasive cardiology. But the concerns set forth just above are still present and an early termination of probation places the Board in a position of having to rely upon the impediments to reentry into invasive cardiology as a barrier to a type of practice for which there is no evidence of rehabilitation, and which the Board can prevent for the remainder of probation absent proof of such rehabilitation. Early termination permits failure to comply with the terms and allows freedom to enter the area of practice again, as impractical as that sounds under these circumstances, without proof of rehabilitation during a time when that proof would have to be made. Such an advantage cannot be offered under these circumstances. Therefore, the Petition must be denied.

#### LEGAL CONCLUSIONS

1. "(b) The Division of Licensing may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee."<sup>2</sup>

2. "A person whose certificate has been revoked or suspended or who has been placed on probation may petition the Division of Medical Quality for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action:

(a) At least three years for reinstatement of a license revoked for unprofessional conduct, except that the division may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(b) At least two years for early termination of probation of three years or more.

(c) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years. The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

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<sup>2</sup> Business and Professions Code Section 2221(b).



The petition may be heard by a panel of the division. The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The division may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section...."<sup>3</sup>

4. The Medical Board is vested with discretion in determining whether license to practice medicine and surgery should be restored.<sup>4</sup> In a proceeding before the Board of Medical Examiners for restoration of license to practice medicine and surgery, applicant must prove that he has rehabilitated himself and is entitled to have his license restored.<sup>5</sup>

5. As set forth in the Factual Findings, Dr. Stemple has demonstrated rehabilitation in all areas of practice except invasive cardiology. He has a persuasive explanation for why he is not in compliance with the three conditions precedent of his probation, and is in full compliance with all other terms. However, as also set forth above, early termination would permit reentry into a practice area, huge barriers to reentry notwithstanding, for which there is no evidence of rehabilitation and lingering causes for significant concern. There is no option but to deny the Petition.

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<sup>3</sup> Business and Professions Code section 2307, in pertinent part.

<sup>4</sup> Housman v. Board of Medical Examiners (1948) 84 Cal.App.2d 308, rehearing denied.

<sup>5</sup> Id.

ORDER

The Petition for Early Termination of Dale Robert Stemple, M.D. is DENIED.

DATED: June 10, 2002

*Stephen J. Smith*

STEPHEN J. SMITH  
Administrative Law Judge  
Office of Administrative Hearings