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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

YVONNE MAO,

Petitioner,

v.

THE SUPERIOR COURT OF SACRAMENTO
COUNTY,

Respondent;

MEDICAL BOARD OF CALIFORNIA,

Real Party in Interest.

C058547

(Super. Ct. No.
03CS000736)

By this petition, a medical doctor challenges the state's decision to discipline her license due to her third criminal conviction for shoplifting. She asserts the discipline was wrong because her conviction does not demonstrate a character flaw detrimental to her ability to practice medicine. She also claims the state acted outside its jurisdiction, and it imposed certain conditions in abuse of the state's lawful discretion. Except to conclude that one of the imposed conditions that

automatically cancels the doctor's license without notice and hearing violates constitutional due process protections, we deny the requested relief.

FACTS AND PROCEDURAL HISTORY

Facts

The facts are not in dispute. Petitioner Yvonne Mao, M.D., is board-certified in internal medicine and nephrology. A nephrologist treats people who have kidney disease. Nephrology also encompasses hypertension, diabetes, and infections. According to Mao, people with kidney disease, especially those who are on dialysis, are "extremely ill," and thus require internal medicine services as well.

In September 2005, Mao stole four body lotion products, one set of salt and pepper shakers, and four pairs of black socks from a Marshalls department store. The merchandise was valued at \$54.91. At that time, Mao was earning \$160,000 a year.

In October 2005, Mao pleaded no contest to one count of petty theft after previously having been convicted of theft. (Pen. Code, §§ 666/484, subd. (a).) The prior convictions were two separate thefts, of which she was convicted in 1996. (Pen. Code, § 484, subd. (a).)

The trial court suspended sentence and placed Mao on summary probation for two years. It ordered her, among other conditions, to serve one day in the county jail with credit for time served, pay restitution fines and fees totaling \$130, and perform 20 days of community service. The court also ordered Mao to stay away from Marshalls stores.

Proceedings before the Medical Board

In September 2006, the executive director of the Medical Board of California (Board), the real party in interest, filed an accusation against Mao seeking to revoke or suspend her license due to the October 2005 conviction. The accusation alleged Mao's act of theft was an "offense substantially related to the qualifications, functions, or duties of a physician" and thus qualified as "unprofessional conduct" subject to discipline by the Board. (Bus. & Prof. Code, §§ 2234, 2236.)¹

This was not the first time Mao had been before the Board for disciplinary reasons. The 2006 accusation alleged facts concerning a prior disciplinary matter for the Board's consideration in reaching a decision on the current offense. Mao initially applied for a license to practice medicine in 1999. The Board denied her application. Shortly thereafter, the Board issued a statement of issues that accused Mao of having been convicted twice of shoplifting and of falsely denying on her 1999 application that she had ever been convicted of a misdemeanor. Pursuant to a stipulated settlement reached in 2000, Mao admitted the allegations, including the convictions, and the Board issued her a probationary license and placed her on probation for four years. As conditions, the Board required Mao to perform 120 hours of community service, complete an ethics course, and undergo psychiatric treatment.

¹ Further undesignated statutory references are to the Business and Professions Code.

In compliance with the terms of her probation, Mao met with Dr. Jason Graber, a psychiatrist, for nine months in 2002 for psychotherapy sessions. At the end of nine months, Graber recommended the Board release Mao from any further mandated psychotherapy. He had found no indication of "psychopathology or subclinical issues that could pose any threat to patients under her care." The Board granted this request, and ultimately lifted Mao's probationary status in 2003.

At the administrative hearing on the 2006 accusation, Officer Marc Pooler of the Los Angeles Police Department testified for the Board. He arrested Mao at the Marshalls department store and transported her to the police station. After reviewing Mao's criminal history, Pooler told her he had discovered her past arrests. He read her her *Miranda*² rights, and she waived them. He asked her how many times she shoplifts. She told him she does it once or twice a month.

Pooler recalled that during the interview, Mao was very concerned that the matter be processed quickly. She was traveling to China, and her plane was scheduled to leave within two or three hours.

Mao testified in her defense. She initiated therapy after her arrest to understand why she engaged in shoplifting. She realized she had been raised in a very strict, oppressive household. Her parents set unreasonably high expectations for

² *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

her, and although she performed extremely well in school, music, and other activities, she never did well enough for them, earning only their criticism. In her adulthood, her parents pushed themselves into her private affairs, asserting their opinions and pressuring Mao. At the time of her crime, she was having problems with her boyfriend, and her parents were pressuring her to get married.

Her shoplifting at Marshalls was not so much a conscious effort to disobey a law and get back at her parents as it was, in her opinion, a subconscious "cry for help, saying that I'm not perfect." Through therapy, she was encouraged to speak with her parents, and now they have better and open communication.

She was having difficulty finding a job since her conviction. At the time of her arrest, she had applied for a position with Kaiser Permanente where she had previously worked. Kaiser denied her application because of her conviction and the pending accusation. She was currently unemployed and had no prospects of employment.

She testified she has never done anything dishonest in her professional life. In her opinion, the shoplifting was an isolated, aberrant incident related to her personal life. It had no effect on how she cared for her patients or handled her administrative duties. She stated she would not shoplift again because now she understands why the behavior occurred and has learned how to communicate with her parents and express her emotions in healthy ways.

Regarding the events on the night of her arrest, Mao stated she did not waive her *Miranda* rights. She also denied telling the officer she shoplifted once or twice a month, and she again denied it in this hearing. She claimed she had shoplifted only three times since graduating from college in 1994, and she was arrested each time.

Mao's therapist, Dr. Dorte Farrar, a marriage and family psychotherapist, also testified, but she was not allowed to provide expert testimony because counsel failed to comply with the expert witness exchange requirements of section 2334. Farrar stated Mao met with her for nine sessions. Her last session with Mao was about two weeks before the administrative hearing. Mao was no longer her patient. Farrar believed there was more work for Mao to accomplish with her, but it was Mao's decision whether to continue.

Adopting the administrative law judge's decision, the Board on March 1, 2007, determined that cause existed to discipline Mao. It found her misconduct was substantially related to the practice of medicine. The Board revoked Mao's license, stayed revocation, and placed her on probation for five years.

As conditions of probation, the Board required Mao to undergo a complete psychiatric evaluation, and to undergo psychotherapy treatment until the Board deemed it no longer necessary. (Conditions 2 and 3.) If, prior to completing probation, Mao was found to be mentally unfit to resume the practice of medicine without restrictions, the Board would retain continuing jurisdiction over her license, and the period

of probation would be extended until the Board determined she was mentally fit to resume practicing without restrictions.

The Board also imposed a condition that would automatically cancel her license. (Condition 9.) Under this condition, if Mao did not practice medicine for a total of two years during the pendency of her probation, her license "shall be automatically cancelled." This apparently would occur without notice or hearing.

Proceedings before the trial court

Mao petitioned the superior court for a writ of administrative mandamus to vacate the Board's decision. She contended the Board erred in determining her conviction was substantially related to the practice of medicine. She claimed the discipline imposed was excessive and impermissible, particularly because it was more severe than her criminal probation. She asserted the Board erred by admitting into evidence, and relying upon, the 2000 stipulated settlement. She also challenged the legality of conditions 2, 3, and 9.

The trial court denied Mao's petition. It concluded Mao's crime was substantially related to the practice of medicine. Paraphrasing language from *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470 (*Windham*), the court wrote: "It is difficult to compartmentalize dishonesty in such a way that a person who is willing to steal from a retail store may yet be considered honest in her dealings with her patients."

The court also concluded Mao had not established the Board abused its discretion by placing her on probation for five

years. The court was not concerned that the medical probation was longer than Mao's criminal probation. License discipline serves a different purpose than do criminal penalties. Moreover, Mao's recidivism called into question her judgment and showed "'an inability or unwillingness to follow the law.' (Griffiths v. Superior Court (2002) 96 Cal.App.4th 757, 771-772 [Griffiths].)"

The court rejected Mao's challenge to the Board's consideration of the 2000 stipulated settlement. The stipulated settlement provided that the admissions it contained were for use only in Medical Board proceedings, which this was.

The court also rejected Mao's challenge to conditions 2 and 3. Mao had brought the issue of her psychological condition into this matter as a defense by presenting evidence of her reasons for shoplifting and her history of therapy. The Board did not abuse its discretion by imposing these conditions.

The court did not address Mao's challenge to condition 9.

This writ petition

Mao filed this petition for writ relief in our court.³ She contends for the first time in this matter that the Board lacked jurisdiction to discipline her because its action was based on a charge that was not made in its accusation.

She also contends the trial court erred by:

³ A petition for extraordinary writ is the exclusive means of reviewing a trial court's decision on the propriety of the Medical Board's revoking, suspending, or restricting a license. (§ 2337.)

1. Determining her shoplifting was substantially related to the practice of medicine so as to justify discipline; and

2. Determining the discipline imposed by the Board, including conditions 2, 3, and 9, did not constitute an abuse of discretion.

We ordered issuance of an alternative writ, and we now turn to the merits of her arguments.

DISCUSSION

I

Jurisdiction to Discipline

Mao claims the Board lacked jurisdiction to discipline her because the charge on which she was actually disciplined was not alleged in the Board's accusation against her. She asserts the only basis for discipline alleged in the accusation was her conviction pursuant to section 2236, subdivision (a). That statute reads in pertinent part: "A conviction of any offense substantially related to the qualifications, functions, or duties of a physician or surgeon constitutes unprofessional conduct within the meaning of this chapter. . . ." (§ 2236, subd. (a).)

The Board's decision, however, states she is being disciplined pursuant to section 2234, subdivision (e), as well as section 2236, subdivision (a). Section 2234 authorizes the Board to take action against a licensee charged with unprofessional conduct. Subdivision (e) of section 2234 defines "unprofessional conduct" to include "[t]he commission of any act involving dishonesty or corruption which is substantially

related to the qualifications, functions, or duties of a physician and surgeon.”

Mao asserts the Board relied upon the unpleaded statute, section 2234, as the basis of its decision instead of the statute pleaded in the accusation, section 2236. This was demonstrated, she claims, by the Board’s reliance on the arresting officer’s testimony as opposed to the bare fact of conviction to reach its decision.

We disagree with Mao’s assertion of lack of jurisdiction.

A challenge to the Board’s jurisdiction is a question of law we may consider even though Mao did not raise it before the Board or the trial court. (*Gilliland v. Medical Bd.* (2001) 89 Cal.App.4th 208, 219.) We decide the issue de novo. (*Id.* at pp. 211-212.)

An accusation is a written statement of charges that initiates a hearing to determine whether a license should be revoked. (Gov. Code, § 11503.)⁴ To be valid, the accusation “shall set forth in ordinary and concise language the acts or omissions with which the [licensee] is charged, to the end that the [licensee] will be able to prepare his defense. It shall specify the statutes and rules which the [licensee] is alleged to have violated, but shall not consist merely of charges

⁴ Proceedings against a licensee by the Medical Board are conducted in accordance with the Administrative Procedure Act, Government Code section 11500 et seq. (APA). (§ 2230, subd. (a).) That act sets forth an accusation’s purpose and the requirements for its validity.

phrased in the language of such statutes and rules." (Gov. Code, § 11503.)

The requirement to set forth the acts, omissions, and statutory violations alleged against the licensee "is a statutory predicate for disciplinary action. It follows that the finding must be based upon the accusation. . . . Disciplinary action cannot be founded upon a charge not made." (*Wheeler v. State Bd. of Forestry* (1983) 144 Cal.App.3d 522, 527.)

However, Government Code section 11503 does not require technical perfection. "Under the liberal rules of administrative pleading it is required only that the licensee be informed of the substance of the charge and afforded the basic, appropriate elements of procedural due process." (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 576.) "Section 11503 of the Government Code requires that the charges be set forth in ordinary and concise language so that the acts with which the licensee is charged will be sufficiently clear so that the person charged will be able to prepare his defense. In these administrative proceedings the courts are more interested with fair notice to the accused than they are to adherence to the technical rules of pleading." (*Wright v. Munro* (1956) 144 Cal.App.2d 843, 848.)

"The first consideration under that statute should be whether or not the [licensee] was in fact able to prepare his defense after reading the accusation." (*Rolfe v. Munro* (1958) 165 Cal.App.2d 726, 730.) There is no doubt Mao was able to

prepare her defense upon reading the accusation. Indeed, because she admitted her conviction, the only defense available to her under either section 2234, subdivision (e), or section 2236, subdivision (a), was that her act was not substantially related to the qualifications, functions, or duties of a physician. And this was in fact the defense she presented.

Most of Mao's testimony concerned her attempts to understand why she had shoplifted and her assurances that the behavior was not related to her practice of medicine. Asked if she had ever done anything dishonest in connection with her professional life, Mao replied, "Never." Asked how she "compartmentalizes" that, she replied, "Well, I think it's an issue related to my personal life, that I am and have dealt with, but it has no effect; it has never had any effect on my professional life."

Asked how she could "draw the line" between her practice of medicine and what had happened, Mao said, "Well, what I did in my personal life was something that was aberrant. It was not something that carried over to my professional life whatsoever. In every other way I'm professional. I care about my patients, and I would never do anything to harm them. I've never been guilty of fraud in billing. It was just something that was isolated." Mao's defense did not go to the fact she was convicted; it attempted to show her actions were not related to her practice of medicine.

During closing argument, Mao's attorney made the same points. He argued that "essentially where this case comes, the

nexus between this offense and the practice of medicine needed to be demonstrated, and it wasn't." Relying on *Grannis v. Board of Medical Examiners* (1971) 19 Cal.App.3d 551, 561, counsel quoted: "'Likewise here, the private conduct of a man who is also a physician, is the proper concern to those who license him only to the extent that it marks him as a physician. Where his professional achievement is unaffected, where the patient community is not placed in jeopardy, his private acts are his own business and are not the basis for discipline.'" It is obvious Mao's defense went to the accusation that her conduct, besides resulting in a criminal conviction, was substantially related to her practice of medicine, the essence of what she was charged by the Board.

Most significantly for our purposes, it was the Board's accusation that put Mao on notice of this defense. Although the accusation stated the cause for discipline arose under section 2236 for her criminal conviction, it also stated the Board's jurisdiction to discipline her was derived from both section 2236, subdivision (a), and section 2234, subdivision (e). The accusation recited both of those statutes verbatim. For Mao to claim now for the first time that she was disciplined based on a statutory claim not contained in the accusation approaches the frivolous. We reject her assertion.

II

Relationship of Conviction to Practice of Medicine

Mao claims the trial court and the Board erred by determining her conviction was substantially related to the

qualifications, functions, or duties of a physician, a finding required for imposing discipline in this case. She argues the finding of a nexus between her shoplifting conviction and her practice of medicine is based solely on speculation. She asserts there is no evidence showing her behavior will adversely affect the patient community. We disagree.

Whether Mao's crime was substantially related to her practice of medicine is a question of law for this court's independent determination. (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.) We look to determine whether a "logical connection or nexus exists" between the conviction and Mao's fitness to practice medicine. (*Griffiths, supra*, 96 Cal.App.4th at p. 762.) We conclude such a connection exists.

It has long been settled that dishonesty by a physician is substantially related to the practice of medicine and is grounds for discipline. (*Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1424-1425 (*Krain*) [upheld discipline based on doctor's guilty plea to soliciting the subornation of perjury]; *Windham, supra*, 104 Cal.App.3d at pp. 469-470 [upheld discipline based on doctor's federal conviction of income tax evasion]; *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305-306 (*Matanky*) [upheld discipline based on doctor's federal conviction of 39 counts of submitting false Medicare claims].)

The act of dishonesty need not arise out of the practice of medicine to establish the required nexus. "For a nexus to exist between the misconduct and the fitness or competence to practice medicine, it is not necessary for the misconduct forming the

basis for discipline to have occurred in the actual practice of medicine. '[The Medical Board] is authorized to discipline physicians who have been convicted of criminal offenses not related to the quality of health care.' [Citation.]" (*Griffiths, supra*, 96 Cal.App.4th at p. 771.)

For example, the *Windham* court rejected the argument that personal income tax evasion did not reflect upon a doctor's professional qualifications: "[W]e find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of \$65,000 in taxes may yet be considered honest in his dealings with his patients." (*Windham, supra*, 104 Cal.App.3d at p. 470.)

The *Krain* court reached the same conclusion regarding a conviction for subornation of perjury: "[T]he intentional solicitation to commit a crime which has as its hallmark an act of dishonesty cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third party entities and payors who act on behalf of patients." (*Krain, supra*, 71 Cal.App.4th at p. 1425.)

Matanky bluntly made the same point: "A physician can be subject to disciplinary action notwithstanding his technical competence or skill under circumstances where his moral character is in dispute. [Citations.] Intentional dishonesty, especially involving moral turpitude, demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine." (*Matanky, supra*, 79 Cal.App.3d at p. 305.)

"A physician who commits income tax fraud, solicits the subornation of perjury, or files false, fraudulent insurance claims has not practiced medicine incompetently. Nonetheless that physician has shown dishonesty, poor character, a lack of integrity, and an inability or unwillingness to follow the law, and thereby has demonstrated professional unfitness meriting license discipline." (*Griffiths, supra*, 96 Cal.App.4th at pp. 771-772.)

The same can be said of Mao. Her behavior demonstrated a lack of moral character so essential for any medical doctor. She now has three separate arrests and convictions for shoplifting. Moreover, she informed the arresting officer that she shoplifts once or twice a month. Such behavior, if it has not already, will certainly interfere with her ability to care for her "extremely ill" patients. Indeed, at the time of her arrest, she was more concerned about making her scheduled flight to China than she was about the ramifications her actions would have on her profession. Due to this background, it is not clear that she can be trusted with exactness in her dealings with people as she practices medicine.

Mao accuses the Board of concluding her conviction was substantially related to the practice of medicine based on speculation and not proof of her future behavior. On the contrary, the truth of that conclusion "rests four-square on common sense." (*Windham, supra*, 104 Cal.App.3d at p. 469.) The Board need not wait for her to commit another theft before it

takes action to protect the public. (*Griffiths, supra*, 96 Cal.App.4th at p. 772.)

Her thefts have demonstrated an unfitness to practice medicine. The doctor-patient relationship "is based on utmost trust and confidence in the doctor's honesty and integrity." (*Windham, supra*, 104 Cal.App.3d at p. 470.) "There is no other profession in which one passes so completely within the power and control of another as does the medical patient." (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578.) Mao's actions demonstrate a lack of character that calls into question her ability to act with the highest level of integrity in assuming control over a patient. Given the Board's charge of protecting the public from such physicians, there is little doubt that Mao's theft conviction is substantially related to her fitness to practice medicine.⁵

III

Imposed Discipline as Abuse of Discretion

Mao claims the discipline imposed on her -- five years of supervised probation, continuing psychiatric evaluation and

⁵ Mao also faults the Board and the trial court for relying on the 2000 stipulated settlement in which she admitted a substantial relationship existed between her two prior theft convictions and the practice of medicine. She claims Evidence Code section 1152 barred the stipulation's admission into evidence. However, the stipulation itself provided that her admission of a substantial relationship was for the purpose of any other proceeding in which the Board was involved. Moreover, we have reached our conclusion of a substantial relationship without relying on the stipulation. We need not entertain this argument further.

treatment (conditions 2 and 3), and automatic termination of license for non-use (condition 9) -- is grossly excessive and an abuse of discretion. We uphold the Board's imposition of conditions 2 and 3, but we conclude condition 9 is not reasonable and violates due process requirements.⁶

"In reviewing the severity of the discipline imposed, we look to the correctness of the agency's decision rather than that of the trial court. We review the actions of the Medical Board to determine whether the discipline imposed constituted a manifest abuse of discretion. [Citations.] 'The penalty imposed by an administrative body will not be disturbed in mandamus proceedings unless an abuse of discretion is demonstrated. [Citations.] Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed. [Citation.]' (*Barber v. State Personnel Bd.* (1976) 18 Cal.3d 395, 404.)

"In reviewing the exercise of this discretion we bear in mind the principle "courts should let administrative boards and officers work out their problems with as little judicial interference as possible. . . . Such boards are vested with a high discretion and its abuse must appear very clearly before

⁶ The Board asks us to take judicial notice of its "Manual of Model Disciplinary Orders and Disciplinary Guidelines," which include the conditions imposed here. We grant the request, but in no way does our grant imply our approval of the conditions in this case. (Evid. Code, §§ 452, subd. (b), 453.)

the courts will interfere." [Citations.]' (*Talmo v. Civil Service Com.* [(1991)] 231 Cal.App.3d 210, 230.)

"In medical discipline cases, the 'highest priority' is protection of the public. (Bus. & Prof. Code, § 2229, subs. (a) & (c)); cf. *Talmo v. Civil Service Com.*, *supra*, 231 Cal.App.3d 210, 230 ['the "overriding consideration" in cases of public employee discipline "is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, 'harm to the public service.'"].)" (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 217-218.)

With this standard in mind, we review each challenged element of the imposed penalty.

A. *Five-year probation term*

Mao claims five years of administrative probation for a misdemeanor shoplifting conviction is an abuse of discretion, particularly in light of the fact the criminal court sentenced her to only two years summary probation notwithstanding her two prior shoplifting convictions. She asserts the discipline is designed to punish her, rather than protect the public.

We disagree. Mao omits from her argument the fact that this is the *second* time she has been disciplined by the Board due to a conviction of theft. The first occasion, occurring when she applied for her license to practice, resulted in a four-year term of probation, a term to which she agreed as part of a stipulated settlement. We see no abuse of discretion by the Board imposing a five-year term of probation for her repeat

offense. This is particularly so in light of evidence before the Board that she continues to shoplift once or twice a month.

B. *Continuing psychiatric evaluation (conditions 2 and 3)*

Conditions 2 and 3 require Mao to undergo a complete psychiatric evaluation and to undergo continuing psychotherapy treatment. If, prior to the five-year probation period's expiration, Mao is determined to be mentally unfit to practice medicine, the Board will extend the probation until it determines Mao is mentally fit to practice.

Mao claims these conditions are unlawful and arbitrary. She argues they have no rational relationship to the charge levied against her of unprofessional conduct due to a criminal conviction. Moreover, she asserts there was no proof of a mental impairment, allegedly a prerequisite before the Board can order an examination for mental illness. (§ 820.)

Conditions and terms of probation imposed by the Board as part of a stay of execution of revocation "shall be just and reasonable in the light of the findings and decision." (Gov. Code, § 11519, subd. (b).) The findings must support the decision, and substantial evidence must support the findings. (See *Topanga Assn. For A Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 509-510.)

The Board's findings support the imposition of conditions 2 and 3. Mao herself placed her shoplifting within the context of a psychological problem. She did not steal because she had no money. She stole, in her opinion, because of deep-seated stress and conflict in her relationship with her parents. She found

her first round of therapy after her first set of convictions to be "helpful and introspective in many areas of [her] personal life." Almost instinctively, she voluntarily returned to therapy after committing her last act of theft in order to find insights into why this had occurred and to learn how to redirect her behavior in positive ways. Her current counselor testified they had achieved progress in their counseling sessions, but she believed more work needed to be done. Mao, however, was no longer her patient.

Under these circumstances, conditions 2 and 3 were reasonable and just. The evidence indicated Mao's behavior was linked to psychological bases and was correctable with psychological treatment. The Board did not abuse its discretion in requiring Mao to undergo continuous therapy until she is deemed mentally fit to practice medicine without restriction.

Furthermore, section 820 does not bar the conditions. Under that statute, the Board may order a doctor to undergo psychological examinations when it appears the doctor may be unable to practice her profession safely because her ability to practice is impaired due to mental illness. The examination section 820 authorizes, however, is investigatory, not adjudicatory. "In other words, the psychiatric examination [authorized by section 820] is an investigatory tool, the results of which may be used by the Board to determine if formal adjudicatory proceedings will be brought." (*Alexander D. v. State Bd. of Dental Examiners* (1991) 231 Cal.App.3d 92, 97.) Here, the examination is required as a condition of probation in

lieu of revocation following formal adjudicatory proceedings. Nothing in the statute limits the Board's adjudicative authority. The Board did not abuse its discretion by imposing conditions 2 and 3.

C. *Automatic cancellation of license (condition 9)*

Condition 9 is designed to prevent Mao from avoiding the conditions of probation simply by not practicing until the probation period expires. Under this condition, Mao, while residing in California, must notify the Board if she stops practicing medicine in California for any reason. She must provide notice within 30 days before she stops practicing, and also within 30 days before she returns to practice. Any period of time in which she does not practice will not count toward reducing the probation term and will not relieve her of her responsibility to comply with probation. If she fails to practice medicine for a total of two years while residing in California, her license "shall be automatically cancelled."

Mao challenges the automatic cancellation provision. She claims the Board has no authority to cancel a license where the licensee is paying her license fees and complying with continuing education requirements. In other words, "there is no requirement that a physician practice under his or her license to retain it." Mao also claims the automatic cancellation provision violates her due process rights to notice and a hearing before her license may be cancelled.

The Board argues condition 9 prevents a disciplined doctor from defeating the terms of probation by taking a self-imposed

vacation until sufficient time has passed for her to apply for termination of probation. If she does not comply with condition 9, the Board argues, "[I]t is elementary that her revocation should immediately go into effect."

We conclude the automatic cancellation clause is not a reasonable condition. If the Board's purpose is to ensure Mao does not sit out her probationary term, it accomplished this purpose by declaring such time would not reduce the term. No matter how long she chooses not to practice medicine, she will still be obligated to practice medicine under the terms and conditions of her probation when she resumes practice. Automatically canceling the license does not further the Board's purpose.

More significantly, the Board cannot revoke Mao's probation and cancel her license without notice and a hearing. An individual must be afforded notice and an opportunity for a hearing before being deprived of an occupational license. (*Ralph Williams Ford v. New Car Dealers Policy & Appeals Bd.* (1973) 30 Cal.App.3d 494, 500-501.)

Her prior notice leading to the current stayed revocation does not satisfy due process required for future violations. That notice was for her past violations. She is entitled to notice if her license is to be revoked based on new violations, such as a violation of the terms of probation. Condition 9's automatic cancellation clause does not comply with this requirement. Mao is entitled to a writ striking that clause.

DISPOSITION

Mao's petition for writ of mandate is granted in part. A writ of mandate shall issue directing the superior court to grant Mao's petition for writ of administrative mandamus limited solely to striking the automatic cancellation clause in condition 9 of the Board's decision of March 1, 2007. In all other respects, the petition for writ of mandate is denied.

The parties shall bear their own costs on this review by extraordinary writ proceedings.

NICHOLSON, J.

We concur:

SCOTLAND, P. J.

CANTIL-SAKAUYE, J.