

MEDICAL BOARD STAFF REPORT

DATE REPORT ISSUED: April 24, 2026
ATTENTION: Board Members
SUBJECT: Proposed Precedential Decision – In the Matter of the
Petition for Reinstatement of John Edward Massey,
Petitioner, Case No. 800-2023-103888
FROM: Kerrie Webb, Attorney III

REQUESTED ACTION

Review the Medical Board of California's (Board) decision in the matter identified above pertaining to John Edward Massey (Massey) and determine whether portions of the decision should be designated as precedential.

BACKGROUND AND ANALYSIS

Pursuant to Government Code section 11425.60 and Title 16 of the California Code of Regulations section 1364.40, the Board has authority to designate a decision as precedential if it contains a significant legal or policy determination of general application that is likely to recur.

Once a decision is designated as precedential, the Board may rely on it, and parties may cite to it in their arguments to administrative law judges (ALJ), the Board, and the courts. Furthermore, a precedential decision promotes consistency in decision-making by institutionalizing rulings that reflect the Board's position on issues likely to recur.

In the case at issue, the Board revoked Massey's physician's and surgeon's certificate effective August 5, 2019, and the decision included a finding that Massey committed sexual misconduct with a patient under Business and Professions Code section 726, among other violations.

Assembly Bill (AB) 1636 (Weber Pierson, Chapter 453, Statutes of 2022), amended Business and Professions Code (BPC) section 2307 effective January 1, 2023, to prohibit reinstatement of a person whose certificate was revoked based on a finding by the Board that the person committed an act of sexual abuse, misconduct, or relations with a patient under BPC section 726 or sexual exploitation as defined in subdivision (a) of BPC section 729. (See BPC section 2307, subd. (i)(1)(B).)

Massey's physician's and surgeon's certificate was revoked before AB 1636 became effective, but he filed his petition for reinstatement after its effective date, when reinstatement of his certificate was prohibited.

Massey argued that BPC section 2307, subdivision (i), should not be applied to him, asserting that doing so would give the statute impermissible retroactive effect absent a

clear legislative intent. Massey maintained that he was entitled to an evidentiary hearing to present evidence on rehabilitation and other factors relevant to reinstatement petitions set forth in BPC section 2307, subdivision (e).

The Office of the Attorney General (OAG) argued that BPC section 2307, subdivision (i)(1)(B), applied to the petition and expressly prohibited the Board from reinstating Massey's certificate. The OAG explained that the prohibition took effect in January 2023, and the petition was not filed until November 2023, constituting a prospective application of the law rather than a retroactive one.

The ALJ rejected Massey's retroactivity argument, concluding that the amendment to BPC section 2307 did not change the legal consequences of Massey's past sexual misconduct or impose new liabilities. Instead, it governed the conduct of reinstatement proceedings going forward.

Massey filed a petition for writ of administrative mandate and complaint for declaratory relief challenging the decision dismissing his petition for reinstatement, but he dismissed the writ/complaint on March 27, 2026.

The issues presented in this case are likely to recur as individuals whose licenses were revoked for sexual misconduct before the effective date of AB 1636 seek reinstatement. Designating this decision as precedential would promote consistency, reduce repetitive motion practice, and conserve the Board's resources regarding the prospective application of BPC section 2307, subdivision (i).

STAFF RECOMMENDATION

Board staff recommend designating the following portions of the decision as precedential:

Issue
Factual Findings 1–13
Legal Conclusions 1–8, 10–17

If the Board approves the request, the portions not designated as precedential will be redacted. Attachment 1 is the redacted version of the decision, which will be publicly posted as the precedential decision. Attachment 2 is the unredacted version, which will remain publicly available on the Petitioner's profile.

ATTACHMENTS

Attachment 1: Redacted Version of the Decision in Case No. 800-2023-103888
Attachment 2: Unredacted Version of the Decision in Case No. 800-2023-103888

ATTACHMENT 1

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

**In the Matter of the Petition for Reinstatement
of:**

John Edward Massey, M.D.

**Physician's and Surgeon's
Certificate No. G 76734**

Respondent.

Case No. 800-2023-103888

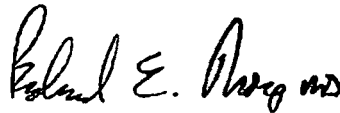
DECISION

**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 July 7, 2025.

IT IS SO ORDERED June 6, 2025.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

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

**In the Matter of the Petition for Reinstatement of:
JOHN EDWARD MASSEY, Petitioner.**

Agency Case No. 800-2023-103888

OAH No. 2024100310

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on May 12, 2025, by videoconference.

Attorney Travis Van Ligten represented petitioner John Edward Massey, who was present.

Supervising Deputy Attorney General Machaela M. Mingardi and Deputy Attorney General Maryam Ahmad represented the Department of Justice, Office of the Attorney General.

On May 12, 2025, argument was heard on the jurisdictional question of whether the Medical Board of California may consider this petition. The matter was submitted for decision as to the jurisdictional question on May 12, 2025.

ISSUE

Does Business and Professions Code section 2307, subdivision (i), prohibit the Medical Board of California (Board) from considering this petition for reinstatement?

FACTUAL FINDINGS

Background and Procedural History

1. The Board issued Physician's and Surgeon's Certificate Number G76734 to John Edward Massey (petitioner) on June 7, 1993.
2. In August 2017, the Board's Executive Director issued a first amended accusation seeking to impose discipline on petitioner's certificate. Petitioner requested and received an administrative hearing on the disciplinary charges, which took place over the course of seven days in February 2018, before an administrative law judge (ALJ) of the Office of Administrative Hearings.
3. The ALJ issued a proposed decision on March 23, 2018, finding cause for discipline in connection with two patients. The ALJ found that petitioner had a sexual relationship with Patient A and had committed sexual misconduct with a patient under Business and Professions Code section 726, in addition to unprofessional conduct and gross negligence under Business and Professions Code section 2234 and 2234, subdivision (b). The ALJ also found that petitioner's termination of Patient B from his medical practice was unprofessional and grossly negligent, constituting separate cause for discipline under Business and Professions Code section 2234 and 2234, subdivision (b). The ALJ concluded that revocation was the appropriate measure of discipline, due to the egregious nature of petitioner's conduct and multiple aggravating factors.

4. On April 9, 2018, the Board issued a Decision and Order, which adopted the ALJ's proposed decision in its entirety and ordered that petitioner's certificate be revoked. The Decision and Order did not take effect immediately. Petitioner sought a writ of administrative mandate and the superior court stayed the Board's Decision and Order pending the outcome of the writ proceedings. The superior court and the court of appeal subsequently denied the writ petition. The Board's Decision and Order took effect on August 5, 2019, revoking petitioner's certificate as of that date.

5. Effective January 1, 2023, the Legislature amended Business and Professions Code section 2307, the statute that governs petitions for reinstatement, as described in more detail below.

6. Petitioner has filed a petition for reinstatement, which he signed on November 20, 2023, and was received by the Board shortly thereafter.

7. The petition was referred to the Office of Administrative Hearings in October 2024, and was set to be heard on May 12, 2025.

Motion and Briefing Regarding Jurisdiction

8. On April 29, 2025, counsel for the Office of the Attorney General (OAG) filed a motion in limine, contending that petitioner is not entitled to a hearing on his petition for reinstatement, because it is barred by Business and Professions Code section 2307, subdivisions (a) and (i)(1)(B), which prohibit reinstatement of a physician's and surgeon's certificate that has been revoked based on a finding of sexual misconduct with a patient in violation of Business and Professions Code section 726. The motion also offered arguments as to the merits of the petition. The motion in limine has been marked for identification as Exhibit 7.

9. On April 30, 2025, petitioner's counsel filed a hearing brief, contending that Business and Professions Code section 2307, subdivision (i), should not apply to this case, and also arguing the merits of the petition. Petitioner's brief and supporting exhibits have been marked for identification as Exhibits P-32, P-33, and P-34.

10. On May 6, 2025, the undersigned issued an Order Bifurcating Hearing, which bifurcated this matter to promote the orderly conduct of the hearing and clarify the issue of jurisdiction. (Gov. Code, § 11512, subd. (b); Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) The Order provided that on May 12, 2025, argument would be heard as to jurisdiction only, with an additional day of hearing to be scheduled later in the event that jurisdiction is found and an evidentiary hearing is required.

11. Counsel for the OAG filed a brief in response to petitioner's hearing brief on May 6, 2025, which has been marked for identification as Exhibit 9.

12. On May 9, 2025, petitioner's counsel filed an opposition to the motion in limine and reply in support of his hearing brief, which has been marked for identification as Exhibit P-35.

13. Argument was heard on May 12, 2025, only as to the jurisdictional issue briefed by the parties.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 ("Section 2307") governs petitions for reinstatement or modification of penalty after a physician's and surgeon's certificate has been revoked, surrendered, suspended, or placed on probation. As relevant here, the version of the statute in effect prior to January 1, 2023, set forth

various waiting periods and procedures for consideration of reinstatement petitions after a certificate was revoked or surrendered.

2. In 2022, the Legislature considered and adopted Assembly Bill 1636, which amended Section 2307 to add a new subdivision (i), effective January 1, 2023. As amended, Section 2307, subdivision (a), states:

Except as provided in subdivision (i), a person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

Section 2307, subdivision (i), states in relevant part:

(1) The board shall not reinstate the certificate of a person under any of the following circumstances:

...

(B) The person's certificate has been revoked based on a finding by the board that the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726 or sexual exploitation as defined in subdivision (a) of Section 729.

3. The jurisdictional dispute in this matter concerns whether petitioner may seek reinstatement under Section 2307. The Board issued a Decision and Order, effective August 5, 2019, which found petitioner had committed sexual misconduct

with a patient in violation of Business and Professions Code section 726 and revoked his certificate on that ground, among others. (Factual Findings 3 & 4.) The amendment to Section 2307 took effect on January 1, 2023. (Factual Finding 5.) Over 10 months later, petitioner filed a petition seeking to reinstate his certificate. (Factual Finding 6.)

4. The OAG contends that Section 2307, subdivision (i)(1)(B), applies to this petition and expressly prohibits the Board from reinstating petitioner's certificate, which was revoked for sexual misconduct with a patient. Subdivision (i) took effect in January 2023, and the petition was not filed until November 2023. The OAG argues that applying subdivision (i) prospectively, the Board may not reinstate petitioner's certificate.

5. Petitioner contends that Section 2307, subdivision (i), should not be applied to him, arguing that to do so would give the statute impermissible retroactive effect absent a clear legislative intent. Petitioner argues that he must be given an evidentiary hearing at which he can present evidence for the Board's consideration on rehabilitation and the other factors relevant to reinstatement petitions set forth in Section 2307, subdivision (e).

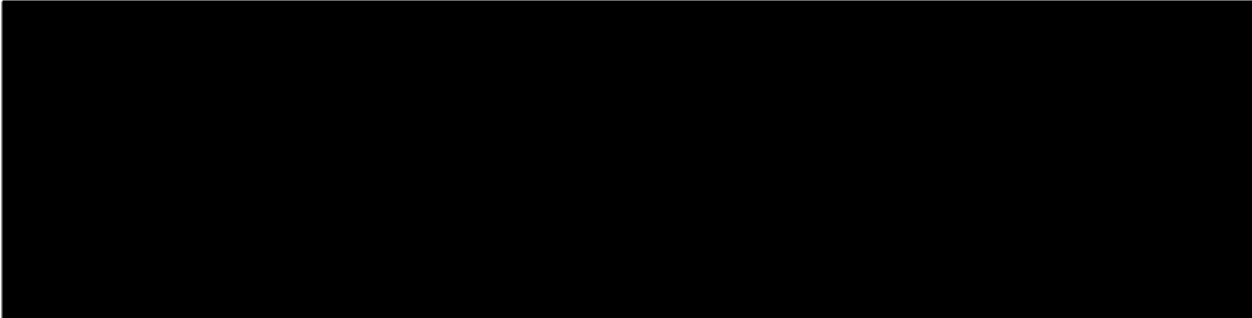
6. Petitioner notes that Board staff initially declined to process the petition, but then processed it after petitioner's counsel demanded a hearing. This is irrelevant. How the agency staff chose to handle the petition has no bearing on the disposition of the jurisdictional issue, which is a question of law.

7. Petitioner also argues that the OAG's motion is untimely and should be denied on that basis. This contention is rejected. Petitioner had adequate time to, and did, present detailed briefing and argument on the jurisdictional question.

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Discussion

8. At the outset, it is important to understand that petitioner has no vested right as a former licensee of the Board. A person seeking reinstatement of a revoked license is in the same position as a person seeking the license for the first time. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1396.)



10. A new statute is generally presumed to operate prospectively, absent an express declaration of retroactivity or a clear and compelling indication that the Legislature intended otherwise. (See, e.g., *People v. Hayes* (1991) 49 Cal.3d 1260, 1274.) But first, one must determine whether the statutory change is "retroactive" or "prospective." As was explained by the California Supreme Court at length in *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 228-232, distinguishing between retroactive and prospective applications of a statutory change is sometimes elusive. Caselaw defining retroactivity focuses on whether the statutory change significantly alters settled expectations by changing the legal consequences of past events, or vitiating substantial rights established by prior law. (*Id.* at p. 230.)

11. In *Tapia v. Superior Court* (1991) 53 Cal.3d 282, the California Supreme Court considered the effect of statutory amendments that changed criminal law in several respects, concluding some amendments could be applied to the prosecution of crimes committed before the measure's effective date, and others could not. The court

found that provisions changing the legal consequences of past behavior, such as changing the definitions of, punishment for, or defenses to crimes, could not be applied retrospectively. (*Id.* at pp. 297-298.) However, the court found that other amendments addressing the conduct of trials could be applied to pending cases regardless of when the charged offense occurred. (*Id.* at pp. 299-300.)

The *Tapia* court explained that a statute about the conduct of trials which have yet to take place, even applied to prosecution of a crime committed before the law's effective date, addresses conduct in the future. (*Id.* at p. 288.) "Such a statute is not made retroactive merely because it draws upon facts existing prior to its enactment [Instead,] [t]he effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future. For this reason, we have said that it is a misnomer to designate [such statutes] as having retrospective effect." (*Ibid.*, internal citations and quotation marks omitted.)

12. In *McHugh*, a case regarding amendments to the Insurance Code that shielded consumers from losing life insurance coverage due to missed premium payments, the California Supreme Court also found that principles of retroactivity are not implicated if a retroactive effect is minimal and does not substantially impair any vested contractual rights. (*McHugh, supra*, 12 Cal.5th at p. 228.)

13. Petitioner's argument, that Section 2307, subdivision (i), would be impermissibly retroactive if applied to him, is unpersuasive. The amendment to Section 2307 does not change the legal consequences of petitioner's past sexual misconduct by imposing new or different liabilities for that conduct. It addresses the conduct of reinstatement proceedings looking forward, and did not change the possible (and actual) penalty of revocation. Nor did petitioner agree to surrender his license, based on an expectation that he might be able to seek reinstatement in the future. Under

these circumstances, the amendments to Section 2307 are properly understood as prospective in effect, and they may be applied to petitioner.

14. Statutory construction begins with the plain language of the statute. (*McHugh, supra*, 12 Cal.5th at p. 227.) If the statute's language is ambiguous, extrinsic sources such as legislative history may provide further insight. (*Ibid.*)

15. The plain language of Section 2307, subdivisions (a) and (i), read together, prohibits petitioner from making this petition, and prohibits the Board from granting the petition. Subdivision (a) states: "Except as provided in subdivision (i), a person . . . whose certificate has been revoked . . . may petition the board for reinstatement....." Subdivision (i)(1) states: "The board shall not reinstate the certificate of a person under any of the following circumstances," including as relevant to petitioner, "(B) The person's certificate has been revoked based on a finding by the board that the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726....."

16. Both parties have presented arguments based on the legislative history of Assembly Bill 1636. However, there is no need to resort to an analysis of legislative history where the statutory language is unambiguous.

17. Pursuant to Section 2307, subdivisions (a) and (i), the Board may not consider this petition for reinstatement. This proceeding must be dismissed.

18. All contentions raised by the parties were considered, and to the extent those contentions are not expressly addressed in this decision, they were found to be without merit.

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ORDER

The petition of John Edward Massey for reinstatement of his revoked physician's and surgeon's certificate is dismissed.

DATE: 05/22/2025



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

ATTACHMENT 2

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

**In the Matter of the Petition for Reinstatement
of:**

John Edward Massey, M.D.

**Physician's and Surgeon's
Certificate No. G 76734**

Respondent.

Case No. 800-2023-103888

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 July 7, 2025.

IT IS SO ORDERED June 6, 2025.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

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

**In the Matter of the Petition for Reinstatement of:
JOHN EDWARD MASSEY, Petitioner.**

Agency Case No. 800-2023-103888

OAH No. 2024100310

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on May 12, 2025, by videoconference.

Attorney Travis Van Ligten represented petitioner John Edward Massey, who was present.

Supervising Deputy Attorney General Machaela M. Mingardi and Deputy Attorney General Maryam Ahmad represented the Department of Justice, Office of the Attorney General.

On May 12, 2025, argument was heard on the jurisdictional question of whether the Medical Board of California may consider this petition. The matter was submitted for decision as to the jurisdictional question on May 12, 2025.

ISSUE

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FACTUAL FINDINGS

Background and Procedural History

1. The Board issued Physician's and Surgeon's Certificate Number G76734 to John Edward Massey (petitioner) on June 7, 1993.
2. In August 2017, the Board's Executive Director issued a first amended accusation seeking to impose discipline on petitioner's certificate. Petitioner requested and received an administrative hearing on the disciplinary charges, which took place over the course of seven days in February 2018, before an administrative law judge (ALJ) of the Office of Administrative Hearings.
3. The ALJ issued a proposed decision on March 23, 2018, finding cause for discipline in connection with two patients. The ALJ found that petitioner had a sexual relationship with Patient A and had committed sexual misconduct with a patient under Business and Professions Code section 726, in addition to unprofessional conduct and gross negligence under Business and Professions Code section 2234 and 2234, subdivision (b). The ALJ also found that petitioner's termination of Patient B from his medical practice was unprofessional and grossly negligent, constituting separate cause for discipline under Business and Professions Code section 2234 and 2234, subdivision (b). The ALJ concluded that revocation was the appropriate measure of discipline, due to the egregious nature of petitioner's conduct and multiple aggravating factors.

4. On April 9, 2018, the Board issued a Decision and Order, which adopted the ALJ's proposed decision in its entirety and ordered that petitioner's certificate be revoked. The Decision and Order did not take effect immediately. Petitioner sought a writ of administrative mandate and the superior court stayed the Board's Decision and Order pending the outcome of the writ proceedings. The superior court and the court of appeal subsequently denied the writ petition. The Board's Decision and Order took effect on August 5, 2019, revoking petitioner's certificate as of that date.

5. Effective January 1, 2023, the Legislature amended Business and Professions Code section 2307, the statute that governs petitions for reinstatement, as described in more detail below.

6. Petitioner has filed a petition for reinstatement, which he signed on November 20, 2023, and was received by the Board shortly thereafter.

7. The petition was referred to the Office of Administrative Hearings in October 2024, and was set to be heard on May 12, 2025.

Motion and Briefing Regarding Jurisdiction

8. On April 29, 2025, counsel for the Office of the Attorney General (OAG) filed a motion in limine, contending that petitioner is not entitled to a hearing on his petition for reinstatement, because it is barred by Business and Professions Code section 2307, subdivisions (a) and (i)(1)(B), which prohibit reinstatement of a physician's and surgeon's certificate that has been revoked based on a finding of sexual misconduct with a patient in violation of Business and Professions Code section 726. The motion also offered arguments as to the merits of the petition. The motion in limine has been marked for identification as Exhibit 7.

9. On April 30, 2025, petitioner's counsel filed a hearing brief, contending that Business and Professions Code section 2307, subdivision (i), should not apply to this case, and also arguing the merits of the petition. Petitioner's brief and supporting exhibits have been marked for identification as Exhibits P-32, P-33, and P-34.

10. On May 6, 2025, the undersigned issued an Order Bifurcating Hearing, which bifurcated this matter to promote the orderly conduct of the hearing and clarify the issue of jurisdiction. (Gov. Code, § 11512, subd. (b); Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) The Order provided that on May 12, 2025, argument would be heard as to jurisdiction only, with an additional day of hearing to be scheduled later in the event that jurisdiction is found and an evidentiary hearing is required.

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13. Argument was heard on May 12, 2025, only as to the jurisdictional issue briefed by the parties.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 ("Section 2307") governs petitions for reinstatement or modification of penalty after a physician's and surgeon's certificate has been revoked, surrendered, suspended, or placed on probation. As relevant here, the version of the statute in effect prior to January 1, 2023, set forth

various waiting periods and procedures for consideration of reinstatement petitions after a certificate was revoked or surrendered.

2. In 2022, the Legislature considered and adopted Assembly Bill 1636, which amended Section 2307 to add a new subdivision (i), effective January 1, 2023. As amended, Section 2307, subdivision (a), states:

Except as provided in subdivision (i), a person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

Section 2307, subdivision (i), states in relevant part:

(1) The board shall not reinstate the certificate of a person under any of the following circumstances:

...

(B) The person's certificate has been revoked based on a finding by the board that the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726 or sexual exploitation as defined in subdivision (a) of Section 729.

3. The jurisdictional dispute in this matter concerns whether petitioner may seek reinstatement under Section 2307. The Board issued a Decision and Order, effective August 5, 2019, which found petitioner had committed sexual misconduct

with a patient in violation of Business and Professions Code section 726 and revoked his certificate on that ground, among others. (Factual Findings 3 & 4.) The amendment to Section 2307 took effect on January 1, 2023. (Factual Finding 5.) Over 10 months later, petitioner filed a petition seeking to reinstate his certificate. (Factual Finding 6.)

4. The OAG contends that Section 2307, subdivision (i)(1)(B), applies to this petition and expressly prohibits the Board from reinstating petitioner's certificate, which was revoked for sexual misconduct with a patient. Subdivision (i) took effect in January 2023, and the petition was not filed until November 2023. The OAG argues that applying subdivision (i) prospectively, the Board may not reinstate petitioner's certificate.

5. Petitioner contends that Section 2307, subdivision (i), should not be applied to him, arguing that to do so would give the statute impermissible retroactive effect absent a clear legislative intent. Petitioner argues that he must be given an evidentiary hearing at which he can present evidence for the Board's consideration on rehabilitation and the other factors relevant to reinstatement petitions set forth in Section 2307, subdivision (e).

6. Petitioner notes that Board staff initially declined to process the petition, but then processed it after petitioner's counsel demanded a hearing. This is irrelevant. How the agency staff chose to handle the petition has no bearing on the disposition of the jurisdictional issue, which is a question of law.

7. Petitioner also argues that the OAG's motion is untimely and should be denied on that basis. This contention is rejected. Petitioner had adequate time to, and did, present detailed briefing and argument on the jurisdictional question.

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Discussion

8. At the outset, it is important to understand that petitioner has no vested right as a former licensee of the Board. A person seeking reinstatement of a revoked license is in the same position as a person seeking the license for the first time. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1396.)

9. Moreover, petitioner's certificate was revoked after a lengthy evidentiary hearing and subsequent writ proceedings. Petitioner did not settle his disciplinary charges by signing a stipulated settlement surrendering his license, in reliance on the previous version of Section 2307 and a hope of potential reinstatement at some unspecified point in the future.

10. A new statute is generally presumed to operate prospectively, absent an express declaration of retroactivity or a clear and compelling indication that the Legislature intended otherwise. (See, e.g., *People v. Hayes* (1991) 49 Cal.3d 1260, 1274.) But first, one must determine whether the statutory change is "retroactive" or "prospective." As was explained by the California Supreme Court at length in *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 228-232, distinguishing between retroactive and prospective applications of a statutory change is sometimes elusive. Caselaw defining retroactivity focuses on whether the statutory change significantly alters settled expectations by changing the legal consequences of past events, or vitiating substantial rights established by prior law. (*Id.* at p. 230.)

11. In *Tapia v. Superior Court* (1991) 53 Cal.3d 282, the California Supreme Court considered the effect of statutory amendments that changed criminal law in several respects, concluding some amendments could be applied to the prosecution of crimes committed before the measure's effective date, and others could not. The court

found that provisions changing the legal consequences of past behavior, such as changing the definitions of, punishment for, or defenses to crimes, could not be applied retrospectively. (*Id.* at pp. 297-298.) However, the court found that other amendments addressing the conduct of trials could be applied to pending cases regardless of when the charged offense occurred. (*Id.* at pp. 299-300.)

The *Tapia* court explained that a statute about the conduct of trials which have yet to take place, even applied to prosecution of a crime committed before the law's effective date, addresses conduct in the future. (*Id.* at p. 288.) "Such a statute is not made retroactive merely because it draws upon facts existing prior to its enactment [Instead,] [t]he effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future. For this reason, we have said that it is a misnomer to designate [such statutes] as having retrospective effect." (*Ibid.*, internal citations and quotation marks omitted.)

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13. Petitioner's argument, that Section 2307, subdivision (i), would be impermissibly retroactive if applied to him, is unpersuasive. The amendment to Section 2307 does not change the legal consequences of petitioner's past sexual misconduct by imposing new or different liabilities for that conduct. It addresses the conduct of reinstatement proceedings looking forward, and did not change the possible (and actual) penalty of revocation. Nor did petitioner agree to surrender his license, based on an expectation that he might be able to seek reinstatement in the future. Under

these circumstances, the amendments to Section 2307 are properly understood as prospective in effect, and they may be applied to petitioner.

14. Statutory construction begins with the plain language of the statute. (*McHugh, supra*, 12 Cal.5th at p. 227.) If the statute's language is ambiguous, extrinsic sources such as legislative history may provide further insight. (*Ibid.*)

15. The plain language of Section 2307, subdivisions (a) and (i), read together, prohibits petitioner from making this petition, and prohibits the Board from granting the petition. Subdivision (a) states: "Except as provided in subdivision (i), a person . . . whose certificate has been revoked . . . may petition the board for reinstatement....." Subdivision (i)(1) states: "The board shall not reinstate the certificate of a person under any of the following circumstances," including as relevant to petitioner, "(B) The person's certificate has been revoked based on a finding by the board that the person committed an act of sexual abuse, misconduct, or relations with a patient pursuant to Section 726....."

16. Both parties have presented arguments based on the legislative history of Assembly Bill 1636. However, there is no need to resort to an analysis of legislative history where the statutory language is unambiguous.

17. Pursuant to Section 2307, subdivisions (a) and (i), the Board may not consider this petition for reinstatement. This proceeding must be dismissed.

18. All contentions raised by the parties were considered, and to the extent those contentions are not expressly addressed in this decision, they were found to be without merit.

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ORDER

The petition of John Edward Massey for reinstatement of his revoked physician's and surgeon's certificate is dismissed.

DATE: 05/22/2025



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings