

<b>STATE BAR COURT OF CALIFORNIA</b>  <b>HEARING DEPARTMENT</b>  845 S. Figueroa Street, 3 <sup>rd</sup> Floor Los Angeles, CA 90017-2515	FOR CLERK'S USE ONLY: <b>FILED</b>  OCT 06 2017  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In the Matter of:  <b>RICHARD HENRY WAGNER,</b>  A Member of the State Bar, No. 127326.	Case No: 15-O-11113(S231696)  <b>ORDER EXTENDING TIME TO PRESENT        PROOF OF PASSAGE OF MPRE</b>

This is Respondent's second motion seeking an extension of time to take and present proof of passage of the Multistate Professional Responsibility Examination (MPRE). He has taken the MPRE twice, failing it by 2 points on the first effort and by a single point on the second. He now again asks for complete relief from the obligation to take and pass the examination or, in the alternative, for another opportunity to take and present proof of passage of the exam without being enrolled administratively ineligible to practice. Because he has missed the deadline for signing up for the November 2017 examination, he asks for extension beyond the March 2018 MPRE.

On May 18, 2017, Respondent filed his first motion regarding his obligation to take and pass the MPRE. In that motion, he also asked this court: (1) to grant him complete relief from the obligation to take and pass the MPRE based on his having come within two points of passing the examination on his first attempt; or, in the alternative, (2) to extend the time for him to take and pass the examination.<sup>1</sup>

On May 22, 2017, the State Bar Office of Probation filed a response to the motion, opposing the request for complete relief but not opposing the request for an extension of time sufficient for Respondent to take and pass the September 2017 examination.

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<sup>1</sup> In Respondent's supporting declaration, he inaccurately concluded with the statement, "My only transgression has involved a failure of MCLE compliance which has been fully cured except for not passing the MPRE exam by a slim margin of 2 points." (Declaration, p. 3, lines 5-7 [underlining added].) In fact, the "transgression" for which Respondent was disciplined was his making a misrepresentation to the State Bar that he had previously complied with his MCLE obligations, an untruthful statement under penalty of perjury that was an act of moral turpitude in violation of Business and Professions Code section 6106. In this court's order granting the requested extension, this court noted, "Having just been disciplined for making inaccurate statements under penalty of perjury to the State Bar, Respondent's making of the above assertion, also under penalty of perjury, is of some concern to this court."

Surprisingly, the same erroneous sentence is included in the declaration Respondent attached to the instant motion. Respondent either did not read this court's footnote in the first order, forgot it when modifying the declaration from the first motion for use in his second motion, or is oblivious to his obligation not to make misleading statements to this court. Any repetition of this conduct by Respondent will be a strong indication that the third possibility is the one most probable.



On May 25, 2017, having reviewed the submitted pleadings, the court concluded as follows:

This court declines to grant Respondent full relief from his court-ordered obligation to take and pass the MPRE. Compliance with the conditions of discipline ordered by the Supreme Court is not measured by the same rules as horseshoes. "Close" is not enough. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 651-652; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 150; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536-537 ["Substantial compliance" with a probation condition is not a defense to culpability of non-compliance]; see also *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1096; and *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187 [same rule applied to violations of rule 955 (now 9.20) obligations].)

Good cause appearing, Respondent's alternative request for an extension of time is GRANTED. Accordingly, the time in which Respondent may and must present proof to the Office of Probation of his passage of the MPRE is extended until ten (10) calendar days after the results of the August 12, 2017, MPRE are released.

As noted above, Respondent took the August 2017 examination, improved his score by a single point, but failed the exam by a single point.

On September 26, 2017, Respondent filed the instant motion seeking either complete relief from the obligation to take and pass the MPRE or for an additional extension of the deadline for him to do so. On October 3, 2017, the Office of Probation filed an opposition to the request.

Having reviewed the competing papers, this court again concludes that there is no basis for granting complete relief from Respondent's obligation to take and present proof of passage of the MPRE. Accordingly, that portion of his motion is DENIED.

Good cause appearing, Respondent's alternative request for an extension of time is GRANTED. Respondent has been trying to pass the MPRE and has twice come extremely close to doing so. Neither the courts, the profession, nor the public is endangered by allowing him to continue to practice while he is given one more chance to improve his score – now by just one more point. Accordingly, the time in which Respondent may and must present proof to the Office of Probation of his passage of the MPRE is extended until ten (10) calendar days after the results of the March 2018 MPRE are released.

Respondent is cautioned not to expect that a third extension will be granted, should he fail to achieve a passing score on his third effort. That is especially true if he fails to take a preparatory class prior to the March 2018 examination or, worse, again includes the factually inaccurate statement, twice addressed by this court, in any supporting declaration.

**IT IS SO ORDERED.**

Dated: October 6, 2017

  
DONALD F. MILES  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 6, 2017, I deposited a true copy of the following document(s):

ORDER EXTENDING TIME TO PRESENT PROOF OF PASSAGE OF MPRE

in a sealed envelope for collection and mailing on that date as follows:

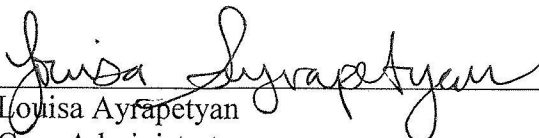
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD H. WAGNER  
RICHARD H. WAGNER, APC  
12127 CAMINITO CORRIENTE  
SAN DIEGO, CA 92128 - 4569

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TERRIE GOLDADE, Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 6, 2017.

  
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Louisa Ayrapetyan  
Case Administrator  
State Bar Court