

**State Bar Court
Review Department**

In the Matter of

JORDAN TONYA LOUISE PETERS

A Member of the State Bar

No. 13-C-16396

Filed January 29, 2018

SUMMARY

While driving under the influence of prescription drugs, Peters caused a car accident that killed a passenger in the other car. She pleaded nolo contendere and was convicted of felony vehicular manslaughter while intoxicated, without gross negligence. A hearing judge found that the facts and circumstances surrounding the conviction involved moral turpitude, and recommended disbarment.

The Review Department affirmed the disbarment recommendation, holding that the facts of the conviction involved moral turpitude, and the mitigating circumstances were not compelling. Thus, there was no reason to deviate from the applicable disciplinary standard, under which disbarment is the presumed sanction for a felony conviction involving moral turpitude.

COUNSEL FOR PARTIES

For State Bar of California: Kevin B. Taylor, Esq.

For Respondent: Jordan T. Peters, Esq.

HEADNOTES

- [1a-c] **1511 Substantive Issues in Conviction Proceedings — Nature of Underlying Conviction — Driving Under the Influence**
1523 Substantive Issues in Conviction Proceedings — Moral Turpitude — Found Based on Facts and Circumstances
The test for whether an attorney’s felony conviction involves moral turpitude is whether the facts and circumstances surrounding the attorney’s criminal conduct show either a deficiency in any character trait necessary for the practice of law, or involve such a serious breach of duty to another or society, or such flagrant disrespect for law or societal norms, that knowledge of the attorney’s conduct would likely undermine public confidence in and respect for the legal profession. Where respondent lacked candor and made disingenuous statements to law enforcement personnel, and her conduct in driving while impaired by abuse of prescription drugs showed lack of regard for her duty to society or concern for the law, the circumstances of her felony vehicular manslaughter conviction involved moral turpitude.
- [2] **191 Miscellaneous General Issues — Effect of/Relationship to Other Proceedings**
1511 Substantive Issues in Conviction Proceedings — Nature of Underlying Conviction — Driving Under the Influence
1691 Miscellaneous Issues in Conviction Cases — Admissibility and/or Effect of Record in Criminal Proceeding
Respondent’s conviction for felony vehicular manslaughter while intoxicated conclusively established that respondent drove while intoxicated and caused victim’s death.
- [3] **543.90 Aggravation — Intentional misconduct, bad faith, etc. (1.5 (d), (e), (f)) — Found but discounted or not relied on — Other reason**
Where respondent’s concealment and false statements to law enforcement were relied upon in finding respondent’s felony conviction involved moral turpitude, no additional aggravation was warranted for concealment, bad faith, or dishonesty.
- [4a, b] **710.36 Mitigation — Long practice with no prior discipline — Found but discounted or not relied on — Present misconduct likely to recur**
Attorney’s absence of prior discipline over many years of practice should not be assigned significant mitigating weight unless misconduct is not likely to recur. Where respondent had not shown that the substance abuse problems involved in her misconduct had been resolved, her 19 years of discipline-free practice deserved only some mitigating weight.
- [5a-c] **725.36 Mitigation — Emotional/physical disability/illness — Found but discounted or not relied on — Inadequate showing of rehabilitation**
Where respondent’s uncontradictory testimony established that misconduct was caused by long-standing depression and prescription drug abuse, respondent was entitled to some mitigation for emotional difficulties or physical or mental disabilities. However, where respondent had a years-long history of abuse, and had started but not completed rehabilitation, she did not show complete, sustained recovery and rehabilitation, and full mitigation was not warranted.

- [6a, b] **130 Generally Applicable Procedural Issues — Procedure on Review**
159 Evidentiary Issues — Miscellaneous Evidentiary Issues
725.36 Mitigation — Emotional/physical disability/illness — Found but discounted or not relied on — Inadequate showing of rehabilitation
 Where respondent's misconduct was related to prescription drug abuse, Review Department permitted respondent to augment record with evidence of rehabilitation occurring after trial in disciplinary proceedings. Evidence of post-trial rehabilitation was not entitled to full evidentiary weight, however, because it was not subject to cross-examination.
- [7] **725.36 Mitigation — Emotional/physical disability/illness — Found but discounted or not relied on — Inadequate showing of rehabilitation**
 Review Department assigns some mitigating weight to attorney's rehabilitation activities while on criminal probation, but gives far greater weight to activities after probation has ended.
- [8a, b] **765.39 Mitigation — Substantial pro bono work — Found but discounted or not relied on — Insufficient evidence**
 Respondents deserve mitigation credit for pro bono and community service activities, even if shown only by respondent's own testimony. Such work does not qualify for full mitigation credit, however, where respondent's testimony lacks specificity and is uncorroborated, so State Bar Court cannot evaluate full measure of respondent's dedication and zeal in such activities.
- [9a-c] **1511 Substantive Issues in Conviction Proceedings — Nature of Underlying Conviction — Driving Under the Influence**
1523 Substantive Issues in Conviction Proceedings — Moral Turpitude — Found Based on Facts and Circumstances
1552.10 Application of Standards — Criminal Conviction — Standard 2.15(b) (felony conviction under circumstances involving moral turpitude) — Applied — Disbarment
 Where respondent's felony vehicular manslaughter conviction, arising from driving while impaired by prescription drugs, involved moral turpitude; showed disregard for law and public safety; caused significant harm; and was accompanied by lack of candor in dealing with law enforcement, and respondent's mitigating factors were not compelling and fell far short of predominating, discipline less than presumed sanction of disbarment would fail to protect public and would undermine confidence in legal profession.

Additional Analysis

Aggravation

Found

584.10 Harm — To public

Mitigation

Found but discounted or not relied on

735.30 Candor and cooperation with Bar

740.31 Good character references

745.39 Remorse/restitution/atonement

Discipline

1610 Disbarment

Other

1541.10 Interim suspension after felony conviction — Ordered
— California or federal felony

OPINION

McGill, J.

On April 30, 2013, Jordan Tonya Louise Peters was driving under the influence of prescription drugs when, without braking, she rear-ended a car stopped at a traffic light. The other driver was seriously injured and the other driver's passenger, her 69-year-old husband, died. On her plea of *nolo contendere*, Peters was convicted of felony vehicular manslaughter while intoxicated without gross negligence.

Disbarment is the presumed sanction for a felony conviction in which the surrounding facts and circumstances involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate. A hearing judge found that the facts and circumstances surrounding Peters's conviction involved moral turpitude, and, not finding compelling mitigation, recommended disbarment.

Peters appeals. She argues that the facts and circumstances surrounding her crime did not involve moral turpitude and her mitigating circumstances are entitled to more credit. She contends that a two-year actual suspension would be sufficient to preserve the integrity of the profession and protect the public. The Office of Chief Trial Counsel of the State Bar (OCTC) requests that we affirm the disbarment recommendation.

Upon our independent review (Cal. Rules of Court, rule 9.12), we find the facts of the conviction involve moral turpitude, and the mitigating circumstances are not compelling. We can discern no reason from this record to deviate from the applicable disciplinary standard, and thus affirm the disbarment recommendation.

I. FACTUAL BACKGROUND¹

A. PETERS ABUSED PRESCRIPTION DRUGS LEADING UP TO THE COLLISION

On and off for several years prior to the April 30, 2013 collision, Peters was taking Neurontin, a central nervous system depressant, for anxiety. Common side effects of the drug include sedation, dizziness, and lack of muscle coordination. Peters also suffered from chronic neck and back pain due to a preexisting medical condition. In September 2010, her primary care physician referred her to a pain management specialist, Dennis Hembd, M.D. Dr. Hembd, too, prescribed Neurontin for Peters, as well as Norco, an opioid medication with the same narcotic component as Vicodin (hydrocodone), and, later, a similar pain medication (Nucynta).

Dr. Hembd soon became concerned about Peters's escalating drug use, as reflected in reports of his visits with Peters from November 5, 2010, through May 13, 2011. Peters once told Dr. Hembd's physician's assistant that Neurontin caused her to feel sedated. She also increased her use of Norco, made frequent refill requests, and sought a stronger dosage. On November 8, 2010, Dr. Hembd wrote that he was "wary of her medication use." Two months later, on January 14, 2011, Dr. Hembd noted a discrepancy between Peters's stated and observed use of Norco and Nucynta. Dr. Hembd also noted that day that Peters admitted to him that she "ha[d] been unable to control the use of her medication," and she failed to participate in the physical therapy he recommended. After his final visit with Peters in May 2011, Dr. Hembd recorded that Peters had run out of Norco two weeks early. He testified at her disciplinary trial that "early refills would obviously be a sign of trouble."

1. The facts are based on the parties' pretrial written stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) All further references to rules are to the Rules of Procedure of the State Bar unless otherwise noted.

In August 2011, Dr. Hembd terminated his treatment of Peters by letter to her and to her primary care doctor. He based his decision on her treatment history and a report from MedCo, a pharmacy management and benefit corporation. He wrote in the letter that, as reported by MedCo, during the prior two months, Peters had filled Norco prescriptions from his office and two other providers using three different pharmacies, which suggested Norco abuse.² Dr. Hembd noted her inconsistent follow-up when she was asked to come in and review her prescription drug use. He cautioned her about the risk of overdose in combining Norco with her other prescribed drugs and recommended that she discontinue taking Norco and seek substance abuse treatment.

Peters did not see Dr. Hembd again or discuss his letter with him. Instead, she talked about her medication use with her primary care doctor, her psychiatrist, her marriage and family therapist, and, later, her new spinal doctor. She thought she “could manage” her prescription drug use and “just needed better willpower to deal with the issue.” She did not seek substance abuse treatment at that time. Although she continued to use other prescription drugs,³ she stopped taking Norco in 2012.

In March 2012, Peters closed her law practice due to mounting stress. She transferred or closed cases, and took steps to ensure that her clients were properly handled. She continued to teach at two universities, and later worked in human resources for a construction company.

At the disciplinary trial, Peters admitted she began to abuse Neurontin in 2012 and had not been following the prescribed dosage for about nine to 12 months before the April 30, 2013, collision. By 2013, her prescribed dose was one

and one-half 600-milligram tablets taken three times per day for a total of four and one-half pills or 2,700 milligrams per day. Her actual daily dose varied as some days she took the prescribed amount, some days less, other days more. At the time, Peters thought she did not have an addiction problem and was in control of her Neurontin use. At trial, she admitted, “I thought I was in control. But I clearly wasn’t.”

**B. PETERS CAUSED A FATAL
AUTOMOBILE COLLISION WHILE
IMPAIRED**

On April 30, 2013, Peters picked up a Neurontin refill and then went to her office at the construction company at which she was employed at the time, worked on several projects and interacted with colleagues. At trial, she admitted that between 9:18 a.m. and 2:00 p.m., she took six or seven Neurontin pills—more than her full day’s prescribed dose—in roughly five hours. She also had several other prescription drugs in her system, including tramadol,⁴ another pain medication prescribed by her primary care doctor. She testified that she did not feel impaired and felt no different that day than any other day.

Unexpectedly, Peters was called around 3:15 p.m. to pick up her son and left work earlier than planned. Three eyewitnesses who observed her driving testified at trial. Making a left turn, on a Roseville, California street, Peters veered right across four lanes, and drove up and over a curb and sidewalk until all four tires were on a grassy area beyond the sidewalk. Peters recalled striking only the curb. Without stopping, she returned to the road and swerved left across three lanes toward the center median. She then swung back over to the right-hand curb, almost came to a stop, but did not. She continued to drive at varying speeds for

2. In July or August 2011, Peters fell, breaking her nose and cracking a tooth. An urgent care provider and a dentist each prescribed Vicodin to treat her resulting pain.

3. Peters’s psychiatrist prescribed her Cymbalta and Wellbutrin for depression, Xanax and Neurontin for anxiety, and Restoril (temazepam) for sleep. Peters’s primary care doctor prescribed her Topril and Lisinopril for high blood pressure.

4. As noted in a California Department of Justice Bureau of Forensic Services toxicology report included in the record, tramadol (Ultram) may induce side effects of dizziness, somnolence, and seizures.

another half-mile. Her driving was so erratic and worrisome that two drivers behind her turned on their emergency flashers to try to slow traffic and to warn others, and one of them called 911.

Around 3:40 p.m., Peters was traveling at approximately 50 to 60 miles per hour when, without braking, she rear-ended one of several cars stopped at a red light. Bonnie Weaver was the driver of that car and her husband of over 48 years, Robert Weaver, was the front seat passenger. The impact crushed the back half of the Weavers' car, leaving nothing behind the front seats. The couple suffered grave injuries and were transported to the hospital. Robert died hours later. Bonnie survived, but continues to suffer from her injuries, as discussed in detail below in aggravation. Peters's erratic driving also set off a chain of events that caused a separate collision involving three other cars, resulting in injuries to two other victims.

C. POLICE INTERVIEWED PETERS AT THE SCENE AND ARRESTED HER

Police Sergeant Jeffrey Beigh (Sergeant Beigh), who was a patrol officer and certified drug recognition expert at the time of the collision, arrived on the scene within 10 minutes and interviewed Peters. He observed that she seemed to be in shock. Peters told him that while driving, she looked down briefly to change the radio channel, and when she looked up, the Weavers' car was in front of her. She also told him she had a history of anxiety, depression, and high blood pressure for which she was taking Xanax, Neurontin, Cymbalta, Wellbutrin, Lisinopril, and Topril.

Sergeant Beigh completed a Driving Under the Influence Report (DUI report) that day,

which documented his roadside interview of Peters and their discussion of her Neurontin and Xanax use. He testified that she told him she had taken two Neurontin pills, her prescribed dose, at approximately 1:30 p.m. Peters testified that she remembered telling him she had taken Xanax as directed, but does not recall stating she had taken Neurontin as directed. She also remembered being asked when she took her *last dose* of Neurontin. Notes on the DUI report corroborate her recollection.⁵

Observing Peters's red, watery eyes, droopy eyelids, and difficulty following instructions, Sergeant Beigh administered Standardized Field Sobriety Tests (SFSTs), which evidenced that she was impaired. In the DUI report, Sergeant Beigh noted that Peters was unsteady, she "missed the number 15 as she counted" (i.e., she said "12, 13, 14, 16"), and her "balance showed to be grossly impaired."

Peters agreed to submit to a preliminary alcohol screening test, which showed her blood alcohol level at 0.00 percent. She also voluntarily provided a blood sample for chemical testing, which ultimately revealed positive results for Neurontin and several other prescription drugs.⁶

Sergeant Beigh arrested Peters and took her to jail. There, he asked her to perform another round of SFSTs, and again she "performed extremely poor[ly]." At this time, she admitted she was taking Cymbalta, Xanax, Wellbutrin, Restoril, Neurontin, Topril, and Lisinopril. She did not mention she was also taking tramadol.

A police officer found a bottle of Neurontin and three loose Neurontin pills in Peters's purse. The officer counted 124 pills in total.⁷ Since the pill bottle showed that the 135-

5. Specifically, the notes indicate that Sergeant Beigh asked Peters when she last used drugs, and what time was her first and last use of drugs. Peters replied, "TOOK MEDS THIS AM AT 0645, TOOK NEURONTIN [AT] 1330" and "0645/1330," respectively.

6. Two laboratories tested for Neurontin in her blood. Each reported a significantly different result. Neither of the testifying expert forensic toxicologists could conclusively determine the reason for the disparity or the actual number of pills Peters had taken.

7. The DUI report noted that Peters stated she spilled some Neurontin pills "into her purse." She testified that she "spilled them likely at work," she "didn't know where it had spilled during the day," and "[n]o one checked anywhere at [her] work."

pill prescription had just been filled that day, Sergeant Beigh concluded that 11 pills were missing. He noted in his DUI report that “Peters could only account for two of the missing Neurontin pills that she claimed to take at 1330 hours.”

At trial, Sergeant Beigh said that he would have included in his report if Peters had told him she took six or seven Neurontin pills. Like the hearing judge, we find that Peters never told the police the total number of Neurontin pills she took the day of the collision.

D. PETERS WAS CONVICTED OF FELONY
VEHICULAR MANSLAUGHTER WITHOUT
GROSS NEGLIGENCE

Peters was charged with one felony count of vehicular manslaughter while intoxicated with gross negligence (Pen. Code, § 191.5, subd. (a)) as to Robert, and three felony counts of driving under the influence of drugs causing injury (Veh. Code, § 23153, subd. (a)) as to Bonnie and two victims in other cars. On January 26, 2015, Peters pled *nolo contendere* to, and was convicted of, one felony count of vehicular manslaughter while intoxicated, but without gross negligence (Pen. Code, § 191.5, subd. (b)). The other charges were dismissed.

In March 2015, during the presentencing phase, Peters filled out a probation application and met with a probation officer. She provided incomplete or inconsistent information at their interview and in writing. While she acknowledged prescription drugs were in her system at the time of the collision, she specified they were “at therapeutic limits.” Further, despite having pled *nolo contendere* to vehicular manslaughter *while intoxicated*, the probation officer noted in his presentencing report that Peters claimed “she was not impaired in any way and that the collision was

a horrible accident.” In addition, she did not inform the probation officer she had been abusing Neurontin for months, or that she had been taking more than her prescribed dose. At trial, the probation officer confirmed that information would have been useful in drafting his presentencing report and recommendations. Peters testified that she was scared and nervous at the interview.

On March 24, 2015, Peters was sentenced to 364 days in jail, five years of formal probation, and attendance at a DUI class for 18 months. She was released on September 9, 2015, after serving 172 days in custody.

II. STATE BAR COURT PROCEEDINGS

After OCTC transmitted the felony conviction records to this court, we placed Peters on interim suspension from the practice of law effective July 7, 2015, pending final disposition of this proceeding. (Bus. & Prof. Code, §§ 6101, 6102; Cal. Rules of Court, rule 9.10; rules 5.341, 5.342.)⁸ Once we received evidence of finality, we referred the matter to the Hearing Department to determine whether the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline. (§ 6102, subd. (e); rule 5.344.)

Following a trial and posttrial briefing,⁹ the hearing judge issued her decision on April 21, 2017. She found that the facts and circumstances surrounding Peters’s conviction involved moral turpitude. She recommended disbarment because Peters failed to establish compelling mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 2.15(b) [disbarment is presumed sanction for felony conviction in which facts and circumstances surrounding offense involve moral

8. All further references to sections are to the Business and Professions Code unless otherwise noted.

9. At Peters’s request, the hearing judge ordered certain confidential portions of the record redacted and sealed. We do not refer to the protected information in this opinion except for that which Peters described or relied on during trial or in her briefs.

turpitude, unless most compelling mitigating circumstances clearly predominate].)¹⁰

III. PETERS'S CRIMINAL CONVICTION INVOLVED MORAL TURPITUDE

[1a] Peters argues that she should not be found culpable of moral turpitude, primarily because she did not know she was addicted to Neurontin nor did she feel impaired the day of the collision. However, her contention does not correctly reflect the test for moral turpitude. The test is whether the facts and circumstances surrounding her criminal conduct show either “a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties)” or involve “such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession. [Citations.]” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) We find that her conduct, as evidenced in the record, establishes moral turpitude under either condition of the test.

[1b] First, the facts and circumstances surrounding her conviction reveal deficiencies in Peters’s honesty and candor. Peters argues that she is not culpable of moral turpitude because she did not make affirmative misstatements to either Sergeant Beigh or the probation officer. However, we find that she was not candid with Sergeant Beigh at the scene about the number of Neurontin pills she had taken. Even assuming a misunderstanding at the scene caused her to misstate the number of pills she had consumed, she never told the police she had taken six or seven—not two—Neurontin pills in the hours before the collision. Further, during the presentencing phase, she did not tell the probation

officer about her overuse of Neurontin—information he testified would have been useful in preparing his report. She also disingenuously told the probation officer she had not been impaired, and the collision was a horrible accident resulting from a lack of caution.

[1c] Second, Peters’s conduct represents a serious breach of her duty to society and demonstrates a flagrant disrespect for the law such that knowledge of her conduct would undermine public confidence in and respect for the profession. [2] Her felony criminal conviction is conclusive proof that she drove while intoxicated and caused Robert Weaver’s death. (§ 6101, subs. (a) & (e); *In the Matter of Posthuma* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 813, 820.)¹¹ Peters had an admitted history of being unable to control her prescription drug use, which prompted one physician to cease treating her. Though she stopped using Norco in 2012, she took Neurontin contrary to direction for nine to 12 months prior to the collision. On the day of the crash, Peters knowingly took six or seven Neurontin pills—more than her full day’s prescribed dose—in about five hours. Despite having previously felt sedated by the drug, she still chose to drive. For nearly a mile, she traversed widely across multiple lanes but did not stop, even after she ran all four tires of her car over the curb and onto the grass. Instead, she continued driving at approximately 50 to 60 miles per hour, and, without braking, rear-ended the Weavers’ stopped car. She destroyed their car, killed Robert, gravely injured Bonnie, and injured others.

[1c] Peters argues she did not feel impaired the day of the collision. But, in fact, she was *significantly* impaired, as shown by her conviction for vehicular manslaughter while intoxicated, her Wildly erratic driving, her failure to apply the

10. All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

11. Penal Code section 191.5, subdivision (b), states: “Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.”

brakes, and, after the collision, her physical appearance, lack of balance, difficulty following instructions, and inability to pass multiple SFSTs. Whether she perceived that she was impaired, she knew or should have known that it was unsafe and unlawful to drive after taking more than a full day's dose of Neurontin in five hours. She had been taking the drug for years, had felt sedated by it before, and knew or should have known about its common side effects of dizziness, sedation, and lack of muscle control. Peters should have stopped driving after she breached the curb, yet she did not. She acted without regard for her duty to society or concern for the law or public safety, and the resulting grave consequences to the Weavers are a prime measure of the results of that disregard. (See *In re Alkow* (1966) 64 Cal.2d 838, 840 (*Alkow*) [moral turpitude where attorney had history of driving while visually impaired and "reasonably must have known that injury to others was a possible if not a probable result of his driving"].)

IV. AGGRAVATION AND MITIGATION

OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.)¹² Peters has the same burden to prove mitigation. (Std. 1.6.)

A. AGGRAVATION

1. SIGNIFICANT AGGRAVATION FOR CAUSING SIGNIFICANT HARM

We find that Peters caused significant harm to the public, which warrants significant weight in aggravation. (Std. 1.5(j).) She caused Robert's death and deprived his family and friends of his love, companionship, and friendship. His wife, Bonnie, testified, "nothing will ever be the same." Peters also gravely injured Bonnie, who

suffered a broken nose, orbital eye blowout, crushed sinuses, dislocated discs in her neck, a crushed foot, internal bleeding, and a broken shoulder that required surgery and placement of a plate held by nine bolts. Bonnie was in critical care for eight days and in therapy for six months. She still must have her discs and eyes checked, gets headaches, and cannot sleep lying down because her crushed sinus wall cannot be repaired so she is unable to breathe well. Two individuals involved in the second collision also suffered physical injuries: one, chest and leg pain, and the other, head and neck pain. Finally, Peters's actions resulted in the destruction of the Weavers' car and damage to at least two cars involved in the second collision.

2. NO OTHER AGGRAVATION WARRANTED

[3] The hearing judge found no additional aggravation for concealment (see std. 1.5(f)) or bad faith or dishonesty (see std. 1.5(d)) because she determined Peters's misconduct involved moral turpitude based on her concealment and false statements to the police and the probation officer. We affirm. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual finding used for culpability, improper to consider them in aggravation].)

B. MITIGATION

1. SOME MITIGATION FOR NO PRIOR RECORD OF DISCIPLINE

[4a] Peters was admitted to the State Bar in 1994 and has no prior record of discipline. The "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not likely to recur" is a mitigating circumstance. (Std. 1.6(a).) The hearing judge assigned significant mitigating weight to

12. Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Peters's discipline-free career without considering whether the misconduct is "not likely to recur," as the standard requires.

[4b] We assign this factor only some mitigating weight. While Peters had 19 years of discipline-free practice, she has not shown that her substance abuse problems are resolved, as discussed below. Absent this evidence, we are unable to find that her misconduct is unlikely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long discipline-free practice is most relevant where misconduct is aberrational].)

2. SOME MITIGATION FOR EXTREME EMOTIONAL AND PHYSICAL DIFFICULTIES

Mitigation is available for "extreme emotional difficulties or physical or mental disabilities" if: (1) the member suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the member will commit future misconduct. (Std. 1.6(d).)

[5a] The hearing judge assigned this factor no weight in mitigation, but we find Peters is entitled to some mitigation. Her uncontradicted testimony establishes that her long-standing depression and prescription drug abuse led to the collision. (See *In the Matter of Deierling* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 552, 560 [attorney's convincing, uncontradicted testimony about drug and alcohol abuse established causal connection to misconduct].) However, Peters has not shown the required proof of complete, sustained recovery and rehabilitation to warrant full mitigation. (*In re Lamb* (1989) 49 Cal.3d 239, 246; see also *Rosenthal v. State Bar* (1987) 43 Cal.3d 658, 664 [attorney must demonstrate "a meaningful and sustained period of successful rehabilitation"]; *Slavkin v. State Bar* (1989) 49 Cal.3d 894, 905 [attorney suffering from drug or alcohol dependence generally must establish that addiction is permanently under control]; std. 1.6(d).)

We date Peters's drug abuse to November 2010. However, she did not seek substance abuse treatment prior to the 2013 collision, disregarding the advice of her pain management specialist, Dr. Hembd, in 2011. Though she stopped using Norco in 2012, she began abusing Neurontin in the months prior to the collision.

Even the fatal collision did not prompt Peters to seek treatment. Nearly two years after the crash, she told the probation officer that she did not feel she had a drug or alcohol problem and did not wish to enter a rehabilitation program.

Only upon release from custody in September 2015 did Peters begin receiving *mandatory* drug abuse and addiction counseling as part of an 18-month DUI program, which she successfully completed in March 2017.¹³ She has not violated her criminal probation or failed any of the required random drug tests, which do not include testing for Neurontin. Further, she testified that she no longer abuses drugs and is able to help support her family financially. [7] While we assign some weight to an attorney's activities while on criminal probation, we give "far greater weight" to activities after probation has ended. (*In the Matter of Bodell* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 459, 464; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 939 [inadequate that petitioner stayed out of trouble while being watched on probation]; *In re Giddens* (1981) 30 Cal.3d 110, 116 [proof of rehabilitation needed "during a period when petitioner is neither on parole . . . nor under supervision of the bar"].)

Peters recently sought treatment on her own initiative. In June 2017, she voluntarily entered an intensive outpatient program (IOP) that addresses the needs of those with addiction issues who are seeking long-term recovery. Peters was discharged from the IOP on August 31, 2017. Since then, she has begun individual therapy with a new marriage and family therapist, and individual drug treatment with a certified drug and alcohol counselor. Her attending psychiatrist at

13. [6a] On review, Peters filed two motions to augment the record. We granted her requests to augment the record with evidence of her rehabilitation since trial.

the IOP stated, “Peters is being treated for her dual diagnoses of depression and substance use disorder in full remission.” He also wrote, “It is my opinion that Jordan Peters is not a danger to the public and does not have an impairment that would prevent her from practicing law.” In her discharge summary, another doctor confirmed that Peters had been diagnosed with: (1) generalized anxiety disorder; (2) major depressive disorder; and (3) opiate use disorder, “in full sustained remission.” [6b] We do not assign these items full evidentiary weight, however, because they were not subject to cross-examination by OCTC at trial.

[5c] We applaud Peters’s rehabilitation efforts, both voluntary and mandatory. Yet, given her years-long history of abuse, her earlier resistance to seeking treatment, and that she only began her treatment just over two years ago, we find, for the purposes of attorney discipline, that Peters has started but not completed rehabilitation. (See *Rosenthal v. State Bar*, *supra*, 43 Cal.3d at p. 664 [18 months of sobriety not sufficiently meaningful and sustained period of successful rehabilitation]; cf. *Howard v. State Bar* (1990) 51 Cal.3d 215, 222–223 [attorney who abused cocaine and alcohol entitled to substantial reduction in discipline given extensive expert and lay testimony about her rehabilitation and evidence demonstrating two and a half years of sobriety]; *Waysman v. State Bar* (1986) 41 Cal.3d 452, 459 [over three years of sobriety and successful treatment of alcohol problem, coupled with other mitigating facts, justified discipline that included six-month stayed suspension and probation under rigorous conditions].)

3. LIMITED MITIGATION FOR COOPERATION

We agree with the hearing judge that Peters is entitled to limited mitigation credit for her cooperation with the State Bar by entering into a stipulation of facts, most of which were easily provable. (Std. 1.6(e) [mitigation credit permitted for spontaneous candor and cooperation displayed to State Bar]; *In the Matter of Gadda* (Review

Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443 [factual stipulation merits some mitigation].) However, we reject Peters’s requests for additional mitigation for her candid testimony about her personal life, mental health struggles, and drug use, and for her offer to stipulate to additional facts. Her testimony largely went to her defense and is considered elsewhere in mitigation, and her offer does not warrant further credit.

4. MODERATE MITIGATION FOR GOOD CHARACTER

Peters is entitled to mitigation if she establishes extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of her misconduct. (Std. 1.6(f).) The hearing judge noted that Peters’s good character evidence was from only five witnesses, and assigned it minimal weight because she did not offer evidence from a wide range of references in the legal and general communities. We accord Peters additional weight, however, as she actually presented six witnesses. Nonetheless, we agree she is not entitled to full mitigating credit as she did not provide any references from the legal community. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have “strong interest in maintaining the honest administration of justice”].)

Peters presented six witnesses who testified to her good character and honesty. Those witnesses included her former paralegal, her pastor, three other people from her church, and an executive assistant at her workplace at the time of trial. Her former paralegal had known her for about five years, while the other witnesses had known her for about one to three years. None knew Peters well. They had varying degrees of knowledge about the circumstances surrounding the collision, but all testified they knew that Peters caused a fatal collision while on prescription medication, was criminally convicted, and was extremely remorseful. Four visited her in jail.

While none of the witnesses were from the legal community or had a long-term relationship with Peters, we find the quantity and quality of their testimony more persuasive than the hearing judge did. We thus assign moderate mitigating weight to Peters's character evidence. (See *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476 [weight of character evidence reduced where wide range of references lacking]; cf. *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for good character for three witnesses, two attorneys and a fire chief, who had long-standing familiarity with attorney and broad knowledge of good character, work habits, and professional skills].)

5. MODERATE MITIGATION FOR PRO BONO AND COMMUNITY SERVICE

[8a] Pro bono work and community service are mitigating circumstances. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Peters testified to numerous pro bono and community service activities. The hearing judge did not assign mitigating credit for any uncorroborated activities, but did allot modest credit for those confirmed by others. We find Peters deserves mitigation for all her activities and also find the record reveals more evidence of pro bono and community service work that entitles her to moderate weight in mitigation overall.

Peters's pro bono and community service work spans many years. She testified that she provided pro bono legal services to several individuals and families prior to the collision. Her work included: representing a single mother with an autistic son to obtain paternal consent for the child to receive medical care; helping an immigrant family in a zoning matter and to defend against stop orders and keep its small business operational; and assisting another immigrant family to attain citizenship. Peters also provided services to the legal and general communities at large. She served for three years on the executive committee of a county bar association section, first as a member, then as vice-president, and then as

president. She also served three years on the board of an organization that aided domestic violence survivors.

After the collision, no further evidence of Peters's pro bono work exists. Yet, while in custody, she taught other inmates to read, helped some prepare for the GED test, and served as a mentor. In 2014, Peters joined a church at which she has regularly volunteered on Sundays, except while incarcerated, assisting kitchen staff and "serv[ing] in areas [for which] there is little thanks." These post-collision activities were corroborated by multiple witnesses.

[8b] Peters's pro bono and community service work is commendable, but does not qualify for full mitigation credit because her testimony lacked specificity and, as to her pre-collision activities, was uncorroborated. We thus cannot evaluate the full measure of the dedication and zeal she brought to those activities. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667 [mitigation for legal abilities, dedication, and zeal in pro bono work]; compare *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited weight given for community service where evidence based solely on attorney's testimony and, thus, extent of service unclear] with *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799 [considerable weight given for legal and community services where attorney, certified taxation specialist and adjunct law professor, served on several bar and law school committees, founded tax group and pension council, had attorneys, clients, and judge submit supporting letters, and received commendation from local council for "Decade of Friendship"].)

6. MODERATE MITIGATION FOR REMORSE AND RECOGNITION OF WRONGDOING

The hearing judge accorded Peters's remorsefulness some weight in mitigation though she never personally apologized to Bonnie Weaver. The judge found that Peters credibly testified that she has shared with friends, colleg-

ues, and church members that she often thinks about the collision, the Weavers, and the remorse she feels for having taken Robert Weaver’s life as a result of her untreated prescription drug addiction. (Std. 1.6(g).)

We too find that Peters’s remorse and recognition of wrongdoing warrant mitigation. We give great weight to the hearing judge’s credibility findings (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032), note that several witnesses provided testimony corroborating that Peters was remorseful, and find that Peters expressed remorse to Bonnie and the entire Weaver family during her criminal sentencing hearing in March 2015. Further, we acknowledge Peters’s concession that she deserves discipline, and recognize her efforts to accept responsibility and seek treatment, although she did not do so in some instances until years after the misconduct. Accordingly, we assign moderate weight to Peters’s remorse and recognition of wrongdoing. (See *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 399–400 [moderate weight assigned for remorse where attorney, at time of her hearing to show cause why she should not be sanctioned, apologized and explained she realized she could not justify her conduct merely because her intent was to help clients, and where attorney disgorged \$18,500 in wrongfully obtained fees, though she did so pursuant to court-imposed sanctions order].)

V. DISBARMENT IS THE APPROPRIATE DISCIPLINE

Our role is not to punish Peters for her crime—the superior court has done so by sentencing her in the criminal proceeding—but to recommend professional discipline. (*In re Brown* (1995) 12 Cal.4th 205, 217 [“the aim of attorney discipline is not punishment or retribution; rather, attorney discipline is imposed to protect the public, to promote confidence in the legal system,

and to maintain high professional standards”]; std. 1.1.) Peters seeks a two-year actual suspension, and OCTC asks that we affirm the disbarment recommendation.

We follow the standards whenever possible and balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis, to ensure that the discipline imposed is consistent with the purposes of discipline. (*In re Young* (1989) 49 Cal.3d 257, 266–267 & fn. 11.) [9a] Disbarment is the presumed sanction for a felony conviction in which the surrounding facts and circumstances involve moral turpitude, unless the most compelling mitigating circumstances clearly predominate, in which case at least a two-year actual suspension is appropriate. (Std. 2.15(b).)

In addition to the standards, we look to case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.) We find no published California case considering a felony vehicular manslaughter conviction. In a 1966, pre-standards case, the Supreme Court imposed a six-month suspension for misdemeanor vehicular manslaughter involving moral turpitude where the attorney had a history of driving while visually impaired and of violating his probation, and had received more than 20 traffic violations. (*Alkow, supra*, 64 Cal.2d 838.) Notably, *Alkow* did not involve intoxicated driving or a felony, and “‘discipline imposed in 1966, is no longer applicable, in light of current societal rejection of impaired driving, especially drunk driving, and the implementation of standards for attorney sanctions that were adopted in 1986.’ [Citation.]” (*In the Matter of Guillory* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 402, 411 (*Guillory*).) Moreover, unlike this case, *Alkow* revealed no finding that the attorney had misled those investigating his crime or those evaluating his sentence.¹⁴

14. Recently, we recommended an actual suspension of two years to continue until proof of rehabilitation for four misdemeanor alcohol-related driving offenses involving moral turpitude. (*Guillory, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 405, 411.) However, *Guillory* is distinguishable from the instant matter because disbarment is not the presumptive discipline, as it is in this case, for misdemeanor convictions.

[9b] Applying standard 2.15(b), we find Peters has failed to establish that the most compelling mitigating circumstances clearly predominate, given the nature of her crime and the attendant aggravation. (See *In re Strick* (1987) 43 Cal.3d 644, 656 [in conviction involving moral turpitude, level of discipline must correspond to reasonable degree with gravity of misconduct].) Peters showed disregard for the law and for public safety when she drove while impaired by Neurontin. This serious breach of her duty to society caused death and injury. The physical and emotional consequences to Bonnie Weaver are significant harms and cannot be overstated. We also emphasize that Peters lacked candor in dealing with the police in the aftermath of the collision and, in particular, the probation officer during the presentencing phase. Honesty and candor are critically important traits to the legal profession, and any deficiency is of serious concern.

[9c] While she had a 19-year discipline-free career before the collision, her rehabilitation is in its early phase, and we find she has not shown her misconduct is unlikely to recur. For the same reason, her crime is not fully mitigated by her physical and emotional problems. These mitigating factors, together with her moderate evidence of good character, pro bono and community service, and remorse, and her limited credit for cooperation do not constitute compelling mitigation. They fall far short of predominating, given her extremely serious misconduct and the profound harm she caused. Anything less than disbarment would fail to protect the public and undermine its confidence in the legal profession. Thus, before Peters is entitled to resume practicing law, she should be required to demonstrate in a reinstatement proceeding by clear and convincing evidence, her rehabilitation and exemplary conduct over an extended period of time.

VI. RECOMMENDATION

We recommend that Jordan Tonya Louise Peters be disbarred from the practice of law and that her name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Peters comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable as provided in section 6140.7 and as a money judgment.

VII. ORDER

The order that Jordan Tonya Louise Peters be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), effective April 24, 2017, will continue, pending the consideration and decision of the Supreme Court on this recommendation.