

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:) No. 02-94-37958
)
THOMAS L. SARGEANT, M.D.) OAH No. N-9408122
Physician's and Surgeon's)
Certificate No. G-60457)
)
Respondent.)
_____)

DECISION

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

This Decision shall become effective on March 9, 1995.

IT IS SO ORDERED February 7, 1995.



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PROPOSED DECISION

On January 9, 1995, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mara Faust, Deputy Attorney General, represented the complainant.

There was no appearance by or on behalf of respondent Thomas L. Sargeant, M.D.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Dixon Arnett is the Executive Director of the Medical Board of California ("the Board") and filed the Accusation solely in his official capacity.

The Accusation, Notice of Defense and Notice of Hearing were amended at hearing as follows: in the caption of each of the above documents, the physician's and surgeon's certificate number for Thomas L. Sargeant, M.D. ("respondent") was changed from "G-60157" to "G-60457."

II

Respondent was served with the Accusation by certified mail on September 8, 1994 at three different addresses, including respondent's address of record with the Board. In addition, respondent was personally served with the Accusation in this matter immediately prior to an interim suspension hearing held pursuant to Government Code section 11529 on September 14, 1994 in connection with this matter. Respondent hand-delivered his signed Notice of Defense and Request for Discovery to Deputy Attorney General Mara Faust at the September 14, 1994 hearing. Respondent's Notice of Defense listed the following as his mailing address:

11305 Griffith Drive
Grass Valley, California 95949

Respondent confirmed the above address as his address of record at the September 14, 1994 interim suspension hearing.

At the September 14, 1994 interim suspension hearing, respondent waived his right to a hearing on the Accusation within 30 days of his request for a hearing, pursuant to Government Code section 11529(f). The parties stipulated that the hearing was to commence not later than 120 days from September 14, 1994, and the parties further stipulated that the hearing was to be held on January 9-13, 1995, in Sacramento, California. Thus, respondent received actual notice of the date, time and place of the hearing on the Accusation in that the hearing was scheduled with respondent present immediately after the September 14, 1994 interim suspension hearing.

Finally, notice of the date, time and place of hearing was served on respondent by certified mail on October 28, 1994 at the address listed above.

Despite proper service of the Notice of Hearing and actual knowledge of the hearing date, time and location, respondent did not appear and was not otherwise represented at hearing. Upon proof of compliance with Government Code sections 11505 and 11509, the matter proceeded as a default pursuant to Government Code section 11520.

III

On June 22, 1987, respondent was issued physician's and surgeon's certificate No. G-60457 by the Board. Said license was due to expire on December 31, 1994.

IV

By Interim Order dated August 26, 1994, respondent's physician's and surgeon's certificate No. G-60457 was suspended pending a hearing pursuant to Government Code section 11529(b) and (c). The interim suspension of respondent's physician's and surgeon's certificate was upheld and the interim suspension remained in effect pursuant to the Decision of Administrative Law Judge Catherine B. Frink dated September 20, 1994. Respondent's physician's and surgeon's certificate remained suspended as of the date of hearing on the Accusation.

V

On July 23, 1993, respondent was interviewed by Thomas Campbell, Senior Investigator for the Board. Respondent admitted that, during 1992, he developed what he described as "life problems" which included family, work and other stressors in his life. Respondent and his wife, Helen Sargeant, entered the Weimar Institute's 19-day "Newstart Program." Respondent and his wife both completed the program; thereafter, respondent felt a need for and completed a second consecutive 19-day program alone.

Respondent further admitted to Campbell that respondent, along with his father, Stan Sargeant, started Elder America Care Medical Corporation, Inc., ("EAC") with offices located at 20235 West Paoli Lane, Weimar, California, on a date not established by the evidence. Respondent admitted to Campbell that he was affiliated with EAC but, as of July 23, 1993, he had "terminated his relationship" with EAC. Respondent further admitted that his then-current practice consisted of psycho-medication management and consulting on the management of psycho-medication within the retirement, rest home and convalescent hospital community and dealing only with geriatric patients. Respondent admitted that while he was a part of EAC he performed therapy, provided psycho-medication management and prescribing; he told Campbell that he was "no longer a part of EAC but may act as a consultant in the treatment provided by EAC.

VI

Special Agent Normal Siegel from the offices of the Inspector General, U.S. Department of Health and Human Services, has been investigating respondent since approximately the summer of 1992 regarding allegations of Medicare fraud in connection with respondent's work activities for EAC. During an interview

with respondent on March 23, 1994, respondent admitted to Siegel that he (respondent) had a substance abuse problem and that he got money for his drugs by billing Medicare for services he had not provided.

Respondent's conduct as set forth above involved the commission of acts involving dishonesty and corruption which are substantially related to the qualifications, functions and duties of a physician and surgeon, thereby constituting unprofessional conduct within the meaning of Business and Professions Code section 2234(e).

VII

On June 8, 1994, the Placer County Narcotic Task Force, along with Senior Investigator Campbell, served a search warrant at 1149 Stags Leap Lane, Auburn, California, where respondent was residing with his family.

Pursuant to the search on June 8, 1994, approximately 1.4 grams of methamphetamine, and approximately 21.3 grams of marijuana, were found and seized. Respondent was arrested for a violation of Health and Safety Code section 11377(a) (possession of methamphetamine), a felony; Health and Safety Code section 11379 (furnishing methamphetamine), a felony; and Health and Safety Code section 11550(a) (being under the influence of a controlled substance), a misdemeanor.

VIII

On June 8, 1994, the date of his arrest, respondent provided a urine sample to police. On June 17, 1994, the sample was tested by gas chromatography and mass spectroscopy by Nancy Enkema, a toxicologist at Valley Toxicology Service Inc. in West Sacramento, California. The urine test results obtained on June 17, 1994 showed that respondent's sample contained methamphetamine and amphetamine. In addition, there was a presumptive positive test result for cannabinoids (i.e., marijuana).

IX

After his arrest, respondent was advised of his Miranda rights by law enforcement officers, and he agreed to make a statement. Respondent admitted that he had been using methamphetamine on a daily basis for "months." Respondent admitted using approximately 1/2 gram per day. Respondent denied selling methamphetamine but admitted that methamphetamine was "just something I [respondent] share with friends." Respondent was asked by Tracy Grant, a Certified Drug Recognition Expert

with the Placer County Sheriff's Department/Placer County Narcotic Task Force, on how many occasions had respondent supplied methamphetamine to "Nina," i.e., Jeanina Berg, a "nanny" who was caring for respondent's children, and respondent admitted furnishing methamphetamine to Nina "half a dozen [times], somewhere in that vicinity."

X

Expert testimony established that the use of 1/2 gram of methamphetamine daily over a period of several months could produce psychosis from a lack of sleep, and could cause the user to experience hallucinations, depending on the purity of the methamphetamine ingested.

XI

Respondent's use of methamphetamine as established in Findings VIII and IX above constitute the use and/or administering to himself of a controlled substance, which constitutes unprofessional conduct within the meaning of Business and Professions Code section 2239(a).

XII

By reason of the facts set forth in Findings VI, VIII and IX, respondent violated federal statutes and regulations as well as statutes and regulations of the State of California regulating controlled substances, thereby constituting unprofessional conduct within the meaning of Business and Professions Code section 2238.

XIII

It was not established by clear and convincing evidence to a reasonable certainty that respondent practiced medicine while under the influence of any narcotic drug to such an extent as to impair his ability to conduct the practice of medicine with safety to the public and his patients. While respondent admitted using methamphetamine daily for "months" prior to June 8, 1994, the evidence did not establish the nature and extent of respondent's practice of medicine after July 23, 1993.

XIV

There was no evidence offered by or on behalf of respondent in mitigation or extenuation, and no evidence offered to establish any rehabilitation on the part of respondent. On the contrary, hearsay evidence suggests that respondent has not taken any steps to deal with his drug problem and that he used methamphetamine as recently as January 4, 1995.

XV

The prayer for relief in the Accusation herein contains a request for costs of investigation and prosecution of this matter incurred by the Board. However, no evidence was submitted on this issue.

DETERMINATION OF ISSUES

I

Clear and convincing evidence established cause for revocation of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2234 and 2234(e) by reason of Finding VI.

II

Clear and convincing evidence established cause for revocation of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2234 and 2239(a) by reason of Findings VIII, IX and XI.

III

Clear and convincing evidence established cause for revocation of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2234 and 2238 by reason of Findings VI, VIII, IX and XII.

IV

No cause for disciplinary action was established pursuant to Business and Professions Code section 2280 by reason of Finding XIII.

V

No order imposing costs of investigation and prosecution of this matter is made by reason of Finding XV.

VI

The matters set forth in Finding XIV are considered in making the Order below.

ORDER

Physician's and Surgeon's Certificate No. G-60457 issued to respondent Thomas L. Sargeant, M.D. is revoked pursuant to Determination of Issues I, II and III, separately and collectively.

Dated: January 17, 1995

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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6 Attorneys for Complainant

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DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation)
Against:) ACCUSATION
11)
12 THOMAS L. SARGEANT, M.D.) No. 02-94-37958
1140 Stags Leap Lane)
13 Auburn, CA 95603)
14 Physician's and Surgeon's)
Certificate No. G-60457)
15 Respondent.)
16

17
18 Complainant, DIXON ARNETT alleges as follows:
19 1. He is Executive Director of the Medical Board of
20 California (hereinafter the "Board"), and makes and files this
21 Accusation solely in his official capacity.
22 1. On or about June 22, 1987, respondent Thomas L.
23 Sargeant, M.D. (hereinafter "respondent") was issued physician's
24 and surgeon's certificate No. G-60457 by the Board. The license
25 is currently in full force and effect with an expiration date of
26 December 31, 1994.
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28 ///

1 2. Business and Professions Code^{1/} (hereinafter
2 "Code") section 2234(e) provides in pertinent part that the Board
3 may take disciplinary action against a licensee who commits any
4 act involving dishonesty or corruption which is substantially
5 related to the qualifications, functions, or duties of a
6 physician and surgeon.

7 3. Section 2238 provides that a violation of any
8 federal statute or federal regulation or any of the statutes or
9 regulations of this state regulating dangerous drugs or
10 controlled substances constitutes unprofessional conduct.

11 4. Section 2239(a) of the Code provides in pertinent
12 part that the use or prescribing for or administering to himself
13 of any controlled substance; or the use of any of the dangerous
14 drugs specified in Section 4211, or to the extent or in such a
15 manner as to be dangerous or injurious to the licensee, or to any
16 other person or to the public, or to the extent that such use
17 impairs the ability of the licensee to practice medicine safely.

18 5. Section 2280 of the Code provides in pertinent part
19 that no licensee shall practice medicine while under the
20 influence of any narcotic drug to such an extent as to impair his
21 ability to conduct the practice of medicine with safety to the
22 public and his patients violation of this section constitutes
23 unprofessional conduct and is a misdemeanor.

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28 1. All statutory references are to the Business and
Professions Code unless otherwise noted.

FIRST CAUSE FOR DISCIPLINARY ACTION

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2 6. From the summer and/or fall of 1992 through June of
3 1994, respondent served as a psychiatrist for Elder America Care
4 Medical Corporation. (Hereinafter EAC). During part of the
5 above referenced time period, respondent was a part-owner of EAC.
6 Though his position at EAC, respondent provided geriatric
7 psychiatric services to elderly patients in some of the rest
8 homes and convalescent hospital in Placer, Sacramento and Nevada
9 counties. As a result of respondent's work activities, he is
10 under investigation for billing MediCare and/or Blue Cross for
11 psychiatric services that were not rendered to elderly patients
12 at nursing homes and/or convalescent hospitals.

13 7. On June 8, 1994, the Placer County Narcotic Task
14 Force and Medical Board Senior Investigator Thomas Campbell
15 served a search warrant at 1140 Stags Leap Lane, Auburn,
16 California, where respondent and his family lived.

17 8. Pursuant to the search on June 8, 1994,
18 approximately 1.4 grams of methamphetamine, and approximately
19 21.3 grams of marijuana, were found and seized. Respondent was
20 arrested for a violation of Health and Safety section 11377(a),
21 (possession of methamphetamine) a felony, Health and Safety Code
22 section 11379 (furnishing methamphetamine), a felony, and Health
23 and Safety Code section 11550(a) (being under the influence of a
24 controlled substance) a misdemeanor.

25 9. Respondent admitted that he had been using about
26 one half gram of methamphetamine daily for months. After his
27 arrest, respondent provided a urine sample with results on June
28 17, 1994 that showed respondent's sample contained

1 methamphetamine, amphetamine and a presumptive positive results
2 for cannabinoids. Additionally, Katy Tate, who had been living
3 with respondent admitted that respondent supplied her with
4 methamphetamine whenever she wanted it.

5 10. Special Agent Norman Siegel from the office of the
6 Inspector General, U.S. Department of Health and Human Services
7 has been investigating respondent for approximately the last two
8 years regarding Medi-Care fraud. During an interview with the
9 respondent on March 23, 1994, respondent admitted to Mr. Siegel
10 that he has a substance abuse problem and that he got money from
11 his drugs by billing Medicare for services he had not provided.

12 11. Respondent's conduct as set forth in paragraphs 6
13 through 10, above, constitutes unprofessional conduct under
14 Sections 2234(e), 2238, 2239(a) and/or 2280 of the Code and is
15 therefore cause for disciplinary action pursuant to section 2234.

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1 WHEREFORE, complainant prays that the Board hold a
2 hearing on the matters alleged herein and following said hearing
3 issue a decision suspending or revoking physician and surgeon
4 certificate No. G-60157, grant complainant their costs of
5 investigation and prosecution, and take such other and further
6 action as the Board deems proper.

7 DATED: SEPT.8 , 1994

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DIXON ARNETT
Executive Director
Medical Board of California
Division of Medical Quality
Department of Consumer Affairs
State of California
Complainant