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

In the Matter of the Accusation Against: **MARGARET M. SPRAGUE, M.D.** Certificate No. G-56228 Respondent	)	No: 10-2001-125460

DECISION

The attached Proposed Decision is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on May 19, 2005.

IT IS SO ORDERED April 19, 2005

By: _____
RONALD L. MOY, M.D.
Chair - Panel B
Division of Medical Quality

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

In the Matter of the Accusation Against: MARGARET M. SPRAGUE, M.D. 2706 Azul Street La Jolla, CA 92037-1141 Physician's and Surgeon's Certificate No. G 56228 Respondent.	Case No. 10-2001-125460 OAH No. L2004050372

PROPOSED DECISION

On February 28 and March 1, 2005, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Mary Agnes Matyszewski, Deputy Attorney General, represented complainant.

Richard Henderson represented respondent.

The matter was submitted on March 1, 2005.

FACTUAL FINDINGS

1. On November 25, 2003, Ron Joseph, Executive Director, Medical Board of California (Board), filed Accusation No. 10-2001-125460 in his official capacity. Respondent filed a timely Notice of Defense. The accusation centers upon respondent's addiction to crack cocaine.

2. On October 7, 1985, the Board issued Physician's and Surgeon's certificate No. G 56228 to respondent.

On December 3, 2003, an Administrative Law Judge suspended respondent's license pursuant to Government Code section 11529 and set the matter for a further hearing on December 23, 2003. Following the hearing, respondent's license was suspended on January 13, 2004.

3. Respondent is 50 years of age. She graduated from UC Santa Cruz in 1977 and the Medical College of Virginia in Richmond in 1984. In 1985, she completed a psychiatry internship at UC Irvine and completed a psychiatry residency at UCSD in 1990. Before her license was suspended, she practiced psychiatry in a private practice in La Jolla, California.

4. Respondent is addicted to crack cocaine, and has been addicted for many years.

5. In 1999, respondent entered and completed a drug rehabilitation program at Hazelden, located in Minnesota. The in-patient portion of the program lasted 28 days. She relapsed and began using crack cocaine about six months later.

6. The Board received a complaint from another physician that alleged respondent had a substance abuse problem in September 2001. Investigators of the Board interviewed respondent in October 2001. She told them she had received treatment for drug addiction.

7. On December 5, 2001, respondent signed a "Statement of Understanding" in which she expressed an interest in entering the Board's diversion program, and she indicated she was aware the Board had initiated an investigation. She admitted she self-administered alcohol or drugs.

8. On December 10, 2001, respondent completed a "Diversion Program Application." She indicated she had a substance abuse problem, the primary substance was cocaine, and she had used it for ten years. In the history portion of the application, she indicated her drug use had been a problem in the past, she was seeking treatment because of her history of cocaine addiction and the Board referred her as a condition of working, and her date of last use of stimulants was September 1999. She did not indicate she used narcotics. She indicated she had received treatment at Hazelden from September to October 1999, had received psychotherapy for ten years, and participated in an AA/NA program through A Better Way for two years.

Respondent signed an "Agreement During Evaluation Process" on December 10 which explained the diversion program and contained her contractual obligations. She learned that if accepted into the program, she would not be prosecuted administratively for violations which resulted in her referral into the program, but if she were terminated from the program, information from her diversion file may be provided to the enforcement program.

9. Arnie Zepel is a case manager for the diversion program and conducted an intake interview of respondent on December 10, 2001. In his report, he indicated respondent

told him she had her first drink when she was 13 years old and drank and used a variety of hallucinogenic drugs in high school. She reported she stopped drinking in college but started using cocaine when she was 21. She said her drug usage began to increase in 1983 while an intern, she stopped while she was pregnant during 1985, but resumed drinking and using cocaine later. She described a general downward spiral of her life, appearance, and career. By 1999, respondent said she was using three grams of cocaine a day and drinking three times a week. She said she entered the Hazelden Recovery Center but did not follow the directions of the treatment staff which included entering diversion and attending 12-step meetings, but did attend a self-help group called "Another Way" with a man who had been her cocaine dealer.

Respondent told Zepel after she returned from Hazelden, her husband began divorce proceedings and he obtained temporary custody of their daughter. She said she was obligated to provide periodic urine tests as part of the custody case, and one such test during the previous summer was positive for cocaine. Respondent claimed she had been to a dentist the previous day. She said another urine test taken by Board investigators was positive for a small amount of alcohol.

Zepel believed respondent was "in denial about her recovery. I also question her honesty during my interview."

10. One of respondent's obligations in the diversion program was to submit to biological fluid testing. On January 19 and 26, 2002, respondent provided urine samples which were tested and found to be positive for cocaine metabolite.

11. Respondent at the hearing admitted she relapsed in January 2002. At that time, Zepel told her about the positive tests and that she had to stop practice and go into therapy. He gave her several suggestions. Respondent decided to return to Hazelden in Minnesota. She entered the program in February and returned to San Diego in June 2002. Zepel sent respondent a memo on June 20, 2002 indicating respondent was leaving Hazelden on June 21 and upon her return to San Diego, would interview with two sober living houses in Escondido, attend diversion meetings, attend AA meetings, and meet with her sponsor. Her next meeting with the Diversion Evaluation Committee (DEC) was scheduled for July 10, 2002.

12. On July 30 and August 16, 2002, respondent provided urine samples which were tested and found to be positive for cocaine metabolite.

13. After respondent's positive drug tests, she and the DEC entered into an agreement on August 16, 2002. It provided in part respondent would not practice medicine until approved by the DEC, she was to enter a halfway house treatment program within 30 days and complete the treatment program in which she was presently enrolled, attend two diversion group meetings a week, and attend 90 [self-help] meetings in 90 days followed by four meetings per week and obtain a sponsor.

14. In September, respondent wrote a report which she called "At Last I Care." She described her history of cocaine use and her efforts to address it. In particular, she addressed the period after she left Hazelden in June. She wrote she expected the DEC would give her a return to work date at the meeting on July 10. She indicated she received encouragement at the meeting but no return to work date, and she became increasingly anxious, helpless, and hopeless. She thought it would be all right for her to go to Destiny House, a recovery home near her daughter. She moved into Destiny House but a few days later, relapsed and did not try to prevent it. She moved out of Destiny House. Respondent then described a moment of "weak, misguided self preservation" in which she "attempted to fake a urine test by means of a clean urine obtained off the internet." She attempted this at a diversion group meeting which she left "in disgrace."

Respondent explained in her report she was instructed by Zepel to interview at Serenity House and get into a day treatment program. She was unable to obtain an interview for three weeks, "and sank deeper." She moved in with her mother in Princeton for two weeks "in a state of emotional torpor." She then described a miracle when a friend told her she was nearly dead and asked her why she was not doing anything. Respondent wrote she finally heard this and prayed for enlightenment, and she realized she was powerless over the addiction process in her mind. She realized once her cravings reached a certain intensity, she was unable to sway the course of her actions. She realized she had to save her life and could do so only by surrendering. She felt she was staring death in the face and was finally willing to accept a higher power's help. She thanked God for the program and for Diversion.

Respondent described the nature of her cocaine addiction as her experiencing "fairly strong cravings and obsessions to use." She indicated the cravings were easy to ignore in Minnesota but they intensified in San Diego, and they could last for months. She felt she got some relief while at 12-step meetings but the relief was temporary. She pointed out recovery from crack cocaine addiction was a dismal prospect and most users relapse.

Respondent wrote in her report that a friend of hers called to tell her about a drug called ibogaine.[1] She indicated it is derived from an African root used in rites of passage rituals for its hallucinogenic properties and it had been used in this country for its potential recreational value and found to relieve heroin addicts of their craving for heroin. She read an article about it and decided ibogaine could buy her some time and create enough mental space to build a strong program of recovery. She saw ibogaine as an adjunct to a 12-step program. Respondent found a clinic in Rosarito Beach, Mexico that administered ibogaine. She wrote she told Zepel about her decision to try it and he said the DEC would not endorse her decision. Respondent went to Rosarito Beach and spent a few days preparing for the treatment. She took the drug on a Friday and felt an intense nausea and was unable to move. She experienced intense visual hallucinations that lasted hours. She remained at the clinic for a few more days exhausted and dizzy, but she found ibogaine relieved her craving for cocaine. She described it as a "miracle." She felt relief "beyond description." But she did

[1] Ibogaine is a Schedule I controlled substance and a hallucinogenic drug. It has no legitimate clinical use in the United States, and has never been the subject of clinical tests. There is no scientific literature that supports its use but there is lay literature that purports to contain anecdotal testimonials.

not consider it a cure and she did not feel normal. She expressed gratitude to the DEC for caring about her and for the last relapse, because a higher power was at work to save her life. She indicated she was living at the Turning Point Recovery Home for Women.

15. A DEC meeting was held on September 25, 2002. By letter dated September 30, 2002, the diversion program's manager indicated the DEC wanted to remind her that compliance with her program agreement and abstinence were required in order for her to remain in the program. She warned respondent if she should fail to comply with the agreement, she would be subject to termination and the enforcement program would be informed.

16. In a letter to Zepel on November 18, 2002, respondent asked if she could be allowed to leave The Turning Point Recovery Home on December 11 when her 90-day commitment was up, and move home. She indicated she attended two mandatory AA meetings at the house, peer group and recovery group meetings, four or five outside AA or CA meetings a week, two diversion meetings a week, and weekly psychotherapy. She wrote she had complied with all the house rules and performed all required tasks; she was working part-time as an assistant horse trainer, and regularly saw her daughter. She indicated she had completed steps one through eight of the AA program with her sponsor who she contacted nearly every day. She indicated she was truly happy in her recovery and sold on staying sober.

17. In a letter to Zepel dated January 14, 2003, respondent again asked to leave Turning Point. She indicated she continued to work on the AA steps, she continued to work as a horse trainer, and she attended AA and other meetings as required.

18. Respondent wrote a lengthy "Semi-Annual Report" which was received by the Board on May 23, 2003. She indicated she lived at Turning Point until the end of January 2003 and during her time there, she lived in a sober environment and put together a personal recovery program that she believed would sustain her. She moved home on February 1 and continued the recovery plan. She described her daily life which included meditation, talking to her sponsor, attending two diversion group meetings a week, two meetings a week at Turning Point, and two or three additional AA or CA meetings a week. She saw Emanuel Peluso, MFCC, for psychotherapy once a week, and Katerine Yarborough, D.O, monthly for medication for her chronic depression. She indicated she continued to work as an assistant horse trainer, spending three or four hours a day working at the stables, and saw her daughter regularly. She described her efforts to complete the twelve steps and her relief in finally surrendering to the realization she was powerless over cocaine. She described the benefits she experienced from sobriety and expressed her happiness. She described her plans to return to work

19. Respondent was scheduled to meet with the DEC on June 18, 2003. Before the meeting, Zepel wrote a report for the DEC and indicated respondent had been compliant since her initial problems with sobriety, and had successfully completed a sober living program in December 2002 and returned home without any problems.

Respondent met with the DEC on June 18, 2003. A letter to respondent on July 7 confirmed the DEC would consider her request to return to work when she had met her annual continuing education requirements. Upon completion of the continuing education, respondent would be allowed to work up to 15 hours a week.

20. On September 2, 2003, respondent provided a urine sample which was tested and found to be positive for cocaine metabolite.

21. On September 8, 2003, Zepel wrote a memo in which he described a series of incidents involving respondent in addition to the positive urine test which he believed justified respondent's termination from the program. These incidents included the following:

a. On August 1, 2003, Zepel was informed by John Rose, a specimen collector, that respondent had missed a test after she called to say she would take the test. Her excuse for missing the test was she had a prior commitment to transport a horse. Zepel told her that excuse was unacceptable and any other missed urine tests or an inability on her part to return a call for a urine test would result in her probable termination from diversion.

b. On August 21 and 22, respondent failed to attend either the Diversion Bar B Q or one of the other meetings on Thursday or Friday.

c. On August 29, respondent called and left a message with a group meeting facilitator, Duane Rogers, that she was ill and would not attend her diversion group meeting. Rogers had spoken to respondent frequently and thought she sounded intoxicated. Respondent had submitted a vacation request to visit relatives in Orinda, California, but Zepel asked Rose to collect a sample. Rose called her several times, and after she answered the phone, she said she was not available and quickly hung up before Rose could talk to her further.

22. Zepel spoke to respondent on September 8, 2003 regarding the positive urine test. At that time, respondent told Zepel she had been to Mexico for another ibogaine treatment over the Labor Day Weekend. She said she anticipated going back to work and wanted to get an extra treatment boost before starting work. She denied using cocaine and said the ibogaine would show up as cocaine on a urine test. Zepel told respondent she would be terminated from diversion and the information reported back to enforcement.

Respondent did not ask Zepel for a re-test of the urine sample she had provided on September 2, 2003. Northwest Toxicology which tested respondent's urine sample maintained the urine sample for one year and could have re-tested the sample if respondent had made a written request for a re-test.

23. By letter dated September 12, 2003, respondent was notified she was terminated from the diversion program effective September 8, 2003 for reasons other than successful completion of the program, and the DEC had determined respondent presented a threat to the public health and safety.

24. The diversion program manager informed the Board's enforcement section of respondent's termination from the program.

25. Respondent wrote a letter to the diversion program dated October 14, 2003. She wrote that when she was advised on September 12, 2003 during a telephone conversation of the results of the urine test, she immediately protested that any such results had to be a false positive. She indicated she had not ingested any contraband substance. She went on to criticize the diversion program and the violation of her rights. She did not ask that the urine sample she provided on September 2, 2003 be re-tested.

26. Northwest Toxicology is a laboratory located in Salt Lake City, Utah. It tested respondent's September 2, 2003 urine sample. David Kuntz, Ph.D., is the laboratory director. He has a B.S. degree in pharmacy, a master of science in pharmaceutical sciences from Oklahoma State University, and a Ph.D. in pharmaceutical sciences from North Dakota State University. He was a postdoctoral fellow in the Colleges of Pharmacy at Washington State University and the University of Utah and is a diplomate of the American Board of Forensic Toxicology and the Forensic Toxicologist Certification Board. He has been the director of Northwest Toxicology for ten years. The laboratory is certified by the College of American Pathologists, various states, and the United States Health and Human Services Agency.

Dr. Kuntz testified at the hearing and explained the testing process of the urine sample respondent provided on September 3, 2003. He testified that after an immunoassay (screening) test was conducted and the specimen was positive for cocaine metabolites, a gas chromatography/mass spectrometry test was performed and it revealed the specimen was positive for the drug metabolite benzoylecgonine at a level of 1234 nanograms per milliliter, and that is produced by the metabolization of cocaine.

Dr. Kuntz testified Northwest Toxicology did not use a medical review officer but instead used a certified scientist to review all the documents, samples, seals, and so forth. The certified scientist is a senior lab technician with years of experience and it is his job to look for reasons to fail a test. Dr. Kuntz called the certified scientist the gatekeeper who eliminates concerns such as tampering and prevents false positives. In addition, Dr. Kuntz in anticipation of the hearing, conducted an independent review in February 2005 and concluded the test was done properly. He found no evidence of a false positive test and believed the lab had correctly identified cocaine in the sample.

Dr. Kuntz was familiar with ibogaine but not its metabolites. He testified all drugs have breakdown patterns and ibogaine had a different structure from cocaine. He testified in his opinion, ibogaine would not have the same mass fragments as cocaine because it is substantially different from cocaine. He was unaware of any scientific studies that showed ibogaine metabolized into cocaine metabolites, and he was certain if that were the case, this would be reported widely. He based his opinion on his experience and training, and his knowledge of chemistry and analytical techniques.

27. Mark Kalish is a physician board certified in psychiatry and forensic psychiatry. He has served as an assistant clinical professor at UCSD in the psychiatry department since 1989 and for ten years was an adjunct professor of law at USD School of Law. He has served as a medical consultant for a residential drug treatment facility and as a staff psychiatrist in state and federal prisons. He is intimately familiar with narcotics addiction.

Dr. Kalish reviewed the Board's reports and records relating to respondent's performance while in the diversion program. He was familiar with her history and the results of the urine tests. He had not reviewed records from Hazelden.

Dr. Kalish testified at the hearing that in his opinion, respondent represented an imminent threat to the public if she were allowed to practice medicine. He reasoned that respondent continued to use cocaine on numerous occasions even while she was actively participating in the diversion program, and she did not complete the program. He pointed out she failed to take advantage of the resources available to her. He knew long-term use of cocaine adversely impaired the user's judgment and thinking by altering perception and memory, and he believed it was unfathomable to think a physician could practice medicine safely while under the influence of cocaine. He pointed out the most important information physicians use is the information patients tell them and what they perceive with their senses, and by using cocaine, respondent's ability to gather and retain this information was adversely affected. Further, he noted in the field of psychiatry, the abilities to perceive and relate information in an objective and unbiased fashion are particularly critical. He believed respondent's continued use of cocaine while in treatment and knowing she would be tested was a strong indication she could not abstain from its use even while treating patients. He also believed respondent could not control her addiction, and pointed to respondent's noncompliance with diversion program requirements as support for that view. He did not believe there was any reason to believe she would be more successful today than she had been in the past.

28. Respondent offered no competent evidence that her taking of ibogaine in September 2003 could have been the cause of the urine test found positive for cocaine. The only evidence she offered was a letter written by Dr. Martin Polanco, apparently a Mexican doctor not licensed in California, who wrote that false positives for stimulants caused by ibogaine had been previously documented. The letter is hearsay and cannot support a finding. (Gov. Code § 11513, subd. (d).) Furthermore, it is entitled to no weight.

29. Respondent testified at length at the hearing, and her testimony can best be described as alternating between inappropriate laughter and tears. Respondent claimed she has been sober since July 31, 2002, and she had not taken any cocaine in September 2003. Her demeanor while testifying inspired no confidence that she was either telling the truth or that she has remained sober for the last three years.

Respondent testified she attends AA and CA meetings regularly, as much as she needs to, and that averages to once or twice a week. She had her urine tested once, more than a year ago, but did not offer the test results into evidence.

30. For the investigation and enforcement of this matter, the Board incurred Attorney General's costs in the amount of $22,947.00 investigative services costs in the amount of $3,216.34, and record review costs in the amount of $300.00. The total is $26,463.34. The amount is reasonable.

LEGAL CONCLUSIONS

1. In this proceeding, complainant bears the burden of establishing the charges by clear and convincing evidence to a reasonable certainty. *Ettinger* v. *Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853. This requires the evidence be "of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth" of the charges (BAJI 2.62), and to be "so clear as to leave no substantial doubt." *In re Angelia P.* (1981) 28 Cal. 3d 908, 919; *In re David C.* (1984) 152 Cal.App.3d 1189, 1208. If the totality of the evidence serves only to raise concern, suspicion, conjecture or speculation, the standard is not met.

2. Business and Professions Code section 2239 provides in part:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

3. Business and Professions Code section 822 provides:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

4. Cause for discipline of respondent's license for violation of Business and Professions Code section 2239, unlawful use of controlled substances, was established by reason of Findings 4, 7, 8, 9, 10, 11, 12, 14, 20, 22, 27, and 29. The evidence established respondent used two controlled substances, cocaine and ibogaine, to the extent as to be injurious to respondent and to the extent that it impaired her ability to practice medicine safely. The fact respondent was never observed to be under the influence of a controlled substance while she practiced psychiatry does not detract from the conclusion that her ability to practice medicine is impaired. *See* Finding 27. Furthermore, it is respondent's continued use of controlled substances over a long period of time, not her termination from the diversion program that is the cause for discipline.

5. Cause for discipline of respondent's license for violation of Business and Professions Code section 822, was established by reason of Findings 4, 7, 8, 9, 10, 11, 12, 14, 20, 22, 27, and 29. The evidence established respondent was physically ill due to her addiction to cocaine and her addiction affected her competency and impaired her ability to practice medicine safely.

6. Respondent argues the case of *People v. Hitch* (1974) 12 Cal.3d 641 requires the test results of the September 2, 2003 be suppressed. *Hitch* requires the police or prosecutor to preserve physical evidence so that it can be examined and tested by the defense, and the good faith unintentional destruction of such evidence that is favorable to a criminal defendant requires a trial court to impose a sanction appropriate to preserving the defendant's right to a fair trial.

There are numerous reasons why *Hitch* would not apply to this situation. The urine sample was taken within the context of a drug rehabilitation program that respondent entered voluntarily, the purpose of the test was to monitor compliance with the program, it was not intended for use in a criminal proceeding, respondent never asked for the urine sample she provided to be re-tested, and the urine sample was maintained for a year. She did not ask Zepel orally for a re-test and did not ask for a re-test in her letter to the Board of October 14, 2003. Had she asked for a re-test in writing within the year, the sample would have been re-tested. *See* Findings 22 and 25.

7. Respondent argues the test results should not be considered because there was no medical review officer used to review the test procedures and results. She points to regulations promulgated by other state and federal administrative agencies which require a medical review officer. The statues regulating the diversion program (Bus. & Prof. Code §§ 2340-2356) and the Board's regulations relating to the diversion program (Cal. Code Regs., tit. 16, §§ 1357-1357.9) contain no requirement of a medical review officer, and respondent points to no authority that requires one administrative agency to follow the administrative

regulations promulgated by another administrative agency. Thus, there is no statutory or regulatory authority that required the Board to use a medical review officer to review urine test results.

According to Dr. Kuntz, Northwest Toxicology used a certified scientist, that is, a senior technician with many years of experience, to review test results and the procedures used in conducting the test. In addition, positive test results are brought to the attention of the DEC which may then discuss the matter with the physician. Three members of a DEC must be physicians and all members must have experience or knowledge in the evaluation or management of persons impaired by drug abuse. (Bus. & Prof. Code §2342.) Respondent presented no reason to believe this system was inadequate.

8. Respondent contends complainant violated *Miranda v. Arizona* (1966) 384 U.S. 436 when she was interrogated by Board investigators and was not advised of her Fifth and Sixth Amendment rights. *Miranda* requires that after police take a person into custody or otherwise deprives the person of his or freedom of action any significant, the person must be warned that he or she has a right to remain silent, any statement made may be used as evidence, and the person has a right to the presence of an attorney, either retained or appointed. Statements obtained in violation this rule cannot be used to establish guilt. *Id.* at 706-07.

Miranda advisements are required only when a person is subjected to "custodial interrogation." Whether a person is taken into custody or otherwise deprived of his or her freedom of action in any significant way is determined by reference to an objective, legal standard: "would a reasonable person in the suspect's position during the interrogation experience a restraint on his or her freedom of movement to the degree normally associated with a formal arrest." Courts generally consider a variety of relevant circumstances.

> *"Among them are whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; whether the express purpose of the interview was to question the person as a witness or a suspect; where the interview took place; whether police informed the person that he or she was under arrest or in custody; whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; whether there were restrictions on the person's freedom of movement during the interview; how long the interrogation lasted; how many police officers participated; whether they dominated and controlled the course of the interrogation; whether they manifested a belief that the person was culpable and they had evidence to prove it; whether the police were aggressive, confrontational, and/or accusatory; whether the police used interrogation techniques to pressure the suspect; and whether the person was arrested at the end of the interrogation. (Citations omitted.) No one factor is dispositive. Rather, we look at the interplay and combined effect of all the circumstances to determine whether on balance they created a coercive atmosphere such that a reasonable person would have experienced a restraint tantamount to an arrest." People v. Aguilera (1996) 51 Cal.App.4th 1151, 1161-62.*

It appears respondent challenges her interviews with Board investigators at her office at the end of 2001. She claimed they "flashed their badges" (that is, identified themselves) when they first met her in her waiting room and then talked to her in her office for 15 to 20 minutes. She testified they did not give her any *Miranda* warnings. She testified they told her they wanted to talk to her about drug abuse and that a doctor wrote a letter saying respondent had used cocaine, and they asked for a urine sample which she refused. Respondent testified she felt threatened and not free to tell them to leave. Regardless of respondent's subjective belief, from an objective point of view, the fact remains this brief interview took place at her office. She felt sufficiently free to refuse to provide a urine sample. Respondent described nothing remotely suggestive of an environment where her freedom was restricted or she was subjected to pressure to confess. She was not arrested. She pointed to no actions by the investigators that could be construed as confrontational, aggressive, coercive, or accusatory. It must therefore be concluded respondent was not subjected to "custodial interrogation" during this interview, and no *Miranda* warnings were required. The same is true for each of respondent's interviews with Board investigators or personnel.

Even if a *Miranda* warning was required, complainant did not offer into evidence at the hearing any statements respondent made and therefore there was no evidence to exclude. It was respondent who testified she told the investigators during one interview that she had been treated for cocaine addiction.

Finally, the courts have held that exclusionary rules applicable in criminal cases do not apply to administrative hearings. *Gikas v. Zolin* (1993) 6 Cal. 4th 841, 859; *Emslie v. State Bar* (1974) 11 Cal. 3rd 210, 229; *Finkelstein v. State Personnel Bd.* (1990) 218 Cal.App.3rd 264. Thus, even if there were a *Miranda* violation, and even if there were statements offered at the hearing that were used against respondent, those statements were admissible.

9. All other legal arguments raised by respondent in the various letters, declarations, and motions are without merit and afford no basis for suppression of any evidence offered at the hearing, or dismissal of the accusation.

10. The evidence showed that respondent has been addicted to crack cocaine for many years. Respondent has made numerous efforts at rehabilitation but to date, those efforts have not been successful. She has been to the Hazelden program twice, but immediately upon leaving the facility the second time, relapsed. She relapsed a month after she entered the Board's diversion program. After a year of sobriety, from August 2002 to September 2003, respondent used both cocaine and ibogaine in an effort to deal with an upcoming change in her life, her return to work. It is apparent respondent continues to rely on illegal drugs to handle stress. Respondent in her letter to the Board after she was terminated from the diversion program, and again in her testimony, continues to blame others for plight. While she testified she understood her addiction and could control it, her conduct showed she cannot.

Respondent presented no evidence of what efforts she has undertaken to address her cocaine addiction since she was terminated from diversion. She testified she attends AA and CA meetings regularly but presented no evidence to support that testimony. She presented no testimony from persons who know her or have treated her, or persons with whom she attends meetings. Respondent's claim of sobriety, without any support, is entitled to little weight, particularly in light of her demeanor while testifying.

Based on all the evidence presented at the hearing, it must be concluded respondent continues to be addicted to cocaine and allowing her to maintain her license represents a threat to the public. Protection of the public is the highest priority in this matter. (Bus. & Prof. Code § 2229.) Efforts at rehabilitation have to date failed. Under these circumstances, the only appropriate discipline is revocation of respondent's license.

11. Cause to require respondent to reimburse the Board for its costs of investigation and prosecution of this matter pursuant to Business and Professions Code section 125.3 in the amount of $26,463.34 was established by Finding 30.

ORDER

1. Physician's and surgeon's certificate number G 56228 issued to respondent Margaret M. Sprague, M.D., is revoked.

2. Respondent is ordered to reimburse the Board for its costs of investigation and prosecution of this matter in the amount of $26,463.34.

DATED: 3/15/05

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
DIVISION OF MEDICAL QUALITY
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against: MARGARET M. SPRAGUE, M.D. 2706 Azul Street La Jolla, CA 92037-1141 Physician's and Surgeon's Certificate No. G566228 Respondent.	Case No. 10-2001-125460 **ACCUSATION**

Complainant alleges:

PARTIES

1. Ron Joseph (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about October 7, 1985, the Medical Board of California issued Physician's and Surgeon's Certificate Number G566228 to Margaret M. Sprague, M.D. (Respondent). Said certificate has been renewed and is current with an expiration date of October 31, 2005.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2239 of the Code states:

> (a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.
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> (b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

6. Section 125.3 of the Code provides, in pertinent part, that the Division may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 14124.12 of the Welfare and Institutions Code states, in pertinent part:

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(a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

8. Section 820 of the Code states:

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

FIRST CAUSE FOR DISCIPLINE

(Unlawful Use or Prescribing)

9. Respondent is subject to disciplinary action as a result of her administering dangerous drugs and/or alcohol to herself in violation of section 2239. The circumstances are as follows:

A. On or about September 12, 2001, Dr. S.H. contacted the Medical Board's enforcement unit and expressed concern that respondent was using dangerous drugs while practicing medicine.

B. Dr. S.H. believed that respondent was using cocaine. She also believed respondent had an alcohol problem. Respondent had told Dr. SH. that she had a positive drug test in the summer of 2001, but that it was a mistake.

C. Respondent's ex-husband, with whom she was involved in a custody battle, expressed his belief that respondent was addicted to illicit drugs.

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D. Respondent spoke with Medical Board investigators on or about October 18, 2001. She told them she had a substance abuse problem in the past but that it was now under control. Respondent indicated attending Narcotics Anonymous Meetings. The urine sample she gave that afternoon showed .02 percent alcohol in her system.

E. On or about November 13, 2001, Medical Board investigators spoke with Dr. B.N., who shared a common waiting room with respondent. He told the investigators he thought respondent had a crack cocaine problem. When he and the other doctors in the office suggested she enter the Medical Board Diversion Program she told them her problem was under control. She also told them she failed a drug screening done for a child custody issue. Although respondent said the test was wrong and would take a retest, she never did. Dr. B.N stated respondent attended church organized meetings, not NA meetings, because respondent found the latter too depressing.

F. On or about November 16, 2001, respondent told Medical Board investigators that she had attended, and completed, a cocaine and alcohol program at Hazelden in 1999. Respondent said she attended NA meetings and AA meetings twice a week at a church and that she had one sponsor for both. Respondent said the positive drug test in 2001 showed a form of cocaine. She again said the test was wrong.

G. On or about December 5, 2001, respondent completed and signed the Statement of Understanding for admission into the Diversion Program. In signing the agreement respondent admitted violating B&P section 2239, self-administration of drugs and/or alcohol.

H. In August 2003, respondent failed to provide scheduled urine samples, and failed to attend scheduled meetings.

G. On or about September 2, 2003, respondent tested positive for cocaine, the fourth such positive test since she had entered the Diversion Program. On or about September 8, 2003, respondent was notified she was terminated from the program as a result of these circumstances.

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SECOND CAUSE FOR DISCIPLINE

(Inability to Practice Medicine Due to Mental/Physical Illness)

10. Respondent is subject to disciplinary action under section 822. The circumstances are as follows:

A. Paragraph 9 in its entirety is incorporated by reference herein.

B. On or about October 25, 2003, Dr. Mark Kalish, a Board certified psychiatrist reviewed various documents concerning respondent's situation. He concluded that respondent's long history of drug abuse has made her unable to maintain her sobriety. Respondent had failed to take advantage of the resources available to her and she had continued to use cocaine despite knowing she would be tested.

C. Dr. Kalish found respondent's inability to abstain while in the Diversion Program was "strong evidence" she would not be able to abstain while practicing medicine. Respondent's continued use of cocaine impairs her thinking and judgment, thereby rendering her unable to practice medicine safely.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division of Medical Quality issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G566228, issued to Margaret M. Sprague, M.D.;

2. Revoking, suspending or denying approval of Margaret M. Sprague, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

3. Ordering Margaret M. Sprague, M.D. to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

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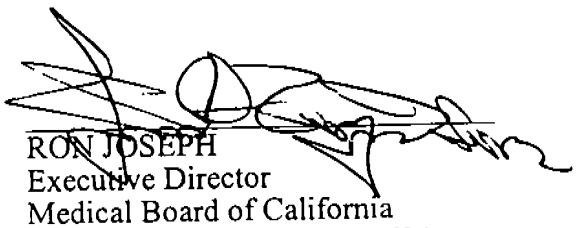
4. Taking such other and further action as deemed necessary and proper.

DATED: 11-25-03



RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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