

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

In the Matter of the Accusation)
Against:)
)
ROBERT A. FARMER, M.D.)
Certificate #C-38732)
)
)
Respondent.)
_____)

File No: 12-92-17855
OAH No: N-9403141

DECISION

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

This Decision shall become effective on June 12, 1995.

DATED May 12, 1995.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA



Ira Lubell, M.D.
Division of Medical Quality

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
) NO. D-5581
)
ROBERT A. FARMER, M.D.) OAH No. N -9403141
600 Nut Tree Road, #330)
Vacaville, CA 95687)
)
Physician's and Surgeon's)
License No. C-38732)
)
Respondent.)

PROPOSED DECISION

On December 12, 13, 14 and 15, 1994, in San Francisco, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Susan K. Meadows, Deputy Attorney General, and Thomas P. Reilly, Deputy Attorney General, represented complainant.

Respondent was present and represented by Kenneth L. Freeman, Esq., of the law firm of Freeman & Gallie.

Evidence was received, and the record remained open for receipt of closing arguments.

During the hearing, complainant offered Exhibit 3, Declaration of Executive Officer Regarding Costs. Respondent objected to the admission of the document. In closing argument, respondent specifically stated the grounds for his objection, and complainant responded to these objections in its closing argument. Having considered the arguments of both parties, respondent's objection is overruled, and Exhibit 3 is admitted.

On December 30, 1994, complainant filed its Closing Argument, marked Exhibit 27. Respondent filed his Closing Argument on January 9, 1995, marked Exhibit N. On January 19, 1995, the Medical Board's filed its Reply Brief, marked Exhibit 28. Thereafter the record was closed, and the matter was submitted.

FINDINGS OF FACT

I

Dixon Arnett, made and filed Accusation No. D-5581, dated March 2, 1994, First Supplemental Accusation, dated October 28, 1994, and First Amended Accusation, dated December 14, 1994, against Robert A. Farmer, M.D. (respondent) in his official capacity as Executive Director of the Medical Board of California (Medical Board).

On March 15, 1994, respondent filed his Notice of Defense requesting a hearing in this matter. On November 1, 1994, respondent filed his Special Notice of Defense to First Supplemental Accusation.

II

The Medical Board issued physician's and surgeon's certificate number C 38732 to respondent on July 16, 1979. At all times relevant herein said certificate was in full force and effect and is due to expire on October 31, 1996.

On October 30, 1987, an Accusation was filed against this certificate. On May 23, 1988, this Accusation was dismissed after full hearing.

III

Respondent attended medical school at the University of North Carolina, obtaining his medical degree in June 1956. He did a one year rotating internship at the University of Virginia in Charlottesville, Virginia from July 1956 until July 1957. From July 1957 until July 1958, respondent did a residency in urology. Upon completion of this residency, he was called to active duty in the military. He served as a flight surgeon in the Air Force for the next 21 years and three months, retiring September 30, 1979. During this time period, respondent attended the School of Public Health, University of California at Berkeley in 1962, obtaining a masters' degree in public health in 1963. Two years later, respondent did a residency in aerospace medicine. Respondent was board certified in aerospace medicine by the American Board of Preventive Medicine in 1966. He became the Director of Aerospace Medicine at Travis Air Force Base in 1977.

IV

From October 1, 1979 until September 30, 1982, respondent did a residency in psychiatry at Napa State Hospital. For the next three years and two months, respondent was employed by the California Medical Facility in Vacaville, California.

In early 1986, respondent began his private practice. He also had a contract with Yolo County to provide psychiatric services within its jail system.

In February 1986, respondent was certified by the American Board of Psychiatry and Urology in February 1986.

Respondent is currently on staff at Vaca Valley Hospital and North Bay Medical Center. He is also a member of the California Medical Association, the Solano County Medical Society and the American Academy of Clinical Psychiatrists. For the past six years, respondent has been the chairman of the Solano County Mental Health Board.

V

In January 1990, respondent began treating K [REDACTED] B [REDACTED] (B [REDACTED]), a female adult because she was distressed about problems in her workplace. As psychotherapy progressed, she discussed problems in her marriage and social life. Respondent diagnosed B [REDACTED] as suffering from major depressive disorder with anxiety disorder and panic disorder features. He also determined that she had a sleep disorder. He treated her on a weekly basis with "supportive and insight" psychotherapy and a variety of medications including, but not limited to, Prozak and/or Tragedone (antidepressants), Xanax (antianxiety), Restoril and/or Chloral Hydrate (sleep disorder medication).

VI

B [REDACTED] proved to be a difficult patient for respondent to treat. She had a history of child sexual abuse. She did not make progress despite trials of several different antidepressant medications. B [REDACTED] was hospitalized in March 1990 and for depression and suicidal ideation. In March 1991, respondent hospitalized B [REDACTED], did screening tests to evaluate her medical as well as psychological condition in order to determine the best method of treatment of B [REDACTED].

Insufficient competent evidence was offered to establish that B [REDACTED] was hospitalized early in 1991 for depression and suicidal ideation.

VII

On October 1, 1991, respondent permitted B [REDACTED] to perform fellatio on him in his office during a psychotherapy session. Immediately following this incident, respondent went on vacation. On October 5, 1991, B [REDACTED] was admitted to Solano Park Hospital and retained on an involuntary hold until October 11, 1991 because she was suicidal. B [REDACTED] did not tell anyone at Solano Park Hospital about the incident of fellatio with

respondent on October 1, 1991. Against medical advice, B [REDACTED] discharged herself from the hospital and was referred back to respondent for further treatment.

VIII

On October 29, 1991, B [REDACTED] again performed fellatio upon respondent in his office during her psychotherapy session. Between October 29th and December 4th, respondent treated B [REDACTED] on November 5th, 12th and 26th; complainant failed to establish that she cancelled several appointments during this time period. On December 4, 1991, B [REDACTED] again performed fellatio upon respondent in his office during her psychotherapy session. Respondent treated B [REDACTED] on December 17, 1991 and for the last time on January 6, 1992.

B [REDACTED] made an appointment with respondent for two weeks thereafter at which time he expected to do an updated evaluation for her insurance company. She was reluctant to see respondent after the December 4th incident and missed several appointments. Respondent contacted B [REDACTED] on several occasions in January and February 1992 in order to do this evaluation.

Respondent received a letter, dated February 25, 1992, from B [REDACTED]'s attorney advising him that she no longer desired his professional services. On or about the date that he received the letter from her attorney, respondent also received a call from the pharmacist indicating that he had duplicate prescriptions for B [REDACTED], i.e., one from respondent and another from Dr. Sarah Hunter (Dr. Hunter), and he wanted to know what to do. Respondent advised him to set aside his and honor Dr. Hunter's prescription.

IX

In March 1992, respondent was approached by Dr. Thomas Jackson (Dr. Jackson), a colleague, friend and the Medical Director at the Solano Park Hospital. He informed respondent that he was aware of allegations that he had had a sexual encounter with a patient. Respondent informed him that he needed time to think about it and that he had an appointment to discuss the issue with his priest.

X

Within a day or two after his conversation with Dr. Jackson, respondent met with his priest at St. Martin's Episcopal Church. During their conference, respondent spent considerable time discussing the problems of his marriage during this meeting. Near the end of their session, respondent talked about what happened in his practice with B [REDACTED].

XI

After the session with his priest and considerable thought, respondent decided to self-report the incidents that occurred with B [REDACTED]. He contacted the Medical Board. On April 28, 1992, an interview was conducted by complainant's investigator and medical consultant. During the interview, respondent advised them about his relationship with F [REDACTED], F [REDACTED]-K [REDACTED], his sexual relationship with F [REDACTED]-K [REDACTED], and openly and candidly discussed the sexual encounters that occurred with B [REDACTED]. The Medical Board's investigation delayed the investigation in this case because of the pending civil action against respondent brought by B [REDACTED].

XII

From early December 1986 until June 1987, respondent treated R [REDACTED] F [REDACTED] (F [REDACTED]), an adolescent male, who was having behavioral and disciplinary problems in school. Respondent also treated J [REDACTED] F [REDACTED]-K [REDACTED] (F [REDACTED]-K [REDACTED]), the juvenile's mother, from December 1986 until May 1987. She was concerned about her son and suffered from anxiety and depression because of problems she had with her husband, who was not the father of her son.

During the time that respondent was treating F [REDACTED]-K [REDACTED] and her son, respondent had a personal and sexual relationship with her that continued until July 1987. The sexual activity did not occur during psychotherapeutic sessions or in respondent's office. F [REDACTED] was aware of the personal relationship between his mother and respondent because he went on social outings with them.

At the time respondent's relationship with F [REDACTED]-K [REDACTED] occurred, she was separated from her husband, and he was separated from his wife. He discontinued the relationship with her when his wife attempted reconciliation of their marriage.

XIII

Expert testimony established that it is not uncommon for a patient to have erotic feelings or sexual fantasies about his/her psychotherapist or vice versa. It is not relevant whether the patient or the physician initiates the sexual encounter. At no time is it appropriate for a psychotherapist to act upon these feelings. The therapist must communicate clearly to the patient that he/she can verbalize such feelings, but the patient needs to know the psychotherapist will not act on them. The psychiatrist must clarify that his/her concern or wish to help is not dependent upon having sex with the patient. To act upon the sexual feelings confirms the patient's worse fears, i.e., one is not capable of loving or caring for the patient

unless the patient is willing to extend sexual favors. Once the psychiatrist explains to the patient that he/she will not act upon the feelings, the physician helps the patient to understand that someone can help, care or love without the involvement of sexual favors. To that extent, it is an important part of the therapeutic process and helps the patient.

XIV

The standard of care prohibits sexual contact between a psychiatrist and his/her patient. From the standpoint of the standard of care, it makes no difference whether the patient or physician initiates the sexual contact. Sexual contact with a patient violates the fundamental aspect of trust necessary for effective psychotherapy and is very damaging to the mental stability and health of the patient and makes the therapeutic neutrality of the psychotherapist impossible to maintain.

XV

As set forth in Findings V, VI, VII, and VIII, respondent had sexual contact with B [REDACTED], his patient, on three occasions. Immediately after the first incident, B [REDACTED] was hospitalized because she was suicidal. While in the hospital, she did not disclose the sexual incident with respondent to her treating psychiatrist. In October 1994, after being informed that she would be required to testify in this hearing and that respondent alleged that she initiated the sexual conduct, respondent became despondent and again attempted suicide. Expert testimony further established that B [REDACTED]'s conduct is directly related to the sexual incidents that she had with respondent. B [REDACTED] continues to experience the sequelae of respondent's misconduct today. Clearly respondent's misconduct damaged B [REDACTED] and impeded her ability to trust others, particularly other physicians on a long-term basis.

XVI

Respondent's conduct with B [REDACTED], set forth in Findings V, VI, VII and VIII, constitutes unprofessional conduct in that each of these incidents was an extreme departure from the standard of care. Furthermore, his misconduct involved sexual relations with this patient and sexual exploitation by him while her psychotherapist in violation of Section one of The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry, published by the American Psychiatric Association, 1992 edition.

XVII

As set forth in Finding XII, respondent had a personal and sexual relationship with F [REDACTED]-K [REDACTED] while treating her and

her son. Though the Board's investigator made her best effort to contact F [REDACTED] and F [REDACTED]-K [REDACTED], she was unable to do so and neither testified at this hearing. No evidence was offered to establish that these particular patients were damaged as a consequence of respondent's misconduct. However, competent expert testimony established that respondent's conduct was inherently exploitive and could damage whatever progress had been made in the treatment. It makes further treatment with any future therapist problematic because the patient could have serious concerns about trust. Complainant further established that, with respect to F [REDACTED], respondent's conduct could seriously damage his therapy, his mental health and his future therapy with any other therapist.

XVIII

Respondent's conduct with F [REDACTED]-K [REDACTED], while she was his patient, set forth in Finding XII, constitutes unprofessional conduct in that it was an extreme departure from the standard of care.

Respondent's conduct with F [REDACTED]-K [REDACTED], while he was treating her son, set forth in Finding XII, constitutes unprofessional conduct in that it was an extreme departure from the standard of care.

XIX

In March or April 1992, respondent self-reported his sexual activity with his patients to the Medical Board. When he met with the Medical Board's investigator and medical consultant, he was cooperative and forthcoming. He spoke freely and signed releases as requested by the Medical Board's investigator. Prior to the time that he contacted the Medical Board, respondent learned from Dr. Jackson that his colleagues were aware that he had had sexual contact with a patient. Therefore respondent's reporting was an effort to disclose what he believed the investigator knew or would soon learn. If he had been concerned about his patients or remorseful for his misconduct, respondent would have fully and accurately reported the incidents with F [REDACTED]-K [REDACTED] that occurred more than six years prior.

XX

Respondent is 63 years old and has been married for over 35 years. Though he and his wife have been separated periodically during the course of their marriage, they have been legally separated since January 10, 1992. He has four biological children and two stepchildren, and the oldest child is 44 years old and the youngest is 31 years of age. As set forth in Finding III, prior to commencing his residency in psychiatry, for over 20 years, respondent had a distinguished military career in the Air

Force. Respondent is active in his community in that he is very involved with opera, is a member of the Rotary Club and active in the Episcopal Church. Respondent is the only psychiatrist in his community that accepts Medi-Cal and Medicare patients.

XXI

Respondent has consistently blamed his transgressions upon the stress of his marital separation and the alleged seduction by B [REDACTED]. Expert testimony established that stressors equivalent to this are likely to trigger similar behavior in the future and that, with intensive psychotherapy, respondent may eventually be able to overcome his pervasive boundary problems. However, this kind of work takes years of therapy. There was no evidence offered in this hearing that, at this time, three years after the incidents with B [REDACTED] and more than seven years after his affair with F [REDACTED]-K [REDACTED], respondent has begun this psychotherapeutic process.

XXII

Pursuant to Business and Professions Code section 125.3, complainant seeks recovery of the costs of investigation and enforcement of the laws set forth in the First Supplemental Accusation and First Amended Accusation. This statute provides, in pertinent part: "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of this case." In support of its prayer for recovery of costs, complainant submitted Exhibit 3, "Certification of Costs", a copy of the investigator's report (Exhibit 28), and attached to its written closing argument the redacted time sheets of the Deputy Attorney Generals (DAGs). No declaration, breakdown or explanation of costs was provided by the Medical Board.

XXIII

Exhibit 3 includes a certification from the Executive Officer that complainant incurred costs totaling \$23,608.50 in investigation and prosecution of this case. In addition the Medical Board seeks \$480.00 for "court costs". The summarization of these costs is set forth in Attachment A, incorporated herein.

DETERMINATION OF ISSUES

I

Cause for discipline of respondent's license was established in that respondent's conduct with B [REDACTED] constitutes a violation of Business and Professions Code section 2234 because

respondent committed acts of gross negligence and repeated negligent acts by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

II

Cause for discipline of respondent's license was established in that respondent's conduct with B [REDACTED] constitutes a violation of Business and Professions Code section 2234(a) because he violated Business and Professions Code sections 2234(b) and (c), 726 and 729 by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

III

Cause for discipline of respondent's license was established in that respondent's conduct with B [REDACTED] constitutes a violation of Business and Professions Code section 2234(b) because he committed acts of gross negligence by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

IV

Cause for discipline of respondent's license was established in that respondent's conduct with B [REDACTED] constitutes a violation of Business and Professions Code section 2234(c) because he committed repeated negligent acts by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

V

Cause for discipline of respondent's license was established in that respondent's misconduct, sexual relations with B [REDACTED] and sexual exploitation of her constitutes unprofessional conduct and a violation of Business and Professions Code section 726 by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

VI

Cause for discipline of respondent's license was established in that respondent's conduct with B [REDACTED] constitutes a violation of Business and Professions Code section 729 by reason of Findings V, VI, VII, VIII, XIII, XIV, XV and XVI.

VII

Cause for discipline of respondent's license was established in that respondent's conduct with F [REDACTED]-K [REDACTED] constitutes a violation of Business and Professions Code section 726 by reason of Findings XII, XIII, XIV, XVII and XVIII.

VIII

Cause for discipline of respondent's license was established in that respondent's conduct with F█████-K█████ constitutes a violation of Business and Professions Code section 2234(b) because he committed acts of gross negligence by reason of Findings XII, XIII, XIV, XVII and XVIII.

IX

Cause for discipline of respondent's license was established in that respondent's conduct with F█████-K█████ constitutes a violation of Business and Professions Code section 2234(c) because he committed repeated negligent acts by reason of Findings XII, XIII, XIV, XVII, XVIII.

X

Cause for discipline of respondent's license was established in that respondent's conduct with F█████-K█████ while treating her son constitutes a violation of Business and Professions Code section 2234(b) because he committed acts of gross negligence by reason of Findings XII, XIII, XIV, XVII and XVIII.

XI

Cause for discipline of respondent's license was established in that respondent's conduct with F█████-K█████ while treating her son constitutes a violation of Business and Professions Code section 2234(c) because he committed repeated negligent acts by reason of Findings XII, XIII, XIV, XVII and XVIII.

XII

Respondent objected not only to the admission of Exhibit 3 but also to an order compelling respondent to pay the costs of investigation and enforcement.

Exhibit 3 satisfies the requirements of Section 125.3 of Business and Professions Code and therefore was admitted into evidence.

XIII

Respondent makes a series of arguments asserting that, if Business and Professions Code section 125.3 is applied as written, it will amount to a deprivation of his constitutional rights.

The Administrative Law Judge lacks jurisdiction to rule on this argument. Article III, section 3.5 of the California Constitution prohibits administrative agencies from declaring statutes unconstitutional or from refusing to enforce statutes on constitutional grounds unless an appellate court has made a determination of unconstitutionality. No appellate court has ruled Business and Professions Code section 125.3 illegal or unconstitutional. Thus, respondent's constitutional arguments are rejected.

XIV

Respondent argues that the Medical Board is not entitled to recovery of costs because the investigation and enforcement for which cost recovery is sought, and the filing of the Accusation against respondent, occurred prior to the date that the Board adopted a policy to seek recovery of such costs, and that recovery of such costs is, therefore, in the nature of an ex post facto application of the Medical Board's policy which is illegal and unenforceable. This argument is also without merit in that ex post facto clauses apply only to acts which are the subject of criminal prosecution. They do not apply to civil or administrative proceedings. Gary v. State Bar (1988) 44 Cal.3d 820, 827-828; Greenbaum v. State Bar (1987) 43 Cal.3d 543, 550.

XV

Respondent asserts that in order for the Medical Board to deprive him of his property in a manner consistent with due process of law, Business and Professions Code section 125.3 must be read in harmony with Government Code section 11514(a). Government Code section 11514(a) requires 10 days notice if a party intends to introduce evidence by way of affidavit. In this case, Exhibit 3 was offered for the first time on Monday morning, December 11, 1994, the first day of the hearing, and therefore, failed to satisfy the notice requirement of this statute. Therefore, respondent argues that Exhibit 3 "shall be given only the same effect as other hearsay evidence" and the Administrative Law Judge cannot make a finding based upon hearsay alone. (Government Code section 11513(c))

Business and Professions Code section 125.3(c) specifically makes such evidence admissible in these proceedings. Specific statutory enactments take precedence over general statutory enactments. Government Code section 11514 does not operate to overrule Section 125.3.

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XVI

Respondent asserts that the doctrine of laches bars the recovery of costs by the Medical Board because of unreasonable delay in prosecuting this case.

It is well established that statutes of limitation barring civil actions do not apply to disciplinary proceedings of a state administrative agency, and there is no specific time limitation unless set by statute for a particular proceeding. Bernd v. Eu (1979) 100 Cal.App.3d 511, 515, 161 CR 58, 60. In order for the doctrine of laches to be applicable, respondent must establish that the administrative proceeding has not been diligently prosecuted, or there has been preaccusation delay and the licensee has been prejudiced.

In the instant case, respondent self-reported his misconduct in April 1992. The Accusation was not filed until two years later. The Medical Board's investigator delayed the investigation against respondent because of the civil action filed by B[REDACTED]. The request for costs was not made in the original Accusation but in a First Supplemental Accusation filed on October 28, 1994. However, Business and Professions Code section 125.3 was enacted in 1992 and became effective January 1, 1993. Even if the Medical Board had diligently prosecuted this case, it is unlikely that it would have filed the Accusation prior to the time that the statute became effective. Respondent failed to establish that he was prejudiced as a result of the delay in prosecuting this case.

XVII

Respondent argues that the Medical Board should not be allowed to recover costs because inadequate, unreliable documentation has been offered in support of its request.

It has been consistently held that the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Hensley v. Eckerhart (1983) 461 U.S. 424, 103 S. Ct. 1933; Nightingale v. Hyundai Motor America (1994) 31 Cal.App.4th 99; Department of Transportation v. Yuki (1995) 31 Cal.App.4th 1754. In Hensley, supra, the Court specifically stated: "The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the Court may reduce the award accordingly."

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XVIII

In its investigation report (Exhibit 28) and written closing argument, the Medical Board sets forth the course of the investigation and litigation.

No documentation was provided regarding the tasks performed, the amount of time spent performing the tasks or the date upon which the tasks were performed by the investigator(s) or attorneys in this case. Though complainant seeks costs of investigation for fiscal year 1994-95, Exhibit 28 provides no information regarding the investigation beyond November 2, 1993.

Complainant offered no documentation to support the need to have two DAGs prosecuting this case. The Medical Board also seeks costs for the time of a legal analyst without explaining what this person does, what tasks were performed by him/her or the dates upon which the tasks were performed during this litigation.

In addition, complainant seeks \$480.00 "court costs" for which no explanation is provided.

Based upon the documentation provided, it is difficult for the Administrative Law Judge to ascertain whether the costs requested are reasonable or whether tasks performed were excessive, unnecessary or redundant.

XIX

Respondent self-reported his misconduct to the Medical Board and provided the Medical Board's investigator and consultant with substantially all of the information needed to prosecute this case.

XX

This case involved four days of hearing that averaged six hours of hearing time per day. Complainant called five witnesses, including one rebuttal witnesses and offered 28 exhibits. Respondent's only witness was himself, and he offered 13 exhibits. Respondent admitted his misconduct. There were no relevant factual issues in dispute. The issues were not complex. The evidence was straight forward.

XXI

Based upon Determination of Issues XVII, XVIII, XIX and XX, the following costs are disallowed: \$480.00 (court costs); \$6,650.00 (70 hours for the services of DAG Meadows at the rate of \$95.00 per hour) ; \$1,525.00 (30.50 hours for the services of legal analyst at the rate of \$50.00 per hour); \$1,276.38 (14.0

hours for the investigator at the rate of \$91.17 per hour). In addition, the remaining costs of investigation and enforcement are reduced as set forth in Attachment B, attached hereto and incorporated herein by reference. Based upon the foregoing, the Medical Board is entitled to recover the costs of investigation and enforcement in the amount of \$8,749.02.

XXII

All legal arguments not specifically addressed herein are found to be without merit and therefore rejected.

ORDER

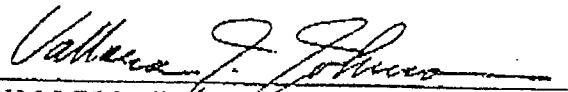
I

Physician's and surgeon's Certificate number C38732 issued to respondent Robert A. Farmer is hereby revoked.

II

Respondent Robert A. Farmer shall pay investigation and enforcement costs to the Medical Board in the amount of \$8,749.02.

Dated: March 30, 1995



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

ATTORNEY GENERAL--OFFICE COPY

Exhibit 2A

~~Admitted for~~
Admitted for
JURISDICTIONAL
PURPOSES ONLY.

1 DANIEL E. LUNGREN, Attorney General
 of the State of California
 2 THOMAS P. REILLY
 Deputy Attorney General
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 4 Oakland, California 94612-3049
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5 Attorneys for Complainant

6
 7
 8 BEFORE THE
 DIVISION OF MEDICAL QUALITY
 9 MEDICAL BOARD OF CALIFORNIA
 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:)

No. D-5581

11 ROBERT A. FARMER, M.D.
 600 Nut Tree Road, # 330
 12 Vacaville CA 95687

OAH No. 9403141

FIRST AMENDED ACCUSATION

13 Physician and Surgeon's License No. C 38732

14 Respondent.
15

16 The complainant, DIXON ARNETT, charges and alleges as follows:

17 1. He is the Executive Director of the Medical Board of California ("the
 18 Board") and makes and files these charges and allegations solely in his official capacity
 19 and not otherwise.

20 2. On or about July 16, 1979, the Board issued to ROBERT ARCHIE
 21 FARMER, M.D. physician's and surgeon's certificate number C 38732. This certificate
 22 is paid and current with an expiration date of October 31, 1994. On October 30, 1987,
 23 a prior accusation was filed against this certificate. On May 23, 1988, this prior
 24 accusation was dismissed after full hearing.

25 III
26
27

STATUTES

1
2 3. Section 2001 of the Business and Professions Code⁴¹ provides for the
3 existence of the Board.

4 4. Section 2003 provides for the existence of the Division of Medical
5 Quality ("the Division") within the Board.

6 5. Section 2004 provides, inter alia, that the Division is responsible for
7 the administration and hearing of disciplinary actions involving enforcement of the
8 Medical Practice Act (section 2000 et seq.) and the carrying out of disciplinary action
9 appropriate to findings made by a medical quality review committee, the Division, or
10 an administrative law judge with respect to the quality of medical practice carried out
11 by physician and surgeon license holders.

12 6. Section 2018 authorizes the Division to adopt such regulations as may
13 be necessary to enable it to carry into effect the provisions of law relating to the
14 practice of medicine.

15 7. Sections 2220, 2234, and 2227 together provide that the Division shall
16 take disciplinary action against the holder of a physician's and surgeon's certificate who
17 is guilty of unprofessional conduct.

18 8. Section 2234 provides, in part, as follows:

19 "The Division of Medical Quality shall take action against any
20 licensee who is charged with unprofessional conduct. In addition to other
21 provisions of this article, unprofessional conduct includes, but is not
22 limited to, the following:

23 (a) Violating or attempting to violate, directly or indirectly,
24 or assisting in or abetting the violation of, or conspiring to violate, any
25 provision of this chapter.

26 (b) Gross negligence.

27 (c) Repeated negligent acts.

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

1
2 "1. The patient may place his/her trust in his/her
3 psychiatrist knowing that the psychiatrist's ethics and professional
4 responsibilities preclude him/her gratifying his/her own needs by exploiting
5 the patient. The psychiatrist shall be ever vigilant about the impact that
6 his/her conduct has upon the boundaries of the doctor/patient
7 relationship, and thus upon the well being of the patient. These
8 requirements become particularly important because of the essentially
9 private, highly personal, and sometimes intensely emotional nature of the
10 relationship established with the psychiatrist."
11

12 Section 2, states, in pertinent part, as follows:

13 "SECTION 2

14 "A physician shall deal honestly with patients
15 and colleagues, and strive to expose those
16 physicians deficient in character or competence,
17 or who engage in fraud or deception.

18 "1. The requirement that the physician conduct
19 himself/herself with propriety in his/her profession and in all the actions
20 of his/her life is especially important in the case of the psychiatrist
21 because the patient tends to model his/her behavior after that of his/her
22 psychiatrist by identification. Further, the necessary intensity of the
23 treatment relationship may tend to activate sexual and other needs and
24 fantasies on the part of both patient and psychiatrist, while weakening the
25 objectivity necessary for control. Additionally, the inherent inequality in
26 the doctor-patient relationship may lead to exploitation of the patient.
27 Sexual activity with a current or former patient is unethical."

FIRST CAUSE FOR DISCIPLINARY ACTION

12 12. Respondent is a psychiatrist in private practice. In January 1990,
13 respondent undertook to care for and treat patient K.B.,³¹ a female adult with a history
14 of child sexual abuse. Respondent diagnosed Ms. B. as suffering from major
15 depression and he treated her with antidepressants and "supportive and insight
16 psychotherapy."
17

18 13. Ms. B. proved to be a difficult patient for respondent to treat. She
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25
26 3. In this Accusation, initials are used to protect patients' privacy. The patients'
27 actual names will be provided to respondent and/or his attorney upon receipt of an
appropriate discovery request.

1 did not make progress despite trials of several different antidepressant medications.
2 Ms. B. was hospitalized in 1990 and again early in 1991 for depression and suicidal
3 ideation.

4 14. On or about October 1, 1991, respondent permitted Ms. B. to
5 perform fellatio on him in his office during a psychotherapy session.^{4/}

6 15. On the evening of October 4, 1991 K.B. drank excessively and told
7 her family she had taken some pills. As a result, she was involuntarily hospitalized at
8 Solano Park Hospital in Fairfield on October 5, 1991. According to the evaluating
9 psychiatrist at the hospital, her chief complaint upon admission was "I want to die."
10 During this hospitalization, respondent was evidently on vacation. K.B. did not tell
11 anyone at Solano Park Hospital about the incident of fellatio with respondent on
12 October 1. K.B. discharged herself from the hospital against medical advice on
13 October 11, 1991 and was referred back to respondent for further treatment.

14 16. On or about October 29, 1991, K.B. again performed fellatio upon
15 respondent in his office during her psychotherapy session.

16 17. Between October 29 and December 4, 1991, K.B. cancelled several
17 appointments with respondent.

18 18. On or about December 4, 1991, K.B. again performed fellatio upon
19 respondent in his office during her psychotherapy session.

20 19. K.B. was reluctant to see respondent after this and missed several
21 appointments. Respondent telephoned K.B. on several occasions in January and
22 February 1992 to discuss these missed appointments. In February 1992, K.B.'s attorney
23 wrote respondent a letter stating that K.B. no longer desired his professional services.

24 20. Respondent's conduct, as set forth in paragraphs 14 through 19
25

26 4. Respondent asserts that Ms. B. initiated this sexual encounter. Ms. B. asserts
27 that respondent requested it. For purposes of this disciplinary action, the question who
initiated the encounter is irrelevant.

1 above constitutes unprofessional conduct in that these incidents constitute gross
2 negligence and repeated negligent acts in the treatment of a psychiatric patient and,
3 therefore, cause exists for discipline under Business and Professions Code sections 2234,
4 2234(a), 2234(b), and 2234 (c). Furthermore, this conduct constitutes sexual
5 misconduct and/or relations with a patient and sexual exploitation by a psychotherapist
6 in violation both of state statutes and the psychiatrists' principles of ethics and
7 therefore cause exists for disciplinary action pursuant to Business and Professions Code
8 section 726 and section 2234 and due to violations of section 729.

9
10 **SECOND CAUSE FOR DISCIPLINARY ACTION**

11 21. In or about the spring of 1987, respondent had a sexual relationship
12 with patient J.F.-K. During the time that respondent was treating patient J.F.-K. and
13 also engaging in a sexual relationship with her, respondent was also treating her
14 adolescent son, R.F.

15 22. By engaging in sexual relations with patient J.F.-K. while she was his
16 patient, respondent violated section 726 (sexual misconduct) and therefore cause for
17 disciplinary action exists.

18 **THIRD CAUSE FOR DISCIPLINARY ACTION**

19 23. The allegations of paragraph 21 are incorporated herein as if fully
20 set forth.

21 24. Respondent's conduct as alleged in paragraph 23 constitutes
22 unprofessional conduct in that these allegations describe gross negligence and/or
23 repeated negligent acts in relation to patient J.F.-K. pursuant to sections 2234 (b) and
24 (c) and therefore also constitute cause for disciplinary action.

25 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

26 25. The allegations of paragraph 21 are incorporated herein as if fully
27 set forth.

1 26. By engaging in a sexual relationship with patient J.F.-K. while at the
2 same time treating her adolescent son, patient R.F., respondent jeopardized the
3 patient-therapist relationship with patient R.F., potentially threatening the value of
4 patient R.F.'s psychotherapy and his future relationships with other therapists.

5 27. Respondent's conduct as alleged in paragraphs 21 through 26
6 constitutes unprofessional conduct in that these allegations describe gross negligence
7 and/or repeated negligent acts with respect to patient R.F. pursuant to sections 2234
8 (b) and (c) and therefore also constitute cause for disciplinary action.

9 COST RECOVERY

10 28. Pursuant to section 125.3 of the Code, the Board is authorized to
11 seek an award of its reasonable costs of investigation and enforcement in this action.

12 29. Under Business and Professions Code section 125.3(d), when
13 requested, the administrative law judge shall make a proposed finding of the amount of
14 reasonable costs of investigation and prosecution of a case.

15 **WHEREFORE**, complainant requests that the Board hold a hearing on
16 the matters hereinabove alleged and after that hearing issue an order suspending or
17 revoking physician's and surgeon's certificate No. C 38732 issued to respondent Robert
18 A. Farmer, awarding the Board its reasonable costs of investigation and enforcement,
19 and taking such other and further action as is deemed just and proper.

20
21 DATED: December 14, 1994

22 
23 DIXON ARNETT
24 Executive Director
25 Medical Board of California
26 State of California

27 Complainant