

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

In the Matter of the Accusation)
Against:)
)
)
ROBERT M. KARNS, M.D.) Case No. 17-2011-215473
)
Physician's and Surgeon's) OAH No. 2012021132
Certificate No. G-7277)
)
Respondent)
_____)

DECISION

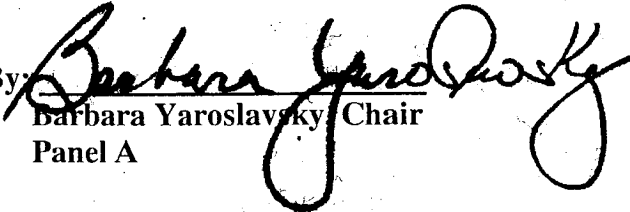
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 15, 2012.

IT IS SO ORDERED October 16, 2012.

MEDICAL BOARD OF CALIFORNIA

By:


Barbara Yaroslavyk, Chair
Panel A

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

In the Matter of the Accusation Against:

ROBERT M. KARNS, M.D.

Physician's and Surgeon's Certificate
No. G 7277,

Respondent.

Case No. 17-2011-215473

OAH No. 2012021132

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings (OAH), on September 20, 2012, in Los Angeles, California. Complainant was represented by John E. Rittmayer, Deputy Attorney General. There was no appearance by or on behalf of Robert M. Karns, M.D. (Respondent).

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on September 20, 2012.

FACTUAL FINDINGS

1. On February 2, 2012, Linda K. Whitney (Complainant) filed the Accusation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.
2. Respondent filed a Notice of Defense requesting a hearing on the Accusation.
3. On April 18, 2012, an Amended Notice of Hearing, setting forth the date, time and place of hearing, was served by United States mail on Respondent's attorney at the address of record listed in Respondent's Notice of Defense.
4. Service of the Amended Notice of Hearing conformed to the requirements of Government Code sections 11505 and 11509.

5. Respondent did not appear at the September 20, 2012 hearing.¹ At Complainant's request, the matter proceeded as a default, pursuant to Government Code section 11520.

6. On October 26, 1961, the Board issued Physician's and Surgeon's Certificate Number G 7277 to Respondent. That certificate was will expire on November 30, 2012, unless renewed.

7(a). On December 15, 2011, an Administrative Law Judge ordered Respondent's Physician's and Surgeon's Certificate be suspended.

7(b). The suspension was based on Respondent's "drug abuse and consequential violations of the law."

8. On January 4, 2012, while Respondent's license was under suspension, an undercover investigator for the Board, posing as a patient, J.G., contacted Respondent by telephone and asked if he could be seen in Respondent's office that day. Respondent agreed, but asked J.G. to hurry because he would be leaving soon.

9. J.G immediately went to Respondent's office on Beverly Drive in Los Angeles, California, and filled out paperwork about his physical condition which had been provided by a male in Respondent's reception area. Respondent then escorted J.G. to his office where J.G. told Respondent that he has having problems with back pain. Respondent took him to an examination room and examined his back by touching and manipulating it, and checked J.G.'s reflexes. After the examination, they returned to Respondent's office, and Respdnent told J.G. that he was having "back pain" and that he was going to write him a prescription.

10. On January 4, 2012, Respondent wrote J.G. a prescription for Naprosyn, dated "1/4/12," while in J.G.'s presence.

11. When Respondent was writing the prescription for Naprosyn, J.G. told Respondent that he had a persistent cough that got worse at night. Respondent told him that he would write him a prescription for Phenergan.

12(a). On January 4, 2012, Respondent wrote J.G. a prescription for Phenergan with Codeine and Vicodin ES while in J.G.'s presence. Respondent back-dated the prescription to December 15, 2011 (the date his license suspension was ordered).

12(b). Codeine and Vicodin are controlled substances.

¹ Prior to the hearing, Respondent's counsel sent a letter to OAH and Complainant's counsel informing them that Respondent would not be appearing at the September 20, 2012 hearing.

12(c). When prescriptions for controlled substances are filled, the pharmacy reports the prescription information (including the dispensing pharmacy, the medication dispensed, the patient and the prescribing physician) to a database maintained by the California Department of Justice known as the Controlled Substance Utilization Review and Evaluation System (CURES). The Board is able to use the CURES database to research a physician's prescribing history and determine when his/her prescriptions were filled. Although CURES does not track when a prescription is written, Board investigators may conduct pharmacy audits to obtain the original prescriptions. Nevertheless, investigators cannot determine from the face of the original prescription whether the date entered by the physician is the date on which the prescription was actually written. Consequently, a physician may enter an erroneous date on a prescription and thereby evade detection of his/her prescribing on dates when his/her license is suspended or otherwise not valid.

13. Respondent's examination of J.G. and Respondent's issuance of prescriptions for medications, including controlled substances, constituted the practice of medicine on January 4, 2012.

14. On January 4, 2012, immediately following J.G.'s visit with Respondent, J.G. identified himself as an undercover Board investigator. Respondent and J.G. engaged in a conversation which was witnessed by Board investigator Robin Hollis. During that conversation, Respondent admitted that he had been suspended from the practice of medicine and that he was aware of that suspension. Respondent also admitted his guilt, stating, "you got me," "so I broke the rules," and "guilty as charged."

15(a). In determining the degree of discipline, if any, to be imposed, Respondent's disciplinary history is taken into consideration.

15(b). Respondent's history of license discipline was detailed in the December 15, 2011 Ruling and Order on Petition for Interim Suspension Order (ISO). The history recounted in that ISO is set forth verbatim below:

32. In 1996, Respondent entered into a Stipulated Settlement and Decision in a case entitled, *In the Matter of the Accusation Against Robert M. Karns, M.D.*, Board case number 05-93-29051, OAH case number L9601232. In the Stipulated Settlement and Decision, effective October 11, 1996, Respondent admitted to violating Business and Professions Code section 2242 (prescribing dangerous drugs without medical justification and a good faith examination) and agreed to accept license discipline by the Board. The Board placed Respondent's medical license on probation for one year, with a stayed suspension, and other terms and conditions including completing a prescribing practices course, agreeing to maintain a record of all controlled substances prescribed, and agreeing to provide free medical services to a community services program.

33. In 2000, Respondent entered into a Stipulated Settlement and Decision in a case entitled, *In the Matter of the First Amended Accusation Against Robert M. Karns, M.D.*, Board case number 11-1998-86962, OAH case number 1999040526. In the Stipulated Settlement and Decision, effective April 24, 2000, Respondent admitted that he altered two professional boxers' medical records, for the purpose of deception, to reflect that their hepatitis B test results were negative when in fact the test results were still pending. These were violations of Business and Professions Code section 2262. The Board revoked Respondent's medical license, stayed the revocation, and placed his license on three years probation with various terms and conditions, including a requirement that Respondent provide free medical services to a community services program and complete an ethics course.

34. In 2003, Respondent entered into a Stipulated Settlement and Disciplinary Order in a case entitled, *In the Matter of the Accusation and Petition to Revoke Probation Against Robert Mitchell Karns, M.D.*, Board case number D1-1998-86962, OAH case number L2002100102. The allegations in that case included gross negligence, repeated negligent acts, incompetence, and general unprofessional conduct in Respondent's care and treatment of two patients between 1994 and 2000, and his failure to obey all laws in violation of earlier probationary terms and conditions. In the Stipulated Settlement and Disciplinary Order, effective January 5, 2004, Respondent did not admit or deny the truth of the allegations in the First Amended Accusation and Petition to Revoke Probation, but agreed that if the matter went to hearing, Complainant could put on a prima facie case establishing the allegations. Respondent agreed to license discipline. The Board revoked Respondent's medical license, stayed the revocation for three years starting on March 5, 2003, and imposed various terms and conditions, including serving a 15-day suspension, completing a medical education course, the PACE² program, and a record keeping course, and agreeing to have a practice monitor.

15(c). Following the ISO, in a Decision and Order, effective March 16, 2012, in Case Number 17-2011-215473 (Current Probation Order), adopting a Proposed Decision following an administrative hearing in January 2012, the Board revoked Respondent's certificate, stayed the revocation and placed Respondent on probation for five years on specified terms and conditions, which included: surrendering his Drug Enforcement Administration permit; maintaining a controlled substances log; abstaining from the use of

² PACE is an acronym for the Physician Assessment and Clinical Education program at the University of California, San Diego School of Medicine.

controlled substances and alcohol; submitting to biological fluid testing; completing a prescribing practice course and an ethics course; undergoing psychiatric evaluation and recommended psychotherapy; undergoing a medical evaluation and recommended treatment; and a prohibition on solo practice and supervision of physician assistants. The Current Probation Order was based on findings that Respondent abused Demerol, a controlled substance, for several years, until April 2011, and that Respondent self-prescribed Demerol and over-prescribed it for two patients who allowed him to keep the excess. Probation was ordered (rather than outright revocation) based on Respondent's progress toward recovery.

16. There was no evidence in mitigation or rehabilitation.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code section 2234 and 2306, for engaging in the practice of medicine while his license was suspended, as set forth in Factual Findings 3 through 14.

- 2(a). Business and Professions Code section 2306 provides:

If a licensee's right to practice medicine is suspended, he or she shall not engage in the practice of medicine during the term of such suspension. Upon the expiration of the term of suspension, the certificate shall be reinstated by the [Board], unless the licensee during the term of suspension is found to have engaged in the practice of medicine in this state. In that event, the [Board] shall revoke the licensee's certificate to engage in the practice of medicine.

- 2(b). The language of section 2306 makes clear that, if a licensee engages in the practice of medicine while his license is suspended, the Board "shall" revoke his certificate to practice medicine. In this case, Respondent admittedly engaged in the practice of medicine while his license was suspended. Consequently, his certificate to practice medicine must be revoked.

3. Even if there were no provision mandating revocation of Respondent's medical license, his disciplinary history warrants revocation. Prior to the ISO, Respondent had been on probation with the Board three times and should have understood the gravity of his license suspension. Nevertheless, he chose to flout the suspension and knowingly engaged in the unauthorized practice of medicine. He also attempted to conceal his violation by back-dating his prescription for controlled substances. His blatant disregard for the ISO, his continued refusal to obey the laws governing the practice of medicine, and his deceitful actions bode poorly for the success of continued probation. Furthermore, Respondent failed to appear at hearing to demonstrate any change in attitude and has provided no assurance that, if probation was ordered, he would become more compliant with the laws governing the

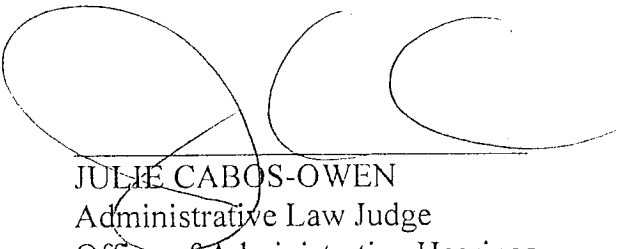
practice of medicine. Given the foregoing, the public health, safety and welfare cannot be protected by any discipline short of revocation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician's and Surgeon's Certificate Number G 7277, issued to Respondent, Robert M. Karns, M.D., is hereby revoked.

DATED: October 1, 2012



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings