

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

In the Matter of the Accusation Against:

MARK L. SAGINOR, M.D.,
Santa Monica, California

Physician and Surgeon's
Certificate No. G 8242

Respondent.

Case No. 06-2004-161565

OAH No. L2006110096

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on September 4 and 5, 2007, and on November 27, 28, 29 and 30, 2007, in Los Angeles, California.

Deputy Attorney General Edward K. Kim represented complainant.

Peter R. Osinoff, Attorney at Law, represented Mark L. Saginor, M.D., (respondent) who was present during the hearing.

Evidence was received and the record was left open to allow complainant to file a Second Amended Accusation. Complainant filed a Second Amended Accusation on December 5, 2007. Respondent did not file a reply. The record was closed and the matter was deemed submitted on November December 20, 2007. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. David T. Thornton made and filed the Accusation and the First Amended Accusation in his official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs. Barbara Johnson (complainant) made and filed the Second Amended Accusation in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On November 21, 1962, the Medical Board of California issued Physician and Surgeon's Certificate No. G 8242 to respondent. The certificate is in full force and effect.

PATIENT M.C.

3. Prior to September 7, 2004, patient M.C. attended a birthday party where she initially saw respondent though they did not formally meet. While at the party, M.C. learned that respondent was the personal physician for the publisher of a men's magazine, and that he had access to the publisher's mansion. At some point that evening, M.C. and three of her friends were invited to the publisher's mansion and they accepted the invitation. A few days later, M.C. and her friends went to the mansion to attend a party. While there, they socialized and went swimming. During this gathering, M.C. conversed with respondent and gave her cell-phone number to respondent.

4. During the days following the party at the publisher's mansion, respondent called M.C. a number of times asking her to "go out" with him. Eventually, M.C. accepted the invitation and was prepared to go out with respondent the following day but she developed a sore throat that she believed was caused by an infection. She called respondent and informed him of her sore throat. Respondent asked a couple of questions regarding M.C.'s sore throat and suggested to M.C. that she go to his residence so that he could examine her throat and give her medicine. Based on this telephone conversation, respondent determined that M.C. had thrush, (candidiasis of the oral mucosa, usually on the tongue, palate or floor of the mouth). Respondent told M.C. he would provide her with Mycelex and vaginal cream to treat the thrush. Respondent then ordered the Mycelex from Century City Medical Plaza Pharmacy. Respondent ordered the Mycelex in his own name.

5. On September 7, 2004, patient M.C. went to respondent's residence to obtain treatment for her sore throat. When she arrived, respondent looked in her throat, touched her glands, and asked her medical questions related to the infection.¹ After examining M.C., respondent gave her the bottle of Mycelex pills that had been prescribed under respondent's name. While M.C. was at respondent's house, they conversed about M.C.'s aspiration to become a professional model. M.C. told respondent that she had modeled in the past for clothing companies. Respondent then invited M.C. to come to his apartment the next day to meet a photographer who would take photos of her. M.C. accepted the invitation.

6. Respondent failed to maintain any medical records relating to his treatment of M.C.'s sore throat. Respondent also failed to accurately identify M.C. in the prescription as the patient who would receive the Mycelex.

¹ M.C. testified that she could not remember the medical questions that respondent asked.

7. On September 8, 2004, M.C. arrived at respondent's residence. She told respondent that she felt better. Respondent examined M.C.'s throat and asked a few questions regarding her symptoms. After a short conversation, respondent invited M.C. to his bedroom. While in the bedroom, respondent offered M.C. a pill later determined to be Methaqualone (also known as Quaalude).² M.C. ingested the Methaqualone. Then respondent, who was addicted to cocaine at the time, began to smoke cocaine from a glass pipe.³ He offered the pipe containing cocaine to M.C. and she smoked from it.

8. Respondent testified that he kept the container of Methaqualone as a memento and that M.C. took the Methaqualone without his knowledge and permission. He further testified that he refused M.C.'s request to smoke cocaine from his pipe because of his concerns of potential negative reactions she might have from smoking cocaine. According to respondent, M.C. smoked the cocaine pipe when he momentarily left his bedroom. This testimony is not credible. Respondent was abusing cocaine every day. He had glass pipes and other drug paraphernalia all over his bedroom, and he had no compunction against smoking it in front of others whom he hardly knew, such as M.C.

9. Later that evening, respondent's friend, Anderson C., arrived to take photographs of M.C. He made no pretense of being a professional photographer because he arrived with only a small polaroid camera and talked about using M.C. as a prostitute for his friends. M.C. was also informed that Anderson C. operated an escort service. He took a photo of M.C. in a revealing outfit and then asked her to take her clothes off and she agreed to do so. He then proceeded to take nude photos of her. M.C. knew that Anderson C. was not a professional photographer, especially after his statements regarding prostitution and after informing M.C. that he operated an escort service.

10. When Anderson C. left respondent's residence, respondent and M.C. went back to respondent's bedroom and smoked more cocaine. Respondent and M.C. attempted to engage in sexual intercourse but respondent was unable to achieve an erection. Thereafter, respondent requested that M.C. orally copulate him, which she agreed to do. M.C.'s testimony that she agreed to orally copulate respondent only because respondent had threatened her was not credible. M.C.'s testimony that she was pressured into smoking cocaine was not credible. M.C. knew exactly what she was doing at every stage of this encounter with respondent.

² Methaqualone is a Schedule I controlled substance that is no longer manufactured by drug companies.

³ Respondent started using cocaine in 2002 to relieve back pain after undergoing back surgery.

11. After the incident on September 8, 2004, M.C. filed a complaint with the Los Angeles Police Department (LAPD) against respondent alleging sexual assault and forcing her to take drugs. On October 6, 2004, officers from LAPD executed a search warrant at respondent's residence. While conducting a search of respondent's bedroom, police officers found numerous bags containing pipes used for smoking cocaine as well as bags containing narcotic residue. Thereafter, criminal charges were filed against respondent, and pursuant to a plea agreement, respondent entered a court ordered drug rehabilitation program. After respondent completed the program, criminal charges were dismissed.

12. On December 3, 2004, Superior Court Judge William C. Ryan issued an order pursuant to Penal Code section 23, prohibiting respondent from practicing medicine pending the criminal proceedings. Immediately thereafter, the Medical Board suspended respondent's physician and surgeon's certificate. On September 8, 2006, the suspension order was lifted. Respondent's certificate is now current and is scheduled to expire on January 31, 2009.

DISCUSSION

13. In issuing a proposed decision the undersigned is guided by the following:

a. With respect to standard of proof: The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853). This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478).

b. With respect to determination of witness credibility: The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67). The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." *Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767. Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890).

14. The factual findings in this case were based on the conflicting testimony of the two percipient witnesses to the incident, respondent and M.C. This required a determination of credibility based on their demeanor, the content of their testimony, and other probative evidence. In this case, neither respondent nor M.C. were completely honest in their testimony. Both tried to place themselves in a more favorable light and tried to portray the other as negatively as possible.

15. Respondent was interested in having a sexual relationship with M.C. from the very beginning. That is why respondent kept calling M.C., and that is why he offered to examine her at his residence and provide her with medicine. M.C. on the other hand, was interested in the potential connections that respondent might offer because of his long-standing relationship with the aforementioned magazine publisher. In fact, M.C. had already agreed to go on a date with respondent before the night in question. She arrived at respondent's residence dressed in a very revealing outfit, agreed to smoke cocaine, and allowed herself to be photographed nude. All of this occurred before they engaged in sex. They both willingly ingested drugs and had sex on September 8, 2004.

16. Respondent testified that he never regarded M.C. as a patient but more as a friend whom he wanted to help. This testimony is not persuasive. Respondent acted in the capacity of M.C.'s physician by examining her, providing her with medication on September 7, 2004, and re-examining her a day later.

17. Respondent next contends that even if a physician/patient relationship existed, it ended before respondent and M.C. smoked cocaine and engaged in sex. This contention is rejected. Respondent blurred the lines between his professional and personal relationship with M.C. by using his position as a physician to entice M.C. to come to his apartment by promising her free medical care. Respondent continued to blur these lines by smoking cocaine with M.C. within minutes after re-examining her on September 8, and by having sex with her a couple hours later. Expert testimony notwithstanding, the undersigned rejects the notion that a physician is free to immediately engage in otherwise prohibited conduct with a patient by completing a follow-up examination and pronouncing a patient cured.

18. Respondent's misconduct was directly related to his drug use. His drug use had caused him to lose all discretion concerning his professional behavior. The Board properly suspended respondent's physician and surgeon's certificate for a two year period, during the criminal proceedings. Since the events in question, respondent has undergone extensive drug rehabilitation and is now drug free. Although respondent failed two drug tests in March 2005, he has been clean and sober since then. He continues to attend Alcoholics Anonymous (AA) meetings on a weekly basis.

19. Respondent has practiced medicine since 1962 with no disciplinary record prior to the suspension resulting from the judicial order set forth in Factual Finding 12.⁴ Further, no evidence was presented that would indicate that respondent has violated the Medical Practice Act since the suspension order was lifted in September 2006.

⁴ Complainant contends that consideration should be given to a prior Administrative Citation when imposing discipline. This contention is rejected since complainant's exhibit 3 (license history and certification) states that "a Citation is not disciplinary action."

20. The purpose of a professional license disciplinary proceeding is to insure public protection, not to punish an individual licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d, 161). In this case, respondent has suffered a two-year suspension of his medical certificate based on the incident involving M.C. Further, respondent has been drug free for almost three years. However, there remain areas of great concern, such as past extensive drug use and professional boundary violations, that should be addressed in any disciplinary order.

LEGAL CONCLUSIONS

1. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 726 for committing acts of sexual misconduct with a patient, based on Factual Findings 3 through 10, and the Discussion section of this decision.

2. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for sexual exploitation of a patient under Business and Professions Code section 729 for engaging in an act of oral copulation with a patient, based on Factual Findings 3 through 10, and the Discussion section of this decision.

3. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct acts under Business and Professions Code sections 2234, subdivision (a) and 2238, for possession of illegal drugs, to wit, cocaine, based on Factual Findings 7 through 10 and the Discussion section of this decision.

4. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivision (a), and 2239, for use of illegal drugs, to wit, cocaine, based on Factual Findings 7 through 10, and the Discussion section of this decision.

5. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivision (a), repeated negligent acts, based on Factual Findings 4 through 6.

6. Cause exists to suspend or revoke respondent's physician and surgeon's certificate under Business and Professions Code section 2266, for failing to maintain adequate records of his treatment of M.C., based on Factual Findings 4 through 6.

7. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, based on Factual Findings 3 through 10 and the Discussion section of this decision..

8. Cause exists to suspend or revoke respondent's physician and surgeon's certificate for unprofessional conduct under Business and Professions Code section 2234, subdivision (e), based on Factual Finding 6.

9. Cause does not exist to suspend or revoke respondent's physician and surgeon's certificate for gross negligence under Business and Professions Code section 2234, subdivision (b). The evidence did not establish that respondent was grossly negligent in this case.

ORDER

Certificate No. G 8242, issued to respondent Mark L. Saginor, M.D., is revoked pursuant to Legal Conclusions I through 8. However, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Controlled Substances - Total Restriction

Respondent shall not order, prescribe, dispense, administer, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If respondent forms the medical opinion, after a good faith prior examination, that a patient's medical condition may benefit from the use of marijuana, respondent shall so inform the patient and shall refer the patient to another physician who, following a good faith examination, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, respondent shall inform the patient or the patient's primary caregiver that respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

//

2. Controlled Substances - Surrender of DEA Permit

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Division or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any state prescription forms and all controlled substances order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Division or its designee.

3. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, respondent shall notify the Division or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

4. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

5. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Division or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

6. Medical Record Keeping Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first six months of probation is a violation of probation.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

7. Ethics Course

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

8. Professional Boundaries Program

Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine (Program). Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Division or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Division or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Division or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Division or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice medicine safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Division or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

If respondent fails to complete the Program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Division or its designee that respondent failed to complete the Program.

9. Notification

Prior to engaging in the practice of medicine, respondent shall provide a true copy of the Decision and Second Amended Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to changes in hospitals, other facilities or insurance carrier.

10. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

11. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

12. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

13. Probation Unit Compliance

Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

14. Interview with Division or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

15. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing thirty 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or

practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and Probation Unit Compliance.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

16. Failure to Practice Medicine – California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty (30) calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

17. Completion of Probation

Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

//

//

18. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

19. License Surrender


Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within 15 calendar days, deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: January 15, 2008


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 PAUL C. AMENT
Supervising Deputy Attorney General
3 EDWARD K. KIM, State Bar No. 195729
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-7336
6 Facsimile: (213) 897-9395

7 Attorneys for Complainant

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

11 In the Matter of the Second Amended Accusation
Against:

Case No. 06-2004-161565

12 MARK L. SAGINOR, M.D.
13 2428 Santa Monica Blvd. Suite 404
14 Santa Monica, CA 90404

**SECOND AMENDED
ACCUSATION**

15 Physician and Surgeon's Certificate No. G8242
16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Barbara Johnston (Complainant) brings this Second Amended Accusation
20 (Accusation) solely in her official capacity as the Executive Director of the Medical Board of
21 California, Department of Consumer Affairs.

22 2. On or about November 21, 1962, the Medical Board of California (Board)
23 issued Physician and Surgeon's Certificate Number G8242 to Mark L. Saginor, M.D.
24 (Respondent). The Physician and Surgeon's Certificate expired on January 25, 2005, and has not
25 been renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Division of Medical Quality
28 (Division) for the Medical Board of California, Department of Consumer Affairs, under the

1 authority of the following laws. All section references are to the Business and Professions Code
2 (Code) unless otherwise indicated.

3 4.Section 2234 of the Code states:

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

7 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
8 abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5,
9 the Medical Practice Act].

10 "(b) Gross negligence.

11 "(c) Repeated negligent acts. To be repeated, there must be two or more
12 negligent acts or omissions. An initial negligent act or omission followed by a separate
13 and distinct departure from the applicable standard of care shall constitute repeated
14 negligent acts.

15 "(1) An initial negligent diagnosis followed by an act or omission medically
16 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
17 act.

18 "(2) When the standard of care requires a change in the diagnosis, act, or
19 omission that constitutes the negligent act described in paragraph (1), including, but not
20 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
21 conduct departs from the applicable standard of care, each departure constitutes a separate
22 and distinct breach of the standard of care.

23 "(d) Incompetence.

24 "(e) The commission of any act involving dishonesty or corruption which is
25 substantially related to the qualifications, functions, or duties of a physician and surgeon.

26 "(f) Any action or conduct which would have warranted the denial of a
27 certificate."

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Section 2238 of the Code states:

“A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.”

6. 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.

“(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.”

7. Section 2266 of the Code states:

“The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

8. Section 726 of the Code states:

“The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action

1 for any person licensed under this division, under any initiative act referred to in this division and
2 under Chapter 17 (commencing with Section 9000) of Division 3.

3 “This section shall not apply to sexual contact between a physician and surgeon
4 and his or her spouse or person in an equivalent domestic relationship when that physician and
5 surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse
6 or person in an equivalent domestic relationship.”

7 9. Section 729 of the Code states:

8 “(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse
9 counselor or any person holding himself or herself out to be a physician and surgeon,
10 psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual
11 intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former
12 patient or client when the relationship was terminated primarily for the purpose of engaging in
13 those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse
14 counselor has referred the patient or client to an independent and objective physician and
15 surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party
16 physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is
17 guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug
18 abuse counselor.

19 “(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol
20 and drug abuse counselor is a public offense:

21 “(1) An act in violation of subdivision (a) shall be punishable by imprisonment in
22 a county jail for a period of not more than six months, or a fine not exceeding one
23 thousand dollars (\$1,000), or by both that imprisonment and fine.

24 “(2) Multiple acts in violation of subdivision (a) with a single victim, when the
25 offender has no prior conviction for sexual exploitation, shall be punishable by
26 imprisonment in a county jail for a period of not more than six months, or a fine not
27 exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

28 “(3) An act or acts in violation of subdivision (a) with two or more victims shall

1 be punishable by imprisonment in the state prison for a period of 16 months, two years, or
2 three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts
3 shall be punishable by imprisonment in a county jail for a period of not more than one
4 year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment
5 and fine.

6 “(4) Two or more acts in violation of subdivision (a) with a single victim, when
7 the offender has at least one prior conviction for sexual exploitation, shall be punishable
8 by imprisonment in the state prison for a period of 16 months, two years, or three years,
9 and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be
10 punishable by imprisonment in a county jail for a period of not more than one year, or a
11 fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

12 “(5) An act or acts in violation of subdivision (a) with two or more victims, and
13 the offender has at least one prior conviction for sexual exploitation, shall be punishable
14 by imprisonment in the state prison for a period of 16 months, two years, or three years,
15 and a fine not exceeding ten thousand dollars (\$10,000).

16 “For purposes of subdivision (a), in no instance shall consent of the patient or client be a
17 defense. However, physicians and surgeons shall not be guilty of sexual exploitation for
18 touching any intimate part of a patient or client unless the touching is outside the scope of
19 medical examination and treatment, or the touching is done for sexual gratification.

20 “(c) For purposes of this section:

21 “(1) "Psychotherapist" has the same meaning as defined in Section 728.

22 “(2) "Alcohol and drug abuse counselor" means an individual who holds himself
23 or herself out to be an alcohol or drug abuse professional or paraprofessional.

24 “(3) "Sexual contact" means sexual intercourse or the touching of an intimate part
25 of a patient for the purpose of sexual arousal, gratification, or abuse.

26 “(4) "Intimate part" and "touching" have the same meanings as defined in Section
27 243.4 of the Penal Code.

28 “(d) In the investigation and prosecution of a violation of this section, no person

1 shall seek to obtain disclosure of any confidential files of other patients, clients, or former
2 patients or clients of the physician and surgeon, psychotherapist, or alcohol and drug abuse
3 counselor.

4 “(e) This section does not apply to sexual contact between a physician and
5 surgeon and his or her spouse or person in an equivalent domestic relationship when that
6 physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his
7 or her spouse or person in an equivalent domestic relationship.

8 “(f) If a physician and surgeon, psychotherapist, or alcohol and drug abuse
9 counselor in a professional partnership or similar group has sexual contact with a patient in
10 violation of this section, another physician and surgeon, psychotherapist, or alcohol and drug
11 abuse counselor in the partnership or group shall not be subject to action under this section solely
12 because of the occurrence of that sexual contact.”

13 FIRST CAUSE FOR DISCIPLINE

14 (Sexual Misconduct)

15 10. Respondent is subject to disciplinary action under section 726 of the Code
16 in that he committed acts of sexual misconduct in the care and treatment of a patient. The
17 circumstances are as follows:

18 Patient Monica C.¹

19 11. On or about September 7, 2004, patient Monica C. went to Respondent’s
20 residence to obtain treatment for a throat infection. While she was there, Respondent looked in
21 her throat, touched her glands, and asked her medical questions related to the infection. After the
22 examination Respondent gave her a bottle of Mycelex pills which he prescribed under his own
23 name at a local pharmacy. Subsequently after taking the medication, Monica C. felt much better.
24 Respondent invited Monica C. to come over the next day to meet a photographer.

25 12. On or about September 8, 2004 Monica C. arrived at the residence of
26

27 1. Initials are used in this pleading to protect patient privacy. Respondent will be provided
28 with identifying information if discovery is requested.

1 Respondent where he examined her glands as a follow up from the prior day's visit. He then
2 gave her a pill² telling her that it was for her throat. After taking the pill, Monica C. began to feel
3 "hazy."

4 13. Later on September 8, 2004, Respondent mixed a white substance into a
5 paste³ put it in a pipe, held it at Monica C.'s mouth, heated it with a lighter, and told her to
6 smoke it. Although Monica C. did not want to smoke the pipe, she could not resist Respondent's
7 commands due to the effects of the methaqualone pill she had taken. Monica C. smoked the
8 substance at Respondent's direction. Respondent also smoked the substance.

9 14. Due to the effects of the methaqualone and cocaine administered by
10 Respondent to Monica C., she became extremely disoriented, and at some point during her visit
11 with Respondent on September 8, 2004, her clothes and a tampon used by Monica C., who was
12 on her period at the time, were removed. A photographer arrived later that day as well, and
13 pictures were taken of Monica C., both clothed and nude.

14 15. Upon the photographer's departure, Respondent attempted to engage in
15 sexual intercourse with Monica C., but was not able to become aroused.

16 16. At some point during her visit with Respondent on September 8, 2004
17 Monica C. orally copulated Respondent. Although she wanted to stop due to the pain in her
18 mouth from a recent tongue piercing, Respondent would not let her. She eventually bit
19 Respondent during oral copulation which angered him.

20 17. On October 7, 2004, a search warrant was executed by the Los Angeles
21 Police Department at Respondent's residence located at 1300 Midvale Avenue, No. 307, Los
22 Angeles CA 90024. During the search, police officer recovered several illegal items, including
23 without limitation, a loaded assault weapon commonly known as an Uzi, and two fully loaded
24 magazines, several narcotic pipes with smoked residue, bags, bottles and dishes containing

25
26 2. This pill was methaqualone, a Schedule I controlled substance with high potential for
27 abuse and no currently acceptable medical use.

28 3. This substance contained cocaine, a Schedule II controlled substance with high potential
for abuse.

1 controlled substances, small pictures of Monica C., and a used tampon.

2 18. During the September 8, 2004 visit by Monica C., Respondent committed
3 acts of sexual misconduct in that he engaged in sexual contact and oral copulation for sexual
4 gratification that was unrelated to, and outside the scope of, the medical treatment of patient.

5 SECOND CAUSE FOR DISCIPLINE

6 (Sexual Exploitation)

7 19. Respondent is subject to disciplinary action under section 729 of the Code
8 in that he engaged acts of oral copulation and sexual contact with patient Monica C. constituting
9 unprofessional conduct and grounds for disciplinary action under the Medical Practices Act,
10 Business and Professions Code section 2000 et seq. The facts and circumstances, set forth in
11 Paragraphs 11 through 18 of this Accusation, are incorporated herein by reference.

12 THIRD CAUSE FOR DISCIPLINE

13 (Possession of Illegal Dangerous Drugs and Controlled Substances)

14 20. Respondent is subject to disciplinary action under section 2238 of the
15 Code in that he possessed an illegal dangerous drug and controlled substance, to wit, cocaine.
16 The facts and circumstances, set forth in Paragraphs 11 through 18 of this Accusation, are
17 incorporated herein by reference.

18 FOURTH CAUSE FOR DISCIPLINE

19 (Use of Drugs)

20 21. Respondent is subject to disciplinary action under section 2239 of the
21 Code in that he used an illegal controlled substance, to wit, cocaine. The facts and
22 circumstances, set forth in Paragraphs 11 through 18 of this Accusation, are incorporated herein
23 by reference.

24 FIFTH CAUSE FOR DISCIPLINE

25 (Gross Negligence)

26 22. Respondent is subject to disciplinary action under section 2234,
27 subdivision (b), of the Code in that he was grossly negligent in the case and treatment of a
28 patient by providing Monica C. with methaqualone and cocaine, and engaging in sexual contact

1 and oral copulation with her. The facts and circumstances, set forth in Paragraphs 11 through 18
2 of this Accusation, are incorporated herein by reference.

3 SIXTH CAUSE FOR DISCIPLINE

4 (Repeated Negligent Acts)

5 23. Respondent is subject to discipline pursuant to section 2234, subdivision
6 (c), of the Code, in that respondent was repeatedly negligent in the care and treatment of patient
7 Monica C. The circumstances are as follows:

8 A. The allegations of the Fifth Cause for Discipline are incorporated herein
9 by reference as if fully set forth.

10 B. The acts and/or omissions set forth in paragraph 22 above constitute
11 departures from the standard of care.

12 C. In addition, Respondent committed repeated negligent acts in the case and
13 treatment of patient Monica C. (a) by failing to maintain any medical records of patient Monica
14 C. in regards to treating her sore throat, and (b) by failing to accurately identify, in a prescription,
15 the patient for whom the medication was intended, viz., by writing a prescription for Mycelex for
16 himself and providing it to Monica C. instead of writing the prescription for Monica C. directly.

17 SEVENTH CAUSE FOR DISCIPLINE

18 (Failure to Maintain Adequate Records)

19 24. Respondent is subject to disciplinary action under section 2266 of the
20 Code in that he failed to maintain adequate and accurate records relating to the provision of
21 services to a patient by failing to maintain any medical records of patient, Monica C. in regards to
22 treating her sore throat.

23 EIGHTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 25. Respondent is subject to disciplinary action under section 2234 of the
26 Code in that respondent engaged in unprofessional conduct in the care and treatment of patients.
27 The facts and circumstances, set forth in Paragraphs 11 through 18 of this Accusation, are
28 incorporated herein by reference.

1 NINTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Dishonesty)

3 26. Respondent is subject to disciplinary action under section 2234,
4 subdivision (e), of the Code in that respondent engaged in unprofessional conduct and dishonesty
5 in the care and treatment of patients. The facts and circumstances, set forth in Paragraphs 11
6 through 25 of this Accusation, are incorporated herein by reference. In addition, respondent
7 ordered a prescription for Mycelex pills in his own name, intending to provide them to M.C., and
8 ultimately provided them to M.C. to treat her medical condition.

9 DISCIPLINE CONSIDERATION

10 27. To determine the degree of discipline, if any, to be imposed on
11 Respondent, Complainant alleges the following:

12 28. On or about October 18, 2002, the Board issued an Administrative
13 Citation to Respondent, Citation Number 06-2002-131216 for failing to maintain adequate and
14 accurate medical records, which resulted in a fine being issued to Respondent to pay \$350.

15 ///

16 ///

17 ///

18

19

20

21

22

23

24

25

26

27

28

