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

In the Matter of the Accusation
Against:

LAWRENCE CARTER AGEE, M.D.

Physician's and Surgeon's
Certificate No. G-59995

Respondent.

File No. 02-1999-104162

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 11, 2000.

IT IS SO ORDERED September 11, 2000.

MEDICAL BOARD OF CALIFORNIA

By: 

Ira Lubell, M.D., Chair

Panel A

Division of Medical Quality

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

In the Matter of the Accusation Against:

LAWRENCE CARTER AGEE, M.D.
3288 Bell Road
Auburn, CA 95603

Physician and Surgeon's
License No. G-59995,

Respondent.

Case No. 02-1999-104162

OAH No. N2000080090

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Medical Quality Hearing Panel, Office of Administrative Hearings, in Sacramento, California, on August 25, 2000.

Complainant was represented by Fred A. Slimp II, Deputy Attorney General, Health Quality Enforcement Section, Department of Justice, State of California.

Respondent Lawrence Carter Agee, M.D. ("respondent"), appeared and represented himself.

Evidence was received and the matter deemed submitted on August 25, 2000.

FACTUAL FINDINGS

1. Complainant Ronald Joseph filed the Accusation against respondent solely in his official capacity as the Executive Director of the Medical Board of California ("the Board"), State of California.

2. On May 4, 1987, the Board issued Physician and Surgeon's Certificate No. G-59995 to respondent.¹

3. Board Senior Special Investigator M██████████ M██████████ learned in November 1999, that respondent, licensed to practice medicine in the State of Vermont, was the subject of disciplinary action relating to his activities as a physician and surgeon. Mr. M██████████ invited respondent to a Board office to discuss the matter with him. Respondent refused. Mr. M██████████ then followed his request with an administrative subpoena and respondent complied. During respondent's meeting with Mr. M██████████ and a Board medical consultant, Mr. M██████████ requested that respondent submit to a voluntary mental examination. Respondent declined, mentioning that he had previously submitted to such examinations. Mr. M██████████ then requested releases. Respondent indicated he would execute such releases. Despite his representation, respondent never submitted any releases for the Board to review respondent's mental capacity to practice medicine safely; accordingly, Mr. M██████████ sought an order on May 11, 2000, from the Board seeking a mental and physical examination of respondent.

4. On May 18, 2000, pursuant to a Petition to Compel Mental and Physical Examination, Ira Lubell, M.D., Chair, Panel A, Division of Medical Quality, Medical Board of California, issued an Order Granting Petition to Compel Mental and Physical Examination pursuant to Business and Professions Code section 820, directed against respondent which stated, in pertinent part:

- A. "Lawrence Carter Agee, M.D. shall submit to an examination to be conducted by one or more physicians and surgeons or psychologists designated by the Board in order to determine whether Lawrence Carter Agee, M.D. is unable to practice medicine safely because of impairment due to mental illness or physical illness affecting competency.
- B. "The failure of respondent Lawrence Carter Agee, M.D. to comply with this order by either refusing or failing to submit to the examination, or refusing or failing to cooperate with the examiner(s), shall constitute grounds for disciplinary action against respondent's California physician and surgeon's certificate pursuant to Business and Professions Code section 821."

¹ Since his licensure, respondent has been notified that he has not demonstrated CME compliance.

5. Having served the order referenced in Finding 4, Mr. Machado, by letter dated May 23, 2000, scheduled an appointment for respondent to meet with a Board designated psychiatrist, M[REDACTED] M[REDACTED], M.D., on June 6, 2000.

6. On June 7, 2000, Dr. M[REDACTED] contacted Mr. M[REDACTED] and advised him that respondent had failed to attend the appointment. Mr. M[REDACTED] telephoned respondent who advised that he would not make any appointment with Dr. M[REDACTED]

7. On June 8, 2000, Mr. M[REDACTED], despite respondent's refusal to attend any appointment with Dr. M[REDACTED], nevertheless dispatched another letter scheduling an appointment with Dr. M[REDACTED] on June 21, 2000.

8. On June 9, 2000, in keeping with the Board's Order, Mr. M[REDACTED] also advised respondent that a physical examination had been scheduled on July 6, 2000.²

9. Respondent, claiming in correspondence directed to Mr. M[REDACTED] that he had "no intention in complying with bogus harassing orders that have no factual basis", failed to attend the appointments set by Mr. M[REDACTED] for either June 21, 2000, or July 6, 2000.

10. Respondent, appearing before this tribunal, has no comprehension of the import of Business and Professions Code section 821. Increasingly hostile and previously married to a psychologist, he perceives himself a victim of false allegations in Vermont with this concomitant action and proceeding in California.³ He adamantly refuses to submit to the Board's Order.

Circumstances in Mitigation

11. Respondent has no prior disciplinary record.

Circumstances in Aggravation

12. Respondent, incessantly fighting with the Board's interest in protecting the public, has taken a cavalier approach to the Board proceedings.

13. Respondent, overlooking the statutory mandate of the Board's jurisdiction and purpose, views its action as mere harassment.

² In each letter to respondent, Mr. M[REDACTED] advised him that failure to comply with the Board's Order constituted grounds for the suspension or revocation of his medical license.

³ Despite numerous efforts by this tribunal to convey to respondent the limited ambit of this proceeding, his efforts to expand the hearing to litigate the underlying action in Vermont were, upon proper objection by the Complainant, repeatedly overruled.

14. Respondent's demeanor, lack of composure, or comprehension into the import of these proceedings, and references relating to his mental state, cause this tribunal particular concern as to his continuing mental capacity to practice medicine safely. It is clear that respondent requires psychotherapeutic intervention.

Costs Findings

15. The Board has incurred reasonable costs of \$3,886.95 in the investigation, prosecution, and enforcement of this matter.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend the physician and surgeon's certificate of respondent for failing to comply with an order pursuant to Business and Professions Code sections 820 – 821 as set forth in Findings 2 – 10.

2. Cause exists to order respondent to pay \$3886.95 as and for the reasonable costs of investigation, prosecution, and enforcement of this matter pursuant to the provisions of Business and Professions Code §125.3 and as set forth in Legal Conclusion 1 and Finding 15.

3. The objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in Board licensure. Cf. *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816. This Board, and its tribunal, have a statutory obligation to assure the public that the person holding its issued license is both qualified and continuously meeting the minimum standards of practice. The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from respondent. *Mephram v. State Bar* (1986) 42 Cal.3d 943, 948; *In the Matter of Rodriguez* (1993) 2 Cal. State Bar Ct. Rptr. 480, 501; see also *Fahmy, supra*. While in the exercise of disciplinary authority, an Administrative Law Judge of the Medical Quality Hearing Panel is mandated to "take action that is calculated to aid in the rehabilitation of the licensee" (Business and Professions Code §2229(b)), in *Fahmy, supra* at p. 817, the appellate court observed that the purpose of a disciplinary proceeding such as this is "to afford protection to the public..." Complainant prays for the suspension of respondent's certificate. Deferring to complainant's request, and there being no evidence sufficient to compel a viable and more favorable alternative in light of respondent's adamant refusal to submit to a Board Order compelling an examination of his mental or physical capacity to safely practice medicine, this tribunal guardedly accedes to complainant's prayer and concludes that the suspension as opposed to the revocation of respondent's certificate is compelled. Accordingly, balancing the respective interests, and mindful of the statutory mandate imposed on this tribunal to protect the public, it is determined that respondent's certificate should be suspended; accordingly, giving due consideration to the facts and circumstances underlying the Accusation (Legal Conclusion 1), the evidence of mitigation (Finding 11) and aggravation

(Findings 12 – 14), the public interest compels the suspension of the certificate of respondent as a physician and surgeon.

ORDER

1. Physician and Surgeon Certificate No. G-59995 issued to respondent Lawrence Carter Agee, M.D., is suspended.

2. Respondent Lawrence Carter Agee, M.D., Physician and Surgeon Certificate No. G- 59995, is ordered to pay forthwith the sum of \$3886.95 to the Medical Board of California.

Dated: 8/25/60



JAIME RENÉ ROMAN

Administrative Law Judge

Medical Quality Hearing Panel

Office of Administrative Hearings

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of the State of California
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8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation) Case No. 02-1999-104162
Against:)
12)
13 **LAWRENCE CARTER AGEE, M.D.**) **A C C U S A T I O N**
3288 Bell Road)
Auburn, CA 95603)
14)
Physician and Surgeon's)
15 Certificate No. G-59995,)
16 Respondent.)
_____)

17
18 The Complainant alleges:

19 **PARTIES**

20 1. Complainant, Ronald Joseph, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this accusation solely in his official
23 capacity.

24 2. On or about May 4, 1987, Physician and Surgeon's
25 Certificate No. G-59995 was issued by the Board to Lawrence
26 Carter Agee, M.D. (hereinafter "respondent"), and at all times
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1 relevant to the charges brought herein, this license has been in
2 full force and effect. Unless renewed, it will expire on
3 September 30, 2000.

4 JURISDICTION

5 3. This accusation is brought before the Division of
6 Medical Quality of the Medical Board of California, Department of
7 Consumer Affairs (hereinafter the "Division"), under the
8 authority of the following sections of the California Business
9 and Professions Code (hereinafter "Code") and/or other relevant
10 statutory enactment:

11 A. Section 2227 of the Code provides that the Board
12 may revoke, suspend for a period not to exceed one year, or
13 place on probation, the license of any licensee who has been
14 found guilty under the Medical Practice Act and may recover
15 the costs of probation monitoring if probation is imposed.

16 B. Section 821 of the Code provides that the Board
17 may revoke or suspend the certificate of a physician and
18 surgeon who fails to comply with an order issued pursuant to
19 Code section 820.

20 C. Section 125.3 of the Code provides in part that
21 the Board may request the administrative law judge to direct
22 any licentiate found to have committed a violation or
23 violations of the licensing act to pay the Board a sum not
24 to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 D. Section 14124.12(a) of the Welfare & Institutions
27

1 Code provides in pertinent part that upon written notice of
2 the Medical Board of California that a physician and
3 surgeon's medical license has been placed on probation as a
4 result of a disciplinary action, no Medi-Cal claim for the
5 type of surgical service or invasive procedure giving rise
6 to the probationary order and performed on or after the
7 effective date of said probationary order or during the
8 period of probation shall be reimbursed, except upon a prior
9 determination that compelling circumstances warrant the
10 continuance of reimbursement during the probationary period
11 for procedures other than those giving rise to the
12 probationary order.

13 4. Respondent is subject to revocation or suspension
14 of licensure within the meaning of Code section 821 as more
15 particularly set forth hereinbelow.

16 **FIRST CAUSE FOR REVOCATION OR SUSPENSION OF CERTIFICATE**

17 (Failure to Comply with Order Pursuant to Bus. & Prof. C. § 820)
18 [Bus. & Prof. Code § 821]

19 5. On or about May 11, 2000 a Petition to Compel
20 Mental & Physical Examination pursuant to Bus. & Prof. Code
21 section 820 was filed against respondent.

22 6. Thereafter on or about May 18, 2000 the Petition
23 indicated in paragraph 5, above, was granted by the Board and an
24 Order Granting Petition to Compel Mental & Physical Examination
25 issued against respondent on or about the same date.

26 7. The Order Granting Petition, etc. as set forth in
27 paragraph 6, above, directed inter alia that respondent "shall

1 submit to an examination to be conducted by one or more
2 physicians and surgeons or psychologists designated by the Board
3 in order to determine whether Lawrence Carter Agee, M.D. is
4 unable to practice medicine safely because of impairment due to
5 mental illness or physical illness affecting competency."

6 8. The said Order Granting Petition, etc. as set
7 forth in paragraph 6, above, also provided that "The failure of
8 respondent Lawrence Carter Agee, M.D. to comply with this order
9 by either refusing or failing to submit to the examination, or
10 refusing or failing to cooperate with the examiners, shall
11 constitute grounds for disciplinary action against respondent's
12 California physician and surgeon's certificate pursuant to Bus. &
13 Prof. Code section 821."

14 9. The Order Granting Petition, etc. as set forth in
15 paragraph 6, above was served on respondent by private courier on
16 or about May 18, 2000.

17 10. No later than June 11, 2000 respondent refused to
18 comply with the Order Granting Petition, etc. as set forth in
19 paragraph 6, above.

20 11. Respondent's conduct as set forth in paragraph 10,
21 above, constitutes conduct subjecting respondent to revocation or
22 suspension of licensure within the meaning of Code section 821.

23 **PRAYER**

24 **WHEREFORE** complainant requests that a hearing be held
25 on the matters herein alleged and that, following the hearing,
26 the Division issue a decision:

1 1. Revoking or suspending Physician and Surgeon
2 Certificate Number G-59995 heretofore issued to respondent
3 Lawrence Carter Agee, M.D.;

4 2. Ordering respondent to pay the Division the actual
5 and reasonable costs of the investigation and enforcement of this
6 case; and

7 3. Taking such other and further action as the
8 Division may deem necessary or proper.

9 DATED: June 29, 2000 .

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Ronald Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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