

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

In the Matter of the Accusation Against:

Randy Scott Rosen, M.D.

Physician's and Surgeon's
Certificate No. G 82218

Respondent.

Case No. 800-2020-067056

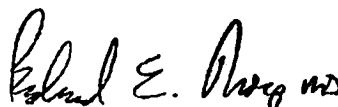
DECISION

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 August 04, 2023.

IT IS SO ORDERED July 05, 2023.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

RANDY SCOTT ROSEN, M.D.,

**Physician's and Surgeon's Certificate No. G 82218,
Respondent.**

Agency Case No. 800-2020-067056

OAH No. 2022100632

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 21, 2023. Reji Varghese (Complainant), Interim Executive Director of the Medical Board of California (Board), was represented by LeAnna E. Shields, Deputy Attorney General. Jerry Sparks, Attorney at Law, represented Randy Scott Rosen, M.D. (Respondent), who was not present.

Documents were received in evidence. The record was left open to allow submission of closing and reply briefs. At the hearing, Complainant submitted a Trial Brief that was accepted as Complainant's Closing Brief, marked as Complainant's

Exhibit 19, and lodged. Respondent submitted a Closing Brief which was marked for identification as Respondent's Exhibit A and lodged. Complainant submitted "Complainant's Rebuttal" which is marked for identification as Complainant's Exhibit 20 and lodged. The record closed and the matter was submitted for decision on April 12, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On March 20, 1996, the Board issued Physician's and Surgeon's Certificate Number G 82218 (license) to Respondent. That license is scheduled to expire on June 30, 2023.
2. On September 21, 2022, William Prasifka, former Executive Director of the Board, filed the Accusation while acting in his official capacity. On September 21, 2022, Complainant, while acting in his official capacity as Deputy Director of the Board, filed the Notice of Automatic Suspension on behalf of former Executive Director William Prasifka. The Accusation and Notice of Automatic Suspension arose from Respondent's criminal convictions for insurance fraud detailed below.
3. On September 30, 2022, Respondent submitted a request for a hearing on the Automatic Suspension. On that date, he also filed a Notice of Defense requesting a hearing.
4. Jurisdiction to proceed with this hearing has been established.

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Respondent's Criminal Convictions

CASE No. 20CF1675

5. On June 26, 2020, a criminal complaint was filed against Respondent charging him with 41 felony counts of insurance fraud with several enhancements. (Super. Ct. Orange County, 2020 No. 20CF1675.)

6. On July 10, 2020, an amended complaint was filed charging Respondent with 41 felony counts of insurance fraud with enhancements. Specifically, Respondent was charged with 24 counts of violating Penal Code section 550, subdivision (b)(3) (insurance fraud), and 17 counts of violating Penal Code section 550, subdivision (a)(5) (insurance fraud - written claim). The amended complaint also alleged enhancements as to all 41 counts pursuant to Penal Code sections 1203.045, subdivision (a) (over \$100,000 loss); 12022.1, subdivision (b) (commission of crime while on bail); 186.11, subdivisions (a)(1) and (a)(3) (aggravated white collar crime over \$100,000 loss); and 186.11, subdivisions (a)(1) and (a)(2) (aggravated white collar loss).

7. On July 15, 2020, the court entered an order by stipulation of the parties prohibiting Respondent from practicing medicine "until the . . . criminal proceeding is fully and completely completed." (Exhibit 6, p. A149.)

8. On August 12, 2022, Respondent signed a change of plea form admitting guilt to four counts of violating Penal Code section 550, subdivision (b)(3) (insurance fraud). Respondent also admitted the enhancement of Penal Code section 186.11, subdivision (a)(1) and (a)(2) (aggravated white collar crime over \$500,000 loss).

9. On August 12, 2022, Respondent signed a statement admitting the factual bases for his guilty plea. Specifically, he admitted that, between July 6, 2016

and October 2, 2019, between January 19, 2017 and October 27, 2017, between July 29, 2016 and January 18, 2018, and between June 28, 2016 and June 18, 2019:

[W]ith the intent to defraud, I did unlawfully conceal and knowingly fail to disclose, and did knowingly assist with another person to conceal and fail to disclose the occurrence of an event and a fact that affected the initial and continued material right and entitlement of Lotus Laboratories to an insurance benefit and payment, and to the amount of a benefit and payment to which Lotus Laboratories was entitled, namely: failing to disclose [Respondent] had an indirect financial interest in Lotus Laboratories when he referred workers compensation patients to Lotus Laboratories for urine toxicology testing, and Lotus Laboratories billed AIG on [25] claims[,] [1] billed American Insurance Management Services on [one] claim[,] billed ATHENS on [10] claims; and] billed Berkshire Hathaway Homestate Companies on [nine] claims[.] Further, in violation of Penal Code section 186.11(a) (1)/(2), that as to counts above, I engaged in a pattern of related fraudulent felony conduct involving the taking of more than five hundred thousand dollars (\$500,000).

(Exhibit 7, pp. A157-A158.)

10. On August 12, 2022, Respondent's guilty plea was accepted by the Court. Respondent was sentenced to 10 years in state prison and ordered to pay restitution in the amount of \$952,639.58.

CASE No. 20CF1682

11. On June 25, 2020, another criminal complaint was filed against Respondent. (Super. Ct. Orange County, 2020 No. 20CF1682.)

12. On July 10, 2020, a first amended complaint was filed, and on July 15, 2020, a second amended complaint was filed. Specifically, Respondent was charged with one felony count of violating Penal Code section 182, subdivision (a)(1) (conspiracy); eight felony counts of violating Penal Code section 550, subdivision (a)(5) (insurance fraud - written claim); 15 felony counts of violating Penal Code section 550, subdivision (b)(3) (insurance fraud); three felony counts of violating Business and Professions Code section 650, subdivision (a) (unlawful compensation-inducement for patient referrals); and 41 felony counts of violating Penal Code section 186.10, subdivision (a) (money laundering). The second amended complaint also alleged enhancements pursuant to: Penal Code section 1203.045, subdivision (a) (over \$100,000 loss) as to counts 1 through 27; Penal Code section 12022.1, 25 subdivision (b) (commission of crime while on bail) as to counts 1 through 68; Penal Code section 186.10, subdivision (c)(1)(B) (transaction value over \$150,000) as to counts 28 through 39, 48 through 50, and 61 through 68; Penal Code section 186.10, subdivision (c)(1)(C) (transaction value over \$1 million) as to counts 40 through 47; Penal Code section 186.22, subdivisions (a)(1) and (a)(2) (aggravated white collar crime over \$500,000 loss) as to counts 2 through 24; and Penal Code section 186.10, subdivision (c)(1)(A) (transaction value over \$50,000) as to count 51.

13. On July 15, 2020, the Court entered an order by stipulation of the parties prohibiting Respondent from practicing medicine "until the . . . criminal proceeding is fully and completely completed." (Exhibit 10, p. A379.)

14. On August 12, 2022, Respondent signed a change of plea form admitting guilt to two counts of violating Penal Code section 550, subdivision (a)(5) (insurance fraud-written claim) and two counts of violating Penal Code section 550, subdivision (b)(3) (insurance fraud). Respondent also admitted one enhancement of Penal Code section 186.11, subdivision (a)(1) and (a)(2) (aggravated white collar crime over \$500,000 loss).

15. On August 12, 2022, Respondent signed a statement admitting the following factual bases for his guilty plea:

On or about and between June 01, 2017 and May 31, 2019, with the intent to defraud, I did knowingly and unlawfully prepare, make, and subscribe a material writing, with the intent to present and use it, and to allow it to be presented to Optum / United Health Care, in support of a false and fraudulent claim, and did aid and abet, and solicit another to do the same.

On or about and between June 01, 2017 and May 31, 2019, with the intent to defraud, I did unlawfully conceal and knowingly fail to disclose, and did knowingly assist with another person to conceal and fail to disclose the occurrence of an event and a fact that affected the initial and continued material right and entitlement of the defendant and others to an insurance benefit and payment, and to the amount of a benefit and payment to which the defendant and others were entitled, namely: failing to disclose that marketers were paid to refer patients to

undergo Naltrexone implants on the bills submitted for those procedures to Optum / United Health Care.

On or about and between February 20, 2018 and March 01, 2018, with the intent to defraud, I did unlawfully conceal and knowingly fail to disclose, and did knowingly assist with another person to conceal and fail to disclose the occurrence of an event and a fact that affected the initial and continued material right and entitlement of the defendant and others to an insurance benefit and payment, and to the amount of a benefit and payment to which the defendant and others were entitled, namely: failing to disclose that marketers were paid to refer patients to undergo Naltrexone implants on the bills submitted for those procedures on patient Kari S. of Optum/ United Health Care.

On or about and between June 01, 2017 and October 17, 2018, with the intent to defraud, I did knowingly and unlawfully prepare, make, and subscribe a material writing, with the intent to present and use it, and to allow it to be presented to Anthem Insurance, in support of a false and fraudulent claim, and did aid and abet, and solicit another to do the same.

Further, in violation of Penal Code section 186.11(a) (1)/(2), that as to counts above, I engaged in a pattern of related

fraudulent felony conduct involving the taking of more than five hundred thousand dollars (\$500,000).

(Exhibit 11, p. A387.)

16. On August 12, 2022, Respondent's guilty plea was accepted by the Court. Respondent was sentenced to 10 years in state prison, to run concurrent with the 10-year sentence in Case No. 20CF1675. Respondent was ordered to pay restitution in the amount of \$8,162,992.00.

Administrative Hearing

17. Respondent did not appear at the administrative hearing. No evidence of mitigation or rehabilitation was submitted.

Costs

18. Complainant submitted the Declaration of Melody Collins (Collins) as evidence of the costs of investigation in this matter. Collins is the designated representative of the Department of Consumer Affairs to certify the costs of investigation charged to the Board. Collins' declaration indicates the Board's costs of investigation totaled \$1,145.50.

19. Complainant submitted declarations of Deputy Attorney General Leanna E. Shields (DAG) as evidence of the costs of prosecution in this matter (both the Accusation and the Notice of Automatic Suspension). The DAG's declarations indicate the Department of Justice, Office of the Attorney General, billed the Board \$10,751.25 in prosecution costs for the Accusation and \$1,922.50 for the Notice of Automatic Suspension, through March 20, 2023.

20. The total costs of investigation and prosecution incurred by the Board were \$13,819.25. These costs are reasonable.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) This means the burden rests on Complainant to establish the charging allegations by 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. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. The Board has the authority to revoke or suspend a physician's license for engaging in unprofessional conduct. (Bus. & Prof. Code, §§ 2004, 2234.) Unprofessional conduct includes incurring a criminal conviction (Bus. & Prof. Code, § 2236) or the commission of any act involving dishonesty or corruption (Bus. & Prof. Code, § 2234, subd. (e)). Such crime or act of dishonesty must be substantially related to the qualifications, functions, or duties of a physician. (Bus. & Prof. Code, §§ 2234, subd. (e), 2236).

3. California Code of Regulations, title 16, section 1360 provides, in pertinent part:

[A] crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present

or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

4. Multiple counts of insurance fraud committed during the practice of medicine is directly related to the practice of medicine. Respondent's crimes also demonstrate a propensity for deceit while working as a physician. This professional dishonesty evidences an unfitness to practice medicine (*Matanky v. Bd. of Med. Examiners* (1978) 79 Cal. App. 3d 293, 305), and is substantially related to the qualifications, functions, and duties of a physician.

5. Business and Professions Code section 2273, subdivision (b), provides:

A licensee shall have the licensee's license revoked for a period of 10 years, or shall stipulate to surrender of the license for 10 years, upon a second conviction for violating any of the following provisions or upon being convicted of more than one count of violating any of the following provisions in a single case: Section 650 of this code, Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the expiration of this 10-year period, an application for license reinstatement may be made pursuant to Section 2307.

6. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, 2236, and 2227, and California Code of Regulations, title 16, section 1360, on the grounds

that Respondent has been convicted of crimes substantially related to the qualifications, functions, and duties of a licensed physician. (Factual Findings 5 through 16; Legal Conclusions 2 through 4.)

7. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, 2227, and 2234, subdivision (e), on the grounds that Respondent has committed acts of dishonesty that are substantially related to the qualifications, functions, and duties of a licensed physician. (Factual Findings 5 through 16; Legal Conclusions 2 through 4.)

8. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover the reasonable costs of enforcement of this matter. Complainant has incurred reasonable costs in the amount of \$13,819.25, as set forth in Factual Findings 18 through 20.

9. Respondent requests a reduction in cost recovery. To ensure that cost awards do not deter licentiates with potentially meritorious claims or defenses from exercising their right to a hearing, the Board must use its discretion to reduce or eliminate costs by considering the following factors: the licentiate's ability to obtain dismissal or reduction of the charges; the licentiate's subjective good faith belief in the merits of his or her position; whether the licentiate raised a colorable challenge to the proposed discipline; the licentiate's financial ability to pay; and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Zuckerman v. State Board of Chiropractic Examiners* (*Zuckerman*) (2002) 29 Cal.4th 32, 45.) In this case, Complainant established all causes for discipline against Respondent, and Respondent has provided no evidence of inability to pay. Consequently, Respondent shall be required to pay the costs of enforcement of this matter in the amount of \$13,819.25.

10. To determine the appropriate level of discipline, the Board considers factors set forth in statutes and regulations. Typically, the Board will consider factors to determine rehabilitation, including the nature and severity of the offenses, total criminal record, time elapsed since the offenses, compliance with terms of parole, probation, or restitution, and any evidence of rehabilitation submitted by the licensee. (Cal. Code Regs., tit. 16, § 1360.1; Bus. & Prof. Code, § 2229.) The Board will also look to the "Manual of Model Disciplinary Orders and Disciplinary Guidelines," 12th Edition/2016 (Guidelines) to determine the appropriate discipline. (Cal. Code Regs., tit. 16, § 1361.) Disciplinary actions can include license revocation, suspension, probation, or public reprimand. (Bus. & Prof. Code, § 2227.)

11. In this case, Respondent's crimes and acts of dishonesty were severe, and they involved a breach of public trust wherein Respondent abused his position as a physician and committed fraud that resulted in restitution orders over \$9,000,000. While Respondent has incurred no other criminal convictions, his current crimes were part of a multi-year pattern which ended relatively recently.

12. Respondent was to begin serving his 10-year prison sentence in August 2022. The evidence at hearing failed to establish any rehabilitation after Respondent committed his crimes and dishonest acts. Although Respondent asserts in his Closing Brief that he "paid full restitution to the insurance companies who were the only victims of his crimes" (Exhibit A, p. Z11), he submitted no evidence at hearing to establish this purported payment.

13. Respondent argues in his Closing Brief that he "recognized the seriousness of his dishonesty and took full responsibility for it (i.e., he admitted the facts [and] pleaded guilty." (Exhibit A, p. Z11.) However, Respondent's admission was made as part of a plea agreement, and it contained no expression of remorse or

acknowledgment of the gravity of his crimes. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940; *In the Matter of Brown, supra.*)

14. Respondent also points out in his Closing Brief that his criminal convictions did not "reveal any harm to a patient or the practice of medicine below the applicable standard of care." (Exhibit A, p. Z9.) However, "[a] physician can be subject to disciplinary action notwithstanding his technical competence or skill under circumstances where his moral character is in dispute. [Citation.] Intentional dishonesty, especially involving moral turpitude, demonstrates a lack of moral character and satisfies a finding of unfitness to practice medicine. [Citation.]" (*Matanky v. Bd. of Med. Examiners, supra*, 79 Cal. App. 3d 293, 305–06.) Such dishonesty includes false and fraudulent billing. (*Ibid.*) Furthermore, the Board is not required to wait until patient harm occurs before taking disciplinary action. The Board's primary purpose is protection of the public, and this includes prevention of future harm. (*Griffiths v. Superior Ct.* (2002) 96 Cal. App. 4th 757, 772 ["[I]t is far more desirable to discipline before a licensee harms any patient than after harm has occurred."].)

15. For criminal convictions and dishonesty arising from the practice of medicine and billing, the Guidelines recommend discipline ranging from seven years' probation to license revocation. Given the gravity of Respondent's crimes and the lack of rehabilitation evidence, revocation of Respondent's license is warranted to protect the public.

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16. Furthermore, probation cannot be imposed in this matter. Although the Board typically has discretion in determining the level of discipline, such discretion has been eliminated in this case. Through Business and Professions Code section 2273, the Legislature has effectively deemed evidence of rehabilitation to be irrelevant in determining the discipline of a physician who has been convicted of more than one count of violating Penal Code section 550. Because Respondent has been convicted in two separate criminal cases for numerous counts of violating Penal Code section 550, his license must be revoked for 10 years pursuant to Business and Professions Code section 2273, subdivision (b). (Legal Conclusion 5.)

17. In his Closing Brief, Respondent requests "that the revocation should be deemed to have commenced on July 14, 2020 (i.e., the date [Respondent] stipulated to the prohibition of practice during the pendency of the criminal proceedings)." (Exhibit A, p. Z11.) He argues that he "has not been engaged in the practice of medicine since [July 14, 2020], and his license has effectively been revoked since that date." (*Id.* at p. Z12.) This argument not persuasive. Respondent's stipulations were to temporarily prohibit him from practicing medicine "until the . . . criminal proceeding is fully and completely completed." (Factual Findings 7, 13.) This is not tantamount to license revocation. Moreover, Respondent failed to cite any legal authority to support his request to backdate the effective date of his license revocation to a date before the filing of the Accusation and before incurring the criminal convictions that form the grounds for his discipline. Consequently, the effective date of Respondent's license revocation cannot be backdated as Respondent requests.

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ORDER

1. Physician's and Surgeon's Certificate Number G 82218, issued to Respondent, Randy Scott Rosen, M.D., is revoked for 10 years commencing on the effective date of this decision.
2. After the expiration of the 10-year period, Respondent may apply for license reinstatement pursuant to Business and Professions Code section 2307.
3. If Respondent later applies for a physician's and surgeon's certificate or reinstatement of his revoked license, Respondent shall reimburse the Board \$13,819.25 for its investigative and prosecutorial costs in this case, before reinstatement or issuance of any physician's and surgeon's certificate or as the Board in its discretion may otherwise order.

DATE: 04/13/2023

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings