

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

In the Matter of the Accusation & the
Automatic Suspension Against:

Robert Jay Rowen, M.D.

Physician's and Surgeon's
Certificate No. G 39465

Case No.: 800-2019-061315

Respondent.

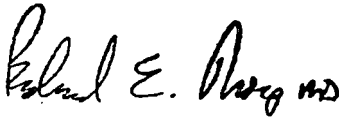
DECISION

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 September 25, 2023.

IT IS SO ORDERED: August 25, 2023.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Accusation Against:

ROBERT JAY ROWEN, M.D., Respondent

Case No. 800-2019-061315

OAH No. 2023010081

AND

In the Matter of the Automatic Suspension Against:

ROBERT JAY ROWEN, M.D., Respondent

Case No. 800-2019-061315

OAH No. 2023010088

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard these consolidated matters by videoconference on June 19, 2023, from Sacramento, California.

Jannsen Tan, Deputy Attorney General, represented Reji Varghese, (complainant), Interim Executive Director, Medical Board of California (Board), Department of Consumer Affairs.

Robert Jay Rowen, M.D. (respondent), made a "special appearance" to object to OAH's jurisdiction, then exited before the hearing commenced. Respondent was not represented at the hearing and did not present any evidence.

Evidence was received, the record was closed, and the matter was submitted for decision on June 19, 2023.

FACTUAL FINDINGS

Background and Procedural History

1. On June 18, 1979, the Board issued respondent Physician's and Surgeon's Certificate Number G 39465 (certificate). Respondent's certificate will expire on November 30, 2024, unless renewed or revoked.

2. On October 7, 2022, former Executive Director, William Prasifka, signed and caused to be filed an Accusation against respondent alleging that cause exists to discipline his certificate based on a felony conviction for tax evasion and related acts of dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician.

3. Based on respondent's felony conviction and consequent incarceration, respondent's certificate was suspended effective September 1, 2022, pursuant to Business and Professions Code section 2236.1, subdivision (a), which provides that a physician's certificate shall be automatically suspended during any time the holder of

the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. On October 7, 2022, former Executive Director, William Prasifka, signed and caused to be filed a Notice of Automatic Suspension of License.

4. Respondent timely filed a Notice of Defense. These matters were set for an evidentiary hearing before an ALJ at OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

5. On September 29, 2021, in the United States District Court, Northern District of California, in case number 19-CR-00486-CRB, respondent was convicted on his guilty plea of violating Title 26, United States Code, section 7201 (tax evasion), as set forth in his plea agreement.

6. In his plea agreement, respondent agreed that elements of his offense included the following: (1) he owed more federal income tax for the tax years 1992 through 1997, and 2003 through 2008, than he paid; (2) he knew that he owed more federal income tax for those years than he paid; (3) he made an affirmative attempt to evade or defeat the payment of such additional taxes; and (4) he acted willfully in attempting to evade or defeat the payment of such additional taxes.

7. More specifically, respondent agreed in his plea agreement to facts including the following: (1) as of September 26, 2019, respondent owed federal income tax liabilities in the amount of approximately \$1,209,587.63; (2) during September 19, 2005, through at least September 13, 2018, respondent willfully attempted to evade payment of the foregoing tax liabilities by committing affirmative acts of tax evasion; (3) respondent attempted to conceal his income by incorporating an entity for the sole purpose of receiving and concealing that income; (4) respondent

attempted to conceal his ownership and financial interest in the entity by directing other individuals to receive and deposit checks, sign and issue checks, and falsely represent on corporate documents and tax forms that they were 99 percent shareholders even though they had no ownership interest in the business, when in fact respondent exclusively directed payments of funds and exercised day-to-day management and control over the entity; (5) respondent attempted to conceal income from his medical practice by instructing patients to make checks payable to businesses that were actually gold dealers; (6) and respondent deposited checks written by patients into a gold dealer's bank account, then received gold and silver coins in exchange for the checks, with the intent of concealing assets from the Internal Revenue Service.

8. On January 26, 2022, the court in the above referenced matter sentenced respondent to serve 18 months in federal prison, and ordered him to pay monetary penalties including a \$95,000 fine, and \$241,156.28 in restitution.

9. Respondent was incarcerated in a federal prison at the time his certificate was automatically suspended. At the time of the hearing in this matter respondent had been released on home confinement.

Prior Discipline

10. On August 11, 1998, in a prior disciplinary matter brought by the Board *In the Matter of the Accusation Against Robert J. Rowen, M.D.*, certificate # G-39465, Case No. 16-97-74289, the Board issued a Public Reprimand against respondent's certificate. The bases for the Public Reprimand are set forth in a Stipulated Settlement in Case No. 16-97-74289, signed by respondent on May 27, 1998, by which respondent admitted that on September 10, 1997, he pled guilty to and was convicted of violating

Title 26, United States Code, section 7212 (attempt to obstruct or impede administration of internal revenue laws).

Costs

11. Complainant requested that respondent be ordered to reimburse the Board for the reasonable costs of investigation and enforcement of this matter in the total amount of \$19,991.50. In support of this total amount, complainant submitted: (1) a Certification of Prosecution Costs: Declaration of Jannsen Tan dated June 8, 2023 (AG Certification), which states that the Attorney General's Office billed the Board \$18,975 for time spent on this matter (AG Costs); and (2) a Declaration of Investigative Activity (Investigation Declaration) in the total amount of \$1,016.50 (Investigation Costs).

12. California Code of Regulations, title 1, section 1042, sets forth the requirements that an agency must comply with in order to recover its costs. Section 1042 requires that a declaration regarding services provided by a regular agency employee must include "the general tasks performed, the time spent on each task, and the method of calculating the cost."

13. The AG Certification includes a "Cost of Suit Summary" which sets forth total attorney hours and total paralegal hours during 2022-2023, without any specification of tasks performed or time spent on each task. The AG Certification does not comply with the requirements set forth in California Code of Regulations, title 1, section 1042.

14. The Investigation Declaration describes the tasks performed, the amount of time billed, and the billing rate of the investigator on this matter. The Investigation Costs appear to be reasonable in light of the allegations.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. Complainant bears the burden of proving, by clear and convincing evidence to a reasonable certainty, that cause exists to discipline respondent's license as alleged in the Accusation. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence is evidence that leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Applicable Laws and Regulations

2. Business and Professions Code section 2227 provides that a physician who has been found "guilty" of violations of the Medical Practices Act may be subject to discipline up to and including revocation of his or her license.

3. Business and Professions Code section 2234, requires the Board to "take action against any licensee who is charged with unprofessional conduct." Unprofessional conduct includes but is not limited to: "[t]he commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon." (Bus & Prof. Code, § 2234, subd. (e).)

4. Business and Professions Code section 2236, subdivision (a), provides that: "[t]he conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter"

5. California Code of Regulations, title 16, section 1360, provides, in relevant part:

[A] crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.

6. Respondent's crime of tax evasion is substantially related to the practice of medicine. The court in *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, upheld the application of California Code of Regulations, title 16, section 1360, in finding conduct outside the actual practice of medicine to be substantially related to the practice of medicine. The conviction at issue in that case was income tax evasion. The court stated: "... we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government of \$65,000 in taxes may yet be considered honest in his dealings with his patients." (*Id.* at p. 470.) Noting that the doctor-patient relationship is based on the utmost trust and confidence in the doctor's honesty and integrity, the court held that a conviction involving dishonesty evidenced a present or potential unfitness to practice medicine consistent with the public health, safety or welfare. (*Ibid.*)

7. Business and Professions Code section 2236.1, subdivision (a), provides that a physician's certificate shall be automatically suspended during any time the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.

Cause for Discipline

8. Cause exists to discipline respondent's certificate pursuant to Business and Professions Code sections 2234, subdivision (e), and 2236, subdivision (a), considered individually and jointly, based on the Factual Findings as a whole and the foregoing Legal Conclusions. Respondent's criminal conviction for tax evasion is substantially related to the qualifications, functions and duties of a physician.

Cause for Suspension

9. Cause existed to automatically suspend respondent's certificate during his term of incarceration pursuant to Business and Professions Code section 2236.1, subdivision (a), based on the Factual Findings as a whole and the foregoing Legal Conclusions. Complainant did not argue that respondent's home confinement constitutes incarceration for purposes of Business and Professions Code section 2236.1, subdivision (a), and that question is not addressed here.

Level of Discipline

10. The Board has developed criteria to consider when determining the appropriate level of discipline to impose on a licensee convicted of a crime. Specifically, California Code of Regulations, title 16, section 1360.1 provides that the following factors are to be considered: (1) the nature and severity of the acts or offenses; (2) total criminal record; (3) the time that has elapsed since commission of the acts or offenses; (4) whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed; (5) evidence of expungement proceedings pursuant to Penal Code section 1203.4; (6) any evidence of rehabilitation submitted by the licensee, certificate or permit holder.

11. Respondent's offenses were quite severe. He was convicted less than two years ago of evading federal income taxes in the amount of approximately \$1,209,587.63. He accomplished this through deliberate schemes implemented over an extended time. Respondent did not submit any evidence of rehabilitation. Moreover, respondent's attitude towards these proceedings and the Board's responsibility for overseeing his certificate do not bode well for his being a successful probationer. Considering all these factors, and the Factual Findings and Legal Conclusions as a whole, public protection requires revocation of respondent's certificate.

Cost Recovery

12. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: (1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (2) the licensee's subjective good faith belief in the merits of his or her position; (3) whether the licensee has raised a colorable challenge to the proposed discipline; (4) the financial ability of the licensee to pay; and, (5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

13. As set forth in the Factual Findings, complainant sought AG Costs in the amount of \$18,975, and Investigation Costs in the amount of \$1,016.50. Because the AG Certification did not comply with California Code of Regulations, title 1, section 1042, the \$18,975 sought by that certification may not be awarded. The costs set forth in the Investigation Declaration are appropriate. When all the relevant factors in

Zuckerman are considered, the costs to be paid by respondent are appropriately set at \$1,016.50.

ORDER

1. Physician's and Surgeon's Certificate Number G 39465, issued to respondent Robert Jay Rowen is revoked.
2. Respondent shall pay the Board \$1,016.50 for the Investigation Costs in this matter, within 60 days of the effective date of this decision.

DATE: July 18, 2023

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings