

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

**In the Matter of the Accusation
Against:**

JEFFREY ROSS Hodgson, M.D.

**Physician's and Surgeon's
Certificate No. A 100211**

Respondent.

Case No. 800-2021-082553

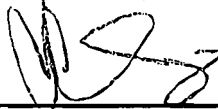
DECISION

**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 April 18, 2024.

IT IS SO ORDERED March 19. 2024.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

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

In the Matter of the Accusation Against:

**JEFFREY ROSS HODGSON, M.D.,
Physician's and Surgeon's Certificate No. A 100211
Respondent.**

Agency Case No. 800-2021-082553

OAH No. 2023080837

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on January 24 through 26, 2024, by videoconference.

Supervising Deputy Attorney General Greg W. Chambers and Deputy Attorney General Kendra S. Rivas appeared representing complainant Reji Varghese, Executive Director of the Medical Board of California.

Attorney Michael Firestone appeared representing respondent Jeffrey Ross Hodgson, M.D., who also was present throughout the hearing.

The matter was submitted for decision on January 26, 2024.

FACTUAL FINDINGS

1. The Medical Board of California issued Physician's and Surgeon's Certificate No. A 100211 to respondent Jeffrey Ross Hodgson, M.D., on May 25, 2007. At the time of the hearing, this certificate was active and was scheduled to expire October 31, 2024. Respondent was on probation, as summarized below in Finding 12.

2. Acting in his official capacity as then-Interim Executive Director of the Board, complainant Reji Varghese filed an accusation against respondent on June 7, 2023. Complainant alleges that respondent stored various controlled substances unlawfully, and that he failed without good cause to attend and participate in an investigatory interview relating to his controlled substance storage. On these grounds, complainant seeks disciplinary action.¹

3. Respondent timely requested a hearing.

Education and Professional Experience

4. Before attending college and receiving his undergraduate degree, respondent served in the Canadian armed forces and then worked for more than 10 years in California as a paramedic.

¹ Complainant does not allege these events as grounds to revoke respondent's probation, because complainant alleges that the events occurred before respondent's probation began.

5. Respondent received a bachelor's degree in 1999, and a medical degree in 2003, both in California.

6. Between 2003 and 2007, respondent completed an internship and residency in anesthesiology, in Illinois. Respondent is not board-certified in anesthesiology.

7. In mid-2007, respondent returned to California and began practicing as an anesthesiologist at a hospital in Salinas. He continued this hospital-based practice until October 2014.

8. For about six months in 2009 or 2010, respondent also worked some weekends for a pediatric dentistry practice in Sacramento, providing anesthesia services for children's dental procedures.

9. Since October 2014, respondent's medical practice has emphasized pain management and addiction treatment, rather than anesthesia. For several years, until fall 2021, respondent provided pain management consultation services for patients in a skilled nursing facility.

10. In November 2022, respondent opened a six-bed residential substance use disorder treatment clinic in Amador County. The clinic offers medication-assisted treatment for alcohol and opioid use disorders. Currently, other physicians prescribe these medications (chiefly buprenorphine and methadone) for clinic patients, because respondent does not hold DEA registration (as summarized below in Finding 18).

Disciplinary History

11. In November 2020, respondent committed a misdemeanor Vehicle Code violation relating to driving after having consumed alcohol. He was convicted of this crime in 2021 and ordered to spend three years on criminal probation.

12. In Board Case No. 800-2020-072479, respondent consented to entry of an order placing him on Board probation for three years because of the matters summarized in Finding 11. This order took effect September 9, 2022. The evidence does not establish the conditions governing respondent's probation, and also does not establish any violations by respondent of those conditions.²

Controlled Substance Storage at Home

13. Between 2007 and 2019, respondent lived alone in Pajaro Dunes. In 2019, he moved to Aptos. Respondent rents a relatively small house that is on a large rural site with at least one other house nearby. He shares his home with a cat, but not with other people.

² The Board issued a citation to respondent on April 4, 2023. The evidence does not establish either the basis for the citation or any defenses respondent may have to its allegations.

14. On September 14, 2021, Santa Cruz County sheriff's deputies conducted a search in respondent's Aptos home.³ In a cardboard box in a closet in a spare bedroom, the deputies found several sealed 100-microgram vials of injectable fentanyl, at least two sealed 500-milligram vials of injectable ketamine, and at least one sealed 2-milligram vial of injectable midazolam. Manufacturer's printing on one of the fentanyl vials stated an expiration date in 2012. Other items also were in the box, including injectable anesthesia drugs that are not controlled substances (some in sealed vials and some showing signs of having been used), syringes, and a copy of a certificate memorializing respondent's Drug Enforcement Administration (DEA) registration.

15. Fentanyl is an opioid drug that is a controlled substance. (Health & Saf. Code, § 11055, subd. (c)(8).) Ketamine is a synthetic drug that also is a controlled substance. (*Id.*, § 11056, subd. (g).) Midazolam is a benzodiazepine drug that is a controlled substance. (*Id.*, § 11057, subd. (d)(21).) All three drugs are dangerous drugs. (Bus. & Prof. Code, § 4022.) All three drugs are in common use for medical anesthesia, including for children undergoing dental care.

³ The warrant authorizing the search states that its purpose is to investigate potentially unlawful cannabis cultivation. Another person was responsible for this activity, and neither any criminal law enforcement agency nor complainant alleges that it involved respondent. The deputies entered and searched respondent's home, however, because they believed that the warrant authorized them to search all "living areas" and "outbuildings" on or relating to the land where cannabis cultivation was occurring.

16. Respondent was not at home when the deputies arrived, but returned while they were taking inventory of the drugs and items summarized in Finding 14. A deputy told respondent that the deputies had found these drugs in one of the house's bedrooms, and respondent replied, "that's a mistake." The deputy also asked respondent why he had the controlled substances. Respondent answered that he had not realized the drugs were at his house, but believed that he must somehow have kept them during a period when he performed "dental anesthesia remotely."

17. The sheriff's deputies seized the medications they had found, and reported the matter to the DEA. DEA agents met with respondent about a week later, and he repeated to them that he believed the controlled substances in his home must have been surplus from a time when he performed pediatric dental anesthesia.

18. On October 5, 2021, respondent signed a document surrendering his DEA registration, "[i]n view of my alleged failure to comply with the Federal requirements pertaining to controlled substances . . . and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part." The DEA agents had commenced an investigation into respondent's use and storage of the controlled substances that the sheriff's deputies had found in respondent's home, but terminated it after respondent surrendered his DEA registration.

19. Respondent testified that he inadvertently had brought home the controlled substances described in Finding 14 at the end of one of his weekends in Sacramento performing pediatric dental anesthesia (described above in Finding 8). When he got home, he put the anesthesia drugs in a box with other medical supplies, intending to return them the next time he went to Sacramento. Soon thereafter, however, the practice stopped offering sedation dentistry on weekends, and respondent never went back. He forgot about the controlled substances, even though

he moved the box at least once (from Pajaro Dunes to Aptos), and was both surprised and dismayed to realize in September 2021 that he still had them in his home.

20. Overall, respondent's testimony regarding the provenance of the controlled substances the sheriff's deputies found in his closet is only weakly credible, because it involves several implausible (though not impossible) details. Nevertheless, no other evidence contradicts this testimony. Regardless of the precise sequence of events that led respondent to have expired controlled substances in a box in his home, the evidence establishes that respondent obtained these drugs for use in his anesthesia practice; stored them in his home, in a manner that was unlikely to make them easily accessible to guests or thieves but that was not locked or otherwise secured; and failed to dispose of them safely after their expiration dates. The evidence does not establish that respondent ever has misused controlled substances or made them available to others for misuse.

Board Investigation

21. On October 8, 2021, respondent participated in an interview with Board investigator Chris Jensen. Respondent had counsel at this interview. Jensen had arranged the interview to discuss the incident summarized above in Finding 11.

22. Jensen began the interview with questions about respondent's medical practice. In answer to a question about his DEA registration, respondent said that he very recently had surrendered it. He declined to answer further questions during the October 2021 interview about the circumstances under which he had surrendered his DEA registration, but he and his counsel acknowledged that the Board might want to undertake "additional follow-up" about these circumstances.

23. Board staff members referred the matter to the Department of Consumer Affairs, Health Quality Investigation Unit (HQIU), for further investigation.

24. HQIU Investigator Raymond Leong obtained relevant records from the Santa Cruz County Sheriff and the DEA. He attempted in November 2021 and again in March 2022 to visit respondent at his house in Aptos. Leong had not contacted respondent in advance of either visit, however, and did not find respondent at home.

25. On June 15, 2022, Leong mailed a letter to respondent, asking respondent to attend an interview "to discuss the events leading up to surrender of your DEA license." Although the letter was addressed correctly to respondent's address of record with the Board, respondent did not receive it; and Leong testified that it eventually came back to Leong's office, marked as undeliverable.⁴

26. On July 13, 2022, Leong mailed a second letter to respondent asking for an interview. Leong addressed this letter correctly to respondent's house, but again respondent did not receive it. Leong testified that this letter also eventually arrived back in Leong's office, marked as undeliverable.

27. On July 25, 2022, Leong telephoned respondent. Leong told respondent that Leong was investigating the circumstances under which respondent had surrendered his DEA registration, and wished to interview respondent for the investigation. Respondent said that he wanted to review documents Leong had

⁴ The evidence does not establish whether this marking was a sticker from the United States Postal Service, or someone's handwriting on the envelope.

received from the DEA about the matter before his interview, and that he would respond further to Leong about scheduling an interview after consulting his counsel.

28. Leong left at least two further voice mail messages with respondent in August 2022 about scheduling an interview, to which respondent did not reply. Neither respondent nor anyone representing respondent ever contacted Leong to set up an interview.

29. Leong prepared a subpoena to respondent, demanding that respondent appear for an investigative interview on September 12, 2022. He testified vaguely that he was “unable” to serve the interview subpoena, but did not describe the efforts he had made to do so.

30. Leong obtained an expert review of the circumstances leading to discovery of the controlled substances in respondent’s home, as Leong understood those circumstances from reports by the sheriff’s deputies and the DEA agents. Because Leong had been unable to interview respondent about these circumstances, neither he nor the expert (Navin Mallavaram, M.D.) had the benefit of respondent’s own explanation. Moreover, the sheriff’s deputies who had searched respondent’s home and seized the controlled substances had misunderstood some of the information respondent gave them; and because respondent had surrendered his DEA registration, the DEA agents never conducted a full investigation into the matter.

31. Dr. Mallavaram completed a residency in anesthesiology, but he currently is a pain management specialist rather than an anesthesiologist. Because incomplete and somewhat inaccurate information was all Leong was able to provide to him, Dr. Mallavaram understood respondent to have possessed the controlled substances at issue in the course of operating a medical practice in which he traveled regularly with

the drugs in his vehicle. On the further assumption that respondent stored and transported the drugs in the box in which the sheriff's deputies had found them, rather than in any kind of lockbox or safe, Dr. Mallavaram characterized respondent's conduct with respect to storing these drugs as reckless conduct in which no reasonable physician would engage, and an extreme departure from the standard of care.

32. At the hearing, Dr. Mallavaram revised his opinion. He explained that if he assumed that respondent had brought the drugs home inadvertently and then forgotten about them in a closet, rather than making a regular practice of driving around with them (and storing them) in a cardboard box, he still would call respondent's conduct a departure from the standard of care. In this latter case, however, Dr. Mallavaram believes the departure, though unfortunate, is simple but not extreme. This testimony is both credible and persuasive.

Additional Evidence

33. Respondent offered numerous personal references. Through testimony and letters, these witnesses credibly described respondent as knowledgeable, trustworthy, responsible, and considerate.

34. The detoxification and rehabilitation clinic respondent opened in November 2022 is not yet financially stable. Respondent hopes that the business will succeed, particularly if he is able to restore his DEA registration. With good reason, however, he is anxious about his financial future.

35. Respondent sought reinstatement to DEA registration in mid-2023. The DEA has not yet acted on his application.

Costs

36. Between November 18, 2022, and January 19, 2024, the Board incurred \$23,535 in costs for legal services provided to complainant by the California Department of Justice in this matter. In addition, complainant's counsel estimated that complainant would incur an additional \$3,520 in costs between January 19, 2024, and the hearing date. Complainant's claim for reimbursement of these costs (\$27,055 in total) is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivisions (b)(2) and (b)(3), with respect to the amount actually incurred. These costs are unreasonable, however, because they reflect considerable repetition and duplication of effort. A reasonable amount for legal services from the Department of Justice for this matter is \$15,000.

37. Complainant also presented evidence showing that the Board incurred \$600 in costs for expert evaluation of this matter in early November 2022. This amount is reasonable, and is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2).

38. Finally, complainant presented evidence showing that the Board incurred \$6,754.50 in costs for investigative services from the HQUI between January 1, 2022, and November 16, 2022. The total is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(1), with respect to the amount actually incurred. These costs are excessive, however, because they involve repetitive and duplicative efforts that were not reasonably necessary to investigate this simple matter, even considering the matters stated above in Findings 22, 24, and 25 through 29. A reasonable amount for investigative costs is \$3,000.

LEGAL CONCLUSIONS

1. The Board may take disciplinary action against respondent only if clear and convincing evidence establishes cause for such action. The factual findings above rest on clear and convincing evidence.

First Cause for Discipline: Improper Controlled Substance Storage

2. The Board may suspend or revoke respondent's physician's and surgeon's certificate if he has engaged in unprofessional conduct. (Bus. & Prof. Code, §§ 2227, 2234.) Unprofessional conduct includes acts that violate state or federal law relating to controlled substances or dangerous drugs. (*Id.*, § 2238.)

3. Complainant's accusation cites a federal regulation that is not relevant to respondent's medical practice, or to the manner in which he stored controlled substances (in a box in his home, as described in Findings 14 and 20). Nevertheless, respondent concedes that this storage method did not satisfy any statutory or regulatory requirement.

4. Respondent argues that because he forgot the controlled substances no later than 2010 (as shown by Findings 8, 16, and 19), complainant's allegations against him are time-barred under Business and Professions Code section 2230.5, subdivision (a). The matters summarized in Findings 13, 19, and 20 show, however, that respondent had several opportunities within seven years before complainant filed the accusation in this matter to recognize that he was storing controlled substances improperly and to correct his error. These allegations are not untimely.

5. The evidence establishes cause for discipline against respondent arising from his error in retaining and storing controlled substances.

Second Cause for Discipline: Failure to Attend Interview

6. Unprofessional conduct also includes "failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board no later than 30 calendar days after being notified by the board," if the certificate holder "is the subject of an investigation by the board." (Bus. & Prof. Code, § 2234, subd. (g).)

7. The matters summarized in Finding 27 and 28 constitute cause for discipline against respondent under this statute.

Disciplinary Considerations

8. Both respondent and the Board incurred unnecessary expenses as a result of respondent's failure to take the opportunity to explain to HQIU Investigator Leong how the controlled substances described in Finding 14 came to his home, and why they were there in a box in a closet. Respondent was careless, though not reckless or grossly negligent, by keeping the substances (as summarized in Findings 19, 20, and 32). His failure to participate in an interview despite knowledge that the Board was undertaking a reasonable investigation was an intentional act that impaired the Board's regulatory activity.

9. Respondent is already on probation. Further probation, or an extension of his probation, is not likely to decrease the already very low probability that any conduct similar to the conduct constituting cause for discipline in this matter will recur. The Board may fulfill its public protection mission in this matter by reprimanding respondent, and by adding the reasonable costs it has incurred in this matter because of respondent's uncooperativeness to his reimbursement obligation.

Costs

10. A physician who has committed a violation of the laws governing medical practice in California may be required to pay the Board the reasonable costs of the investigation and enforcement of the case, but only as incurred on and after January 1, 2022. (Bus. & Prof. Code, § 125.3.) The matters stated in Findings 36 through 38 establish that these costs for this matter total \$18,600.

11. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board or bureau must exercise its discretion to reduce or eliminate cost awards to ensure that the board or bureau does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.*, at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

12. All these matters have been considered. They do not justify any further reduction in respondent's cost reimbursement obligation.

ORDER

1. Physician's and Surgeon's Certificate No. A 100211, held by respondent Jeffrey Ross Hodgson, M.D., is hereby publicly reprimanded.

2. Respondent must pay \$18,600 to the Board, to reimburse the Board for its enforcement costs in this matter, within 30 days after the effective date of this order. In the alternative, respondent may request that the Board add these costs to his cost reimbursement obligation in Board Case No. 800-2020-072479, and accept payment of these costs in installments to be completed at or before the end of respondent's Board probation in Board Case No. 800-2020-072479.

DATE: 02/15/2024


JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings