

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

In the Matter of the Citation Order
Against

Francis Peter Lagatutta, M.D.

Physician's and Surgeon's
Certificate No. G-84334

Respondent.

Case No. 800-2017-033166

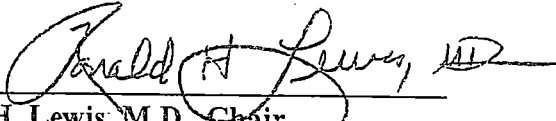
DECISION

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 October 30, 2020.

IT IS SO ORDERED September 30, 2020.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Citation against:

FRANCIS PETER LAGATUTTA, M.D., Respondent

Agency Case No. 800-2017-033166

OAH No. 2020021174

PROPOSED DECISION

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by video and telephonic conference on August 3, 2020.

Complainant was represented by Latrice R. Hemphill, Deputy Attorney General. Respondent Francis Peter Lagatutta, M.D., participated and was represented by Matthew A. Brinegar, attorney at law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 3, 2020.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Jenna Jones, Chief of Enforcement for the Medical Board of California (Board), issued Citation number 8002017033166, against Respondent.¹ The Citation alleges that in the care and treatment of a patient, Respondent failed to keep adequate records, in violation of Business and Professions Code section 2266.² The Citation imposes an administrative fine of \$350.

2. Respondent is licensed by the Board as a physician and surgeon, holding certificate number G 84334. That license was issued to him by the Board on January 16, 1998. The certificate is due to expire in August 2021 unless renewed. Respondent has no record of discipline against his California license.³

3. After receiving the Citation, Respondent requested a hearing, and this proceeding ensued. All jurisdictional requirements have been met.

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¹ Complainant signed the Citation Order on December 24, 2019, although it is dated December 30, 2019 on the first page.

² Further statutory citations are to the Business and Professions Code.

³ Respondent is licensed in 25 states. He had a minor disciplinary issue in Alaska, as he had failed to disclose his licensure in North Carolina.

The Underlying Complaint and Expert Review

4. Respondent is the chief administrator of LAGS Medical Centers (LAGS). He employs some 40 medical professionals, including numerous doctors, and has numerous offices around California. The patient in question was being seen at a LAGS facility in Visalia, and later she moved to the central coast. Respondent works out of the office in Lompoc, California, but it appears LAGS has other offices near that one, i.e., in San Luis Obispo. Respondent is board certified in several disciplines, including Physical and Rehabilitative Medicine, Pain Medicine, Electrodiagnostic Medicine, and Addiction Medicine. Respondent is the administrator of the practice.

5. A LAGS patient, a woman identified here as D.G., complained to the Board about the care and treatment she had received from Respondent and his staff. Among her complaints was a claim that they had not reduced her prescription to morphine as she had asked. Other complaints were that biopsies were improperly performed, and that drug tests were falsified. She indicated a belief that Respondent was performing excessive tests. D.G. had, in 2016, been discharged as a patient after several of her urine tests were positive for methamphetamines; Respondent believes, and it may fairly be inferred that this was at the root of her allegation of falsified tests.

6. The Board had an expert review the complaint and the patient's treatment records. That expert was William Barreto, M.D., who is board certified in both Physical Medicine and Rehabilitation, and in Pain Management. Dr. Barreto testified that the vast majority of his practice is Pain Management. Dr. Barreto reviewed at least 300 pages of documents, Respondent's interview with the Board, and other evidence, generating a detailed report to the Board.

7. In terms of Respondent's treatment of D.G., Dr. Barreto found no deviations from the standard of care by Respondent and the LAGS staff. Dr. Barreto did not find any over testing, or improperly performed biopsies. He found evidence that it was LAGS staff that wanted to reduce the patient's morphine prescription over her objection, the opposite of what she alleged in her complaint. Dr. Barreto concluded that several failed urine tests justified discharging the patient from treatment; he did not believe the tests were falsified.

The Insufficient Records

8. Dr. Barreto did find some record keeping violations in his review of the chart. For example, several procedures were performed where an informed consent agreement had not been signed by the patient. Procedures were performed, and repeated, without documentation of the effectiveness of the earlier procedures. Thus, for example, a medial block was performed on November 12, 2014, without indication of effectiveness, and then a radiofrequency ablation was performed on December 23, 2014. No improvement (or lack of improvement) was charted, but another radiofrequency ablation was performed on February 4, 2015, again without any notes in the chart regarding improvement in the patient.

9. Dr. Barreto found that the patient underwent a cervical sympathetic block on February 23, 2015, and a 70 percent improvement was noted, along with a note that pain was still 10/10 on average. Dr. Barreto found the two entries difficult to explain.

10. As another example of record keeping shortcomings, Dr. Barreto cited to several reports where it was not clear just which physician examined or treated the

patient. For example, one physician's name might be printed on the report, but the document was signed by another physician.

11. Dr. Barreto opined that the record keeping violations amounted to a simple departure from the standard of care.

Respondent's Evidence in Mitigation and Rehabilitation

12. Respondent did not argue against Dr. Barreto's findings and opinions regarding the records, acknowledging that Complainant's expert had some valid points. In mitigation, he pointed out that the problem charts were generated mainly in 2014-2015, and his practice had gone to a new electronic record keeping system in July 2014. He testified that by 2016-2017 the staff was keeping better records, as it was by then familiar with the new electronic system.

13. Respondent took other steps to improve record keeping. One step was to enroll and complete the record keeping course offered by the UC San Diego Medical School's PACE program. He took and completed that course in July 2017. He has since then used that education to train LAGS staff in better record keeping practices.

14. There is no evidence of any further violations by Respondent.

LEGAL CONCLUSIONS

1. Section 125.9 authorizes state agencies, including the Board, to issue citations to their licensees. California Code of Regulations (CCR), title 16, section

1364.10,⁴ provides authority for the Board's Executive Director, or his or her designee, to issue citations to physicians and surgeons. CCR section 1364.11, subdivision (a)(44), provides authority to issue a citation for a violation of section 2266. CCR section 1364.14 provides the procedure for contesting a citation.

2. Jurisdiction to issue the Citation and to conduct this hearing was established based on Legal Conclusion 1 and Factual Findings 1 through 3.

3. Section 2266 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."

4. Respondent and those employed by him committed violations of section 2266 in connection with the record keeping for one of Respondent's patients, based on Factual Findings 1 through 6, and 8 through 11.

5. Respondent has taken steps to improve his practice's record keeping, which is a professional response to a professional shortcoming.

6. Section 125.9, subdivision (b)(3), provides that the Board can assess a fine of up to \$5,000. The fine in this case is \$350, seven percent of the maximum and a mild response from the Board to the problem at hand. Grounds to dismiss the citation have not been established, and the Citation shall be affirmed.

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⁴ Further citations to the CCR shall be to title 16 thereof.

ORDER

The appeal of Respondent Francis Peter Lagatutta, M.D., from Citation number 8002017033166, is denied and the Citation is affirmed. Respondent shall pay the civil fine of \$350 to the Board within 30 days of the effective date of this order, following the payment instructions set out at page 2 of the Citation.

DATE: September 1, 2020

DocuSigned by:
Joseph D. Montoya
JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings