REDACTED

BEFORE THE

BOARD OF MEDICAL QUALITY ASSURANCE

STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of the Accusation against<br><br>HENRY T. GUNTER, M. D.<br>121 Sotoyomi<br>Santa Rosa, California<br>License No. C 24710<br><br>Respondent. | NO. D-1723<br><br>N 7941 |

OFFICE OF ADMIN. HEARINGS
EXHIBIT 2
AGENCY
FILE NO.
DATE

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted by the Agency as its Decision in the above-entitled matter.

A copy of Section 11522 of the Government Code and a copy of the Agency's Criteria Relating to Rehabilitation are appended hereto and made a part hereof.

This Decision shall become effective on May 20, 1977.

IT IS SO ORDERED April 20, 1977.

Blanche C. Bersch

BLANCHE C. BERSCH, Secretary-Treasurer

BEFORE THE

BOARD OF MEDICAL QUALITY ASSURANCE

STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of the Accusation against<br><br>HENRY T. GUNTER, M. D.<br>121 Sotoyomi<br>Santa Rosa, California<br>License No. C 24710<br><br>Respondent. | NO. D-1723<br><br>N 7941 |

PROPOSED DECISION

This matter was consolidated with the Matter of the Accusation against John Richard Jenkins, Jr., M. D., Case No. D-1725 and was heard before Stewart A. Judson, Administrative Law Judge, State of California, Office of Administrative Hearings on November 15, 16, 17, 18 and 19, 1976 at San Francisco, California.

The Board of Medical Quality Assurance of the State of California was represented by Louis C. Castro, Deputy Attorney General.

Henry T. Gunter, M. D. was present and represented himself.

Accordingly, the following decision is herewith proposed, certified and recommended for adoption:

FINDINGS OF FACT

I

Raymond Reid is the Executive Secretary of the California

State Board of Medical Quality Assurance and made the Accusation in his official capacity and not otherwise.

II

On or about November 11, 1962, the Board of Medical Examiners (predecessor of the Board of Medical Quality Assurance) issued to Henry T. Gunter, M. D. (hereinafter respondent) physician and surgeon's certificate No. C-24710. Said license is and has been at all times mentioned herein in full force and effect.

III

It was stipulated that on or about March 28, 1974, in the Superior Court of the State of California, County of Sonoma, Case No. 7084-C, respondent was convicted on his plea of nolo contendere of having violated California Penal Code section 192.2 (involuntary manslaughter). It was further stipulated that the surrounding circumstances of said conviction reveal substantial relationship to respondent's licensed activity in that they disclose that respondent did contribute to the death of a patient, one L[redacted] S[redacted] (hereinafter S[redacted]).

IV

On November 21, 1972, respondent was professionally employed by S[redacted]. On said date, respondent did treat, diagnose, prognose, prescribe for, operate on and care for S[redacted]. Included within said conduct was respondent's decision to perform on said patient a sterilization procedure known

as a "transcervical intra-uterine tubal fulguration via hysteroscope". At the time, said procedure was an innovative one in the United States and was one which respondent had never before performed. Additionally, respondent, in performing said procedure, utilized an unmetered carbon-dioxide tank to administer carbon dioxide gas into the patient's intra-uterine cavity. Respondent attempted to measure the flow of said gas by placing the tip of said hysteroscope to his inferior eyelid. As a result, an excess amount of carbon-dioxide gas was insufflated into the patient thereby causing her death. S[redacted] died as the result of bilateral pneumothorax with pneumoperitoneum and extensive diffuse interstitial emphysema, resulting in anoxia.

It was stipulated that respondent's aforenoted conduct was an extreme departure from the standard of practice of medicine.

VI

The following additional facts were established:

1. Respondent is presently forty-one years of age, married and the father of three daughters, ages fifteen through seventeen. Since November, 1974, respondent has carried on an office practice in Fair Oaks, California and, for the past year and one-half, has been employed as an emergency room physician at Twin Lakes Hospital in Folsom, California.

2. Respondent received an AB degree from the University of Alabama in 1955 and attended the University of Mississippi School of Medicine from September, 1955 to June, 1957. During

his first year, respondent maintained a grade average of 84.82 and ranked in the middle-third of his class. During his second year, respondent maintained a grade average of 87.74 and ranked in the upper third of his class. Respondent transferred to Tulane University School of Medicine in September, 1957. During his third and fourth years, respondent's respective weighted grade averages were 81.0 and 84.3. Respondent received his medical degree from said school on June 1, 1959.

3. Respondent's post-graduate medical training and experience is as follows:

| | |
|---|---|
| July, 1959-July, 1960: | Rotating internship; Grady Memorial Hospital; Atlanta, Georgia. |
| July, 1960-July, 1961: | Resident; OB-GYN; Crawford Long Hospital; Atlanta, Georgia. |
| July, 1961-July, 1962: | Resident; OB-GYN: Kapiolani, Queens and St. Francis Hospitals; Honolulu, Hawaii. |
| July, 1962-July, 1963: | Resident; OB-GYN; St. Luke's Hospital; San Francisco, California. |
| July, 1963-July, 1965: | OB-GYN; USAF Hospital; Blythville, Arkansas. |
| July, 1965-Oct.,1968: | Private Practice; Waynesville, North Carolina. |
| Oct., 1968-July, 1969: | Resident; General Surgery; Orange Memorial Hospital; Orlando, Florida. |
| July, 1969-Dec., 1970: | Resident; General Surgery; Mobile General Hospital; Mobile, Alabama. |

| | |
|---|---|
| Jan., 1971-Nov., 1974: | Resident; General Oncologic Surgery; City of Hope Medical Center, Duarte, California. |
| July, 1971-Nov., 1974: | Private Practice; Santa Rosa, California. |
| Nov., 1974-Present: | Private Practice; Sacramento, California. |

4. Respondent has been issued the following medical licenses:

| | | | |
|---|---|---|---|
| Mississippi | License No. 4196 | June 24, 1959 | written exam |
| California | License No. C-24710 | Nov. 27, 1962 | reciprocity |
| Florida | License No. 10940 | Jan. 7, 1964 | written exam |
| North Carolina | License No. 14563 | June 15, 1965 | reciprocity |
| Alabama | License No. 5284 | Jan. 5, 1970 | reciprocity |

5. Respondent is a Board Certified Diplomate of the American Board of Obstetrics and Gynecology and a member of the International College of Surgeons, Pan Pacific Surgical Association, American Fertility Society, Society of Air Force Clinical Surgeons, American Association of Gynecological Laparoscopists, International Family Planning Research Association and the American College of Emergency Physicians. Since October, 1972, respondent has attended fourteen scientific and medical meetings, various hospital staff meetings and has passed both a written and practical examination for certification in cardio-pulmonary resuscitation.

6. Since his aforenoted conviction and the attendant publicity, respondent's net taxable income has dropped by sixty

per cent. Respondent's wife and three daughters currently reside in Santa Rosa, where respondent's wife is employed at Santa Rosa Junior College. Respondent is able to be with his family approximately three weeks out of every four and on holidays. In 1975, respondent's net taxable income was $16,211.00. Respondent's wife earns approximately $20,000.00 yearly. It is anticipated that respondent's net taxable income for 1976 will be slightly higher than in 1975.

7. Since 1974, respondent has been utilized as an assistant surgeon, on occasion, by colleagues. Respondent was employed at Twin Lakes Hospital on condition that he obtain prior approval of a qualified surgeon or staff member prior to exercising his surgical privileges. As the result of his inability to obtain economically feasible malpractice insurance, however, respondent does not exercise his privileges as a surgeon. Respondent, as any other staff member, is subject to an ongoing monthly medical review by the tissue and surgery audit committee of said hospital. Since said employment, respondent's supervisors have found his care and management of patients to be within the standard of practice of medicine.

8. During the aforenoted transcervical intra-uterine tubal fulguration procedure, the anesthesiologist left his post approximately five minutes prior to the termination of the operation. Inasmuch as said procedure was "blind", respondent was unaware of said absence. The evidence established that said

carbon-dioxide insufflation was sufficiently gradual so that S[redacted]'s vital signs would have been gradually affected, thereby giving notice to the anesthesiologist that said procedure was amiss. However, said anesthesiologist failed to assure that S[redacted]'s vital signs would be monitored during his absence, and S[redacted] expired before resuscitation could be effected.

9. Respondent has suffered no other malpractice action during his professional career. As a result of his aforenoted conviction, imposition of sentence was suspended and respondent was placed upon probation for a period of three years. On September 25, 1975, respondent's probation was terminated and his conviction dismissed pursuant to Section 1203.4 of the California Penal Code.

DETERMINATION OF ISSUES

I

Complainant's motion to dismiss the second, fourth, fifth and sixth causes for disciplinary action is granted.

FOR A FIRST CAUSE FOR DISCIPLINARY ACTION

II

Respondent was convicted of a felony which is substantially related to his licensed activity, and cause for disciplinary action thereby exists pursuant to Sections 2383 and 2361 in conjunction with Section 2372 of the California Business and Professions Code.

FOR A THIRD CAUSE FOR DISCIPLINARY ACTION

III

Respondent's conduct constitutes gross negligence, and cause for disciplinary action thereby exists pursuant to Section 2361(b) in conjunction with Section 2372 of the California Business and Professions Code.

ORDER

1. Certificate No. C-24710 of Henry T. Gunter, M. D., respondent above-named, is revoked pursuant to Determinations II and III hereinabove, separately and severally; provided, however, that the effective date of said order of revocation is stayed for a period of ten (10) years from the effective date of this Order, and respondent is placed on probation to the Board of Medical Quality Assurance upon the following terms and conditions:

A. Respondent shall comply with all rules, regulations and laws pertaining to the practice of medicine in the State of California;

B. Respondent shall report in person to the Board at its regular annual meeting held in San Francisco, commencing in the year of the effective date of this Order and for each year thereafter during said period of probation, as the Board may direct;

C. Respondent shall initiate and submit to the Board written quarterly reports in affidavit form giving his current address, place of employment and stating whether he is complying with the terms and conditions of said probation, and providing other information as the Board may request. The first of said reports shall be due upon notice from the Board;

D. Respondent shall promptly report to the Board any change in employment and address;

E. Respondent shall cooperate fully and speak with any representative or investigator of the Board during said probation and shall provide any records or documents that may be requested;

F. Respondent shall not perform any major surgical procedures for a period of five (5) years from the effective date of this Order unless in a supervised and structured environment, approved in advance by the Board, wherein respondent must obtain prior approval for said procedure from a qualified surgeon. Major surgical procedures include all surgery involving general anesthetic, regional block

and intravenously administered medications. Supervised and structured environment includes the performance of said surgical procedures under the supervision of a qualified surgeon;

G. The period of probation (ten /10/ years) must be served in the State of California before the probation can be terminated.

2. Upon full compliance with the terms and conditions hereinabove set forth and upon the expiration of the aforesaid period of probation, respondent's license to practice medicine and surgery shall be restored to its full privileges, free and clear of said terms and conditions; provided, however, that in the event that respondent violates or fails to comply with any of the aforenoted terms and conditions, the Board, after notice to respondent and an opportunity to be heard, may terminate said probation, vacate the stay order and reimpose the order of revocation, to become effective immediately, or make such other order as it deems appropriate.

3. Paragraphs 5, 8, 9 and 10 of the Accusation are each dismissed.

DATED: November 24, 1976

STEWART A. JUDSON
Administrative Law Judge

REDACTED

EVELLE J. YOUNGER, Attorney General
of the State of California
LOUIS C. CASTRO
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Tel: (415) 557-2879

Attorneys for Board of
Medical Quality Assurance

BEFORE THE BOARD OF MEDICAL QUALITY ASSURANCE

FOR THE STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of the Accusation<br>against<br>HENRY T. GUNTER, M.D.<br>121 Sotoyomi<br>Santa Rosa, California<br>License No. C 24710<br>Respondent. | No. D-1723<br>ACCUSATION |

Raymond Reid charges and alleges:

1. That he is the Executive Secretary of the State Board of Medical Quality Assurance and that he makes these charges and allegations in his official capacity and not otherwise.

2. That on or about November 11, 1962, the State Board of Medical Quality Assurance issued to respondent henry Thomas Gunter, M. D. (hereinafter referred to as respondent) physician and surgeon's certificate No. C 24710; that the aforementioned license is and has been at all times mentioned herein in full force and effect.

3. That on or about March 28, 1974, in the Superior Court of the State of California, County of Sonoma, Case No. 7084-C, respondent was convicted on his plea of nolo contendere, of having violated Penal Code section 192.2

(involuntary manslaughter). That the surrounding circumstances of said conviction reveal a sustantial relationship to respondent's licensed activity in that they disclose that respondent did willfully and unlawfully kill a patient, one L[redacted] S[redacted].

FOR A FIRST CAUSE FOR DISCIPLINARY ACTION

4. That respondent's felony conviction as alleged in paragraph 3 above constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Business and Professions Code sections 2383 (conviction of a felony) and 2372.

FOR A SECOND CAUSE FOR DISCIPLINARY ACTION

5. That respondent's conviction as alleged in paragraph 3 above is the conviction of an offense involving moral turpitude which constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Business and Professions Code sections 2383 (conviction of an offense involving moral turpitude) and 2372.

* * *

6. That on or about November 21, 1972, respondent was professionally employed by L[redacted] S[redacted]. That on said date respondent in a grossly negligent manner did treat, diagnose, prognose, prescribe for, operate on, and care for L[redacted] S[redacted]. Included within said conduct, was respondent's decision to perform on said patient a new sterilization procedure called a "intra-uterine tubal fulguration via hysteroscope," which respondent had never performed before. Additionally, respondent in performing said procedure utilized an unmetered carbon-dioxide tank to administer intra-uterine carbon dioxide gas. As a result, an excess amount of carbon-dioxide gas was administered to L[redacted] S[redacted] thereby causing her death.



Δ osr

FOR A THIRD CAUSE FOR DISCIPLINARY ACTION

7. That respondent's conduct as alleged in paragraph 6 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Business and Professions Code sections 2361(b) (gross negligence) and 2372.

FOR A FOURTH CAUSE FOR DISCIPLINARY ACTION

8. That respondent's conduct as alleged in paragraph 6 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Business and Professions Code section 2361(d) (gross immorality) and 2372.

FOR A FIFTH CAUSE FOR DISCIPLINARY ACTION

9. That respondent's conduct as alleged in paragraph 6 constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Business and Professions Code section 2361(e) (moral turpitude) and 2372.

FOR A SIXTH CAUSE FOR DISCIPLINARY ACTION

10. That respondent's conduct as alleged in paragraph 6 above is unprofessional conduct in general and constitutes grounds for disciplinary action pursuant to Business and Professions Code sections 2361 and 2372.

WHEREFORE, the Board of Medical Quality Assurance prays that it may take such action as it deems appropriate.

DATED: 3/11/76

RAYMOND REID, Executive Secretary
Board of Medical Quality Assurance