BEFORE THE
BOARD OF PODIATRIC MEDICINE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES
STATE OF CALIFORNIA

In the Matter of the Citation Against: GARY J. JAMISON, D.P.M. Podiatric Certificate No. E-2132, Respondent.	No. 93/94-11A OAH No. L-07029

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Podiatric Medicine as its Decision in the above-entitled matter.

This Decision shall become effective on June 21, 1995.

IT IS SO ORDERED May 22, 1995.

MEDICAL BOARD OF CALIFORNIA
BOARD OF PODIATRIC MEDICINE
DIVISION OF ALLIED HEALTH PROFESSIONS
STATE OF CALIFORNIA

By: Elaine Brown DPM

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

In the Matter of the Citation Against: GARY J. JAMISON, D.P.M. Podiatric Certificate No. E-2132, Respondent,	Case No. 93/94-11A OAH No. L-07029

PROPOSED DECISION

This matter came on regularly for hearing before W. F. Byrnes, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on November 16, 17, and 18, 1994. The complainant appeared personally and was represented by Diane M.L. Tan, Deputy Attorney General. The respondent appeared personally and was represented by Robert K. Crawford, Attorney at Law. Evidence was received, and the record was held open for receipt of briefs.

The Complainant's Post-Hearing Brief (Exhibit 9) was received on December 30, 1994; an Addendum to Complainant's Post-Hearing Brief (Exhibit 10) was received on January 3, 1995.

An ex parte communications was received from Dr. Jamison on January 26, 1995; it was placed on the record as the Court's Exhibit Z together with an Order Pursuant to Government Code section 11513.5, and the parties were allowed an opportunity to rebut the ex parte communication; in response thereto, a letter (Exhibit 11) was received from complainant on February 15, 1995, and a letter (Exhibit M) was received from respondent on February 16, 1995.

The Respondent's Post-Hearing Brief (Exhibit N) was received on February 23, 1995.

The Complainant's Reply Brief (Exhibit 12) was received on April 3, 1995. An Addendum thereto (Exhibit 13) was received on April 4, 1995.

The matter was then submitted, and the Administrative Law Judge finds the following facts:

I

Complainant James H. Rathlesberger made this Citation in his official capacity as Executive officer of the Board of Podiatric Medicine.

II

Respondent Gary J. Jamison, D.P.M., received a degree of Doctor of Podiatric Medicine from the California College of Podiatric Medicine, and was issued California License No. E-2132 to practice podiatric medicine on June 28, 1977. The license remains in good standing, with no history of disciplinary action.

III

A. Citation No. 93/94-11 was issued against respondent on August 19, 1993, charging violation of Business and Professions Code section 2264 ("The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person ... to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct."). The citation contained an order of abatement and imposed a fine of $2,500.00. Respondent requested and was afforded an informal conference with the Executive Officer of the Board.

B. Following the informal conference, the original citation was withdrawn and Amended Citation No. 93/94-11A was issued, charging the same violation but amending the charging language and lowering the fine to the minimum $1,100.00 for the offense because of respondent's first-offender status. Respondent requested an administrative hearing, and these proceedings ensued.

C. The factual basis of the citation is that, while under oath as a defense witness on January 21 and 26, 1993, in the trial of People vs. Brian Douglas Carey (Los Angeles Superior Court No. A770888), respondent testified that he used unlicensed medical assistants to perform physical therapy in his office.

IV

The use of unlicensed medical assistants to perform physical therapy (for which licensure is required pursuant to the Physical Therapy Practice Act) is contrary to law. The Board of Podiatric Medicine has for many years taken the position that the performance of physical therapy is not included in the "basic administrative, clerical, and technical supportive services" which an unlicensed medical assistant may perform pursuant to Business and Professions Code section 2069. In 1988, the Legislature enacted Business and Professions code section 2071, directing the Division of Allied Health Professions to "adopt and administer regulations which establish standards for technical supportive services which may be performed by a medical assistant." In response to that directive, section 1366 of title 16 of the California Code of Regulations became effective on April 20, 1992; subsection (e) thereof provides that "Nothing in these regulations shall be construed to authorize a medical assistant to practice physical therapy."

V

Respondent testified in the Carey trial on January 21, 1993, that he used unlicensed medical assistants to perform physical therapy in his office. Respondent was cautioned as to his rights against self-incrimination pursuant to the Fifth Amendment to the United States Constitution, and he was given time to consider his options. He immediately telephoned the Executive Officer of the Board of Podiatric Medicine; the Executive Officer told him in no uncertain terms that it is illegal to use unlicensed medical assistants to perform physical therapy. Respondent resisted that advice, which he believed to be contrary to the standard of practice of podiatrists, and asked for proof, in response to which the Executive Officer faxed him a partial copy of a 1984 Department of Consumer Affairs legal opinion from the Board's policy manual. Still unconvinced, respondent called senior colleagues, many of whom told him that we all do or did it, but the law has recently been changed to prohibit the practice. Respondent went to the library with an attorney to research the matter, and found the 1992 regulations which clarified that the practice was not permitted. Subsequently, on January 26, 1993, respondent again took the stand in the Carey trial, declined to exercise his Fifth Amendment rights, and again testified that he used unlicensed medical assistants to perform physical therapy in his office.

VI

The Board's Executive Officer was acting well within the scope of his duties and discretion in the issuance of this citation.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

The citation, the fine imposed, and the order of abatement are appropriate within the meaning of Business and Professions Code section 125.9 and section 1399.698 of title 16 of the California Code of Regulations.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Citation No. 93/94-11A is affirmed.

DATED: 4-17-95

W. F. BYRNES
Administrative Law Judge
Office of Administrative Hearings

WFB:btm