

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

In the Matter of the Accusation and
Petition to Revoke Probation Against:

NOLAN JONES, M.D.

Physician and Surgeon Certificate
No. A 30400

Respondent.

Agency Case No. D3-1997-77146

OAH Case No. 2008090760

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on January 20, 2009, in Los Angeles, California.

Abraham M. Levy, Deputy Attorney General, represented Barbara Johnston (Complainant), Executive Director of the Medical Board of California.

Lawrence A. Moy, Attorney at Law, represented Nolan Jones, M.D. (Respondent). Respondent was not present, despite being properly and timely served with the Notice of Hearing and the First Amended Accusation and Petition to Revoke Probation.

The parties submitted the matter for decision on January 20, 2009.

FACTUAL FINDINGS

1. The Medical Board of California (the Board) issued physician and surgeon certificate number A 30400 to Respondent on August 27, 1976. The evidence established that Respondent's license expired on October 31, 2008. The evidence did not establish whether the license was renewed. However, if it was not renewed, the Board nonetheless retains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

2. Complainant, in her official capacity, filed the Accusation and Petition to Revoke Probation on July 17, 2008. Respondent filed the Notice of Defense on August 3, 2008. Complainant, in her official capacity, filed the First Amended Accusation and Petition to Revoke Probation on January 7, 2009. Respondent was properly and timely served with the Notice of Hearing and the First Amended Accusation and Petition to Revoke Probation.

3. Complainant contends Respondent's medical license merits revocation because he fabricated medical records, and in doing so, committed gross negligence, acts of dishonesty, and failed to maintain adequate and accurate records regarding two patients in 2006. Complainant further contends these same acts constitute violations of an earlier imposed probation and therefore provide cause to revoke that probation and impose the stayed revocation.

4. Respondent contends that Complainant's allegations are based on the testimony of the two patients at issue and that those two patients are not credible. As such, Respondent argues that Complainant cannot prove her allegations by clear and convincing evidence to a reasonable certainty.

5. On or about March 19, 2006, a husband and wife (R.C. and M.C., respectively)¹ were in an automobile accident. R.C. and M.C. went to Respondent's clinic for treatment on March 23, 2006. Respondent never met, never examined, and never treated R.C. or M.C. However, Respondent signed medical records that reported that he had performed a comprehensive medical evaluation of R.C. and M.C. on March 23, 2006. Additionally, Respondent signed other medical records that reported that he had evaluated and treated R.C. on March 31, April 10, 14, May 1, 12, 22, 31, and June 16, 2006, and that he had evaluated and treated M.C. on April 10, 20, May 1, 19, and June 2, 2006.

6. Respondent's clinic records for both R.C. and M.C. show that he diagnosed each with various spinal and soft tissue injuries to the back and neck, among other conditions. Respondent charged a fee for each documented visit.

7. Respondent's clinic records show that R.C. received physical therapy 38 times between March 23 and June 16, 2006, but R.C. only received physical therapy four times. Respondent's clinic records show that M.C. received physical therapy 36 times between March 23, and June 2, 2006, but like R.C., M.C. only received physical therapy four times. Respondent's clinic records regarding R.C.'s and M.C.'s physical therapy did not document why R.C. and M.C. underwent the number of physical therapy sessions indicated. The records did not describe how the physical therapy methods used were applied to R.C. or M.C. and did not describe each patient's response to the treatments. Respondent failed to monitor R.C.'s and M.C.'s physical therapy treatments.

8. R.C. and M.C. testified at hearing. Neither R.C. nor M.C. made any agreement with the Attorney General's office or any law enforcement agency in return for their testimony in this proceeding. They admitted to acts that helped create untrue and inaccurate medical records to further their personal injury/insurance claims. They admitted that their actions were dishonest and wrong. Neither R.C. nor M.C. ever met Respondent. On their first day in Respondent's clinic, both R.C. and M.C. signed a sign-in sheet that purported to document their presence at subsequent visits. That is, at the initial visit, R.C.

¹ Initials are used when referring to the patients at issue in this matter to preserve patient confidentiality.

signed the sign-in sheet 38 times, documenting 38 future visits between March 23, and June 16, 2006. On that same initial visit, M.C. signed the sign-in sheet 36 times, documenting 36 future visits between March 23, and June 2, 2006. R.C. and M.C. did not visit Respondent's clinic the number of times documented.

9. Complainant proffered the opinions of Dr. Bryce D. Breitenstein, an occupational medicine physician who currently has his own consulting practice and is the Medical Director of the Concentra Occupational Medical Centers in Placentia, California. He is board certified by the National Board of Medical Examiners, the American Board of Internal Medicine, the American Board of Medical Management, and the American Board of Preventative Medicine, among others.

10. Breitenstein reviewed the records in this matter and opined that Respondent's fabricated records for R.C. and M.C. were extreme departures from the standard of care. He further opined that Respondent's failure to monitor R.C.'s and M.C.'s physical therapy, his failure to document where the treatment modalities were applied to each patient, the effects of those treatments, and his failure to document why each patient underwent the number of physical therapy sessions they did, were all extreme departures from the standard of care. Breitenstein clarified that these violations by Respondent (regarding physical therapy), taken alone, were simple departures from the standard of care, but together, over the period of time in which Respondent allegedly treated R.C. and M.C., constituted extreme departures from the standard of care.

11. Respondent did not offer an expert opinion contrary to that of Breitenstein.

12. Respondent has a history of previous discipline by the Board. On August 2, 1999, in *the Matter of the Accusation Against Nolan Jones, M.D.*, case number 09-1997-77146, the Board revoked Respondent's medical license, stayed the revocation, and imposed a four-year probation against Respondent. The probation contained various terms and conditions, including a requirement that Respondent's license be suspended until he successfully completed the Physician's Assessment and Continuing Education program at the University of California, San Diego School of Medicine. The Accusation in that matter alleged that Respondent committed acts of gross negligence (Bus. & Prof. Code, § 2234, subd. (b)), repeated negligent acts (Bus. & Prof. Code, § 2234, subd. (c)), and incompetence (Bus. & Prof. Code, § 2234, subd. (d)) in his care and treatment of numerous female patients in approximately 1996. Respondent entered into a stipulated settlement wherein he agreed not to contest those allegations, agreed he was subject to discipline, and agreed to be bound by the Board's discipline.

13. On June 21, 2002, in *the Matter of the Petition to Revoke Probation Against Nolan Jones, M.D.*, case number D1-1997-77146, the Board again revoked Respondent's medical license, stayed the revocation, and extended Respondent's probation for three years beyond the date it would have otherwise expired under the terms of the previously imposed probation, with various terms and conditions. The Petition in that proceeding alleged that, in approximately 1999, Respondent had violated three different conditions of probation,

including failing to ensure practice monitor reports were filed, failing to obey all laws, and failing to file accurate quarterly reports. Respondent entered into a stipulated settlement, wherein he agreed Complainant could establish a prima facie showing in support of the Petition's charges, he gave up his right to contest those charges, agreed he was subject to discipline, and further agreed to be bound by the imposition of discipline.

14. On August 12, 2004, in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.*, case number D2-1997-77146, the Board revoked Respondent's medical license a third time, stayed the revocation, and extended Respondent's probation for five years beyond the date it would have otherwise expired under the terms of the previously imposed probation. The terms and conditions of this probation included condition number 10 that states as follows: "Obey All Laws: Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders." The Accusation and Petition in that proceeding alleged six causes for discipline involving his care and treatment of patients, three distinct counts of gross negligence (Bus. & Prof. Code, § 2234, subd. (b)), two distinct counts of dispensing an improperly labeled dangerous drug (Bus. & Prof. Code, § 2238), and false advertising (Bus. & Prof. Code, § 651). The pleading further alleged cause to revoke the earlier imposed probation for failing to obey all laws. Respondent entered into a stipulated settlement, wherein he agreed Complainant could establish a factual basis for the allegations, gave up his right to contest those charges, agreed he was subject to discipline, and further agreed to be bound by the imposition of discipline.

LEGAL CONCLUSIONS

1. Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. "[A] physician is required to possess and exercise, in both diagnosis and treatment, that reasonable degree of knowledge and skill which is ordinarily possessed and exercised by other members of his profession in similar circumstances." (*Landeros v. Flood* (1976) 17 Cal.3d 399, 408; see also, *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998.) "The standard of care against which the acts of a physician are to be measured is a matter peculiarly within the knowledge of experts . . . and can only be proved by their testimony [citations], unless the conduct required by the particular circumstances is within the common knowledge of the layman." (*Landeros v. Flood, supra*, 17 Cal.3d at p. 410.)

3. Gross negligence is defined as “the want of even scant care or an extreme departure from the ordinary standard of conduct.” (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1185-1186.)

4. Business and Professions Code section 2234 states in pertinent part:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(b) Gross negligence.

[(c)] . . . [(c)]

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

5. Business and Professions Code section 2266 states in pertinent part:

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.

6. Respondent created false medical records by documenting examinations and evaluations of patients R.C. and M.C., though he never met, examined, or treated either patient. These actions by Respondent are substantially related to a physician’s qualifications, functions, and duties. Respondent failed to monitor the four physical therapy sessions with which each patient was treated, and falsely documented that a significant number of additional physical therapy treatments had been rendered to each. Furthermore, he failed to document the basis for treating patients R.C. and M.C. with physical therapy, the manner in which the treatments were administered, and each patient’s response to those treatments. All of these actions and omissions by Respondent were extreme departures from the standard of care, and thus constitute gross negligence.

7. Despite proper notification of the date and time of the hearing, Respondent did not appear and failed to provide any discernable defense to Complainant’s allegations, except for Respondent’s counsel’s argument that patients R.C. and M.C. were not credible witnesses. Through counsel, Respondent argued that R.C. and M.C. were persons willing to present untrue medical records as the basis for their accident insurance claims. Respondent argued that, as such, R.C.’s and M.C.’s testimonies were unreliable. However, R.C. and M.C. stood to gain nothing by testifying in this proceeding. Respondent provided no evidence or compelling argument as to why R.C. and M.C., despite their fraudulent actions, should be disbelieved as to their testimony here. This is especially salient given that, by

testifying as they did, R.C. and M.C. risked other potential liability. Thus, considering these points collectively, and despite R.C.'s and M.C.'s previous dishonest actions, their testimony in this proceeding is found credible. (See Evid. Code. § 780, subd. (f).)

8. Complainant proved her allegations by clear and convincing evidence to a reasonable certainty. Respondent's history of discipline by the Board, and his willingness to engage in acts of gross negligence and dishonesty within his medical practice while on probation, demonstrate that the constraints of probation are ineffective and unmerited. Therefore, revocation of Respondent's medical license is appropriate.

9. Cause exists to revoke Respondent's medical license, pursuant to Business and Professions Code section 2234, subdivision (b), for gross negligence, by creating false medical records, as set forth in Factual Findings 1, 2, 5, 7-11, and Legal Conclusions 1-4, and 6-8.

10. Cause exists to revoke Respondent's medical license, pursuant to Business and Professions Code, sections 2234, subdivision (b), for gross negligence, by failing to monitor the physical therapy provided to patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, and Legal Conclusions 1-4, and 6-8.

11. Cause exists to revoke Respondent's medical license, pursuant to Business and Professions Code, section 2234, subdivision (b), for gross negligence, by failing to document the basis for, application of, and responses to the physical therapy provided to patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, and Legal Conclusions 1-4, and 6-8.

12. Cause exists to revoke Respondent's medical license, pursuant to Business and Professions Code section 2234, subdivision (e), for dishonest acts, by creating false medical records for patients R.C. and M.C., acts that are substantially related to a physician's qualifications, functions, and duties, as set forth in Factual Findings 1, 2, 5-11, and Legal Conclusions 1, 2, 4, and 6-8.

13. Cause exists to revoke Respondent's medical license, pursuant to Business and Professions Code, section 2266, for failing to maintain adequate and accurate medical records for patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, and Legal Conclusions 1, 2, and 5-8.

14. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.*, (case number D2-1997-77146), for committing gross negligence, in violation of Business and Professions Code, section 2234, subdivision (b), by creating medical records that documented evaluations and examinations for patients R.C. and M.C. that did not occur, as set forth in Factual Findings 1, 2, 5-11, 14, and Legal Conclusions 1-4, and 6-9.

15. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.*, (case number D2-1997-77146), for committing dishonest acts, in violation of Business and Professions Code, section 2234, subdivision (e), by creating medical records that documented evaluations and examinations for patients R.C. and M.C. that did not occur, as set forth in Factual Findings 1, 2, 5-11, and 14, and Legal Conclusions 1, 2, 4, 6-8, and 12.

16. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.* (case number D2-1997-77146), for committing gross negligence, in violation of Business and Professions Code, section 2234, subdivision (b), by documenting more physical therapy treatments than had occurred for patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, and 14, and Legal Conclusions 1-4, and 6-8.

17. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.* (case number D2-1997-77146), for committing gross negligence, in violation of Business and Professions Code, section 2234, subdivision (b), by failing to document the basis for, application of, and responses to, the physical therapy provided to patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, 14, and Legal Conclusions 1-4, 6-8, and 11.

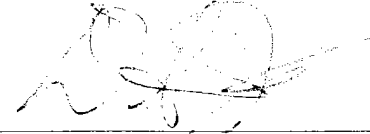
18. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.* (case number D2-1997-77146), for committing gross negligence, in violation of Business and Professions Code, section 2234, subdivision (b), by failing to monitor the physical therapy treatments of patients R.C. and M.C., as set forth in Factual Findings 1, 2, 5-11, 14, and Legal Conclusions 1-4, 6-8, and 10.

19. Cause exists to revoke Respondent's probation, pursuant to the probationary terms and conditions in the Stipulated Settlement and Disciplinary Order in *the Matter of the Accusation and Petition to Revoke Probation Against Nolan Jones, M.D.* (case number D2-1997-77146), for failing to maintain adequate and accurate records, in violation of Business and Professions Code, section 2266, as set forth in Factual Findings 1, 2, 5-11, 14, and Legal Conclusions 1, 2, 5-8, and 13.

ORDER

Certificate number A 30400, issued to Respondent Nolan Jones is revoked pursuant to Legal Conclusions 9-19, separately and for all of them.

Dated: February 17, 2009



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings