

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

In the Matter of the Accusation)
Against:)
)
Forrest O. Smith, M.D.)
Certificate # C-35811)
)
)
)
Petitioner.)
_____)

File No: 03-93-28640

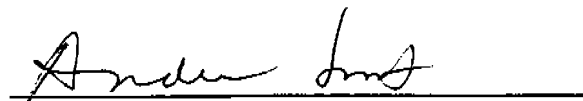
DECISION

The attached Stipulation is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on April 15, 1996.

It is so ordered April 15, 1996.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA



Anabel Anderson Imbert, M.D.
Chair
Panel B

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DAVID LEW
Deputy Attorney General
3 50 Fremont Street, Suite 300
San Francisco, California 94105-2239
4 Telephone: (415) 356-6367
5 Attorneys for Complainant

6
7 BEFORE THE
8 DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation) No. 03-93-28640
Against:)
11)
FORREST O. SMITH, M.D.)
12 5565 W. Los Positas, Suite 330)
Pleasanton, California 94588) STIPULATION AND WAIVER
13)
Physician's and Surgeon's)
14 Certificate No. C35811.)
15 Respondent.)

16
17 IT IS HEREBY STIPULATED by and between Forrest O.
18 Smith, M.D., (hereinafter, "respondent"), and Dixon Arnett, as
19 Executive Director of the Medical Board of California, Department
20 of Consumer Affairs, by and through his attorney, David Lew,
21 Deputy Attorney General, that the following matters are true:

22 1. Dixon Arnett, the named complainant in Accusation
23 No. 03-93-28640, is the Executive Director of the Medical Board
24 of California (hereinafter, "Board") and brought said action
25 solely in his official capacity. Respondent's license history
26 and status as set forth in paragraph 2 of the Accusation is true
27 and correct.

2. Respondent is represented by James Jay Seltzer,

1 Esq., Attorney at Law. Respondent has retained the above-named
2 attorney as his attorney in regard to the administrative action
3 herein and respondent has counseled with said attorney concerning
4 the effects of this stipulation, which respondent has carefully
5 read and which he fully understands.

6 3. Respondent has received and read Accusation No. 03-
7 93-28640, which is presently on file and pending against him
8 before the Division of Medical Quality (hereinafter, "Division")
9 of the Board, said accusation having been filed on or about
10 December 14, 1994. (A copy of Accusation No. 03-93-28640 is
11 attached hereto as Exhibit A.)

12 4. Respondent understands the nature of the charges
13 alleged in the above-mentioned accusation and that said charges
14 and allegations would constitute cause for imposing discipline
15 upon respondent's physician and surgeon's certificate heretofore
16 issued by the Board.

17 5. Respondent and his attorney are aware of each of
18 respondent's rights, including the right to a hearing on the
19 charges and allegations; respondent's right to confront and
20 cross-examine witnesses who would testify against him;
21 respondent's right to present evidence in his favor or to call
22 witnesses in his behalf, or to so testify himself; respondent's
23 right to contest the charges and allegations and any other rights
24 which may be accorded him pursuant to the California
25 Administrative Procedure Act (Govt. Code, § 11500 et seq.);
26 respondent's right to reconsideration, appeal to superior court
27 and to any other or further appeal; respondent understands that

1 in signing this stipulation rather than contesting the
2 accusation, he is enabling the Division to impose disciplinary
3 action upon his license without further process.

4 6. Respondent hereby freely and voluntarily waives his
5 right to a hearing on the charges and allegations contained in
6 Accusation No. 03-93-28640 in order to enter into this
7 stipulation, and he further agrees to waive his right to
8 reconsideration, judicial review, and any and all rights which
9 may be accorded him by the California Administrative Procedure
10 Act and other laws of the State of California.

11 7. This stipulation constitutes an offer in settlement
12 to the Board and is not effective until adoption by the Board.

13 8. In the event that this stipulation is not adopted
14 by the Board, nothing recited herein shall be construed as a
15 waiver of respondent's right to a hearing or as an admission of
16 the truth of any of the matters charged in the accusation.

17 9. All admissions of facts and conclusions of law
18 contained in this stipulation are made exclusively for this
19 proceeding and any future proceedings between the Board and
20 respondent shall not be deemed to be admissions for any purpose
21 in any other administrative, civil, or criminal action, forum, or
22 proceeding.

23 10. For purposes of this action, respondent admits a
24 violation of Business and Professions Code section 2286. Based
25 upon this admission, respondent agrees and stipulates that cause
26 for disciplinary action exists therein against his certificate to
27 practice medicine pursuant to Business and Professions Code

1 section 2234.

2 11. Based upon all of the foregoing admissions,
3 stipulations, and recitals, it is stipulated and agreed that the
4 Division may issue a decision upon this stipulation whereby:

5 12. Based upon the above stipulations and recitals, IT
6 IS HEREBY STIPULATED AND AGREED that the Board, upon its approval
7 of the stipulation herein set forth, may, without further notice,
8 enter an order, whereby respondent, as holder of Physician's and
9 Surgeon's Certificate No. C35811, shall by way of letter from the
10 President of the Division of Medical Quality of the Medical Board
11 of California be publicly reprovved and reprimanded; provided,
12 however, that said public reprovval and reprimand is conditional
13 on respondent complying with the following terms and conditions:

14 (A) COOPERATION WITH MEDICAL BOARD INVESTIGATION

15 Respondent shall agree to fully cooperate with and
16 make himself available to the Board and its designees,
17 including the Office of the Attorney General, in any
18 investigation of Paxton Beale, King Medical Center,
19 Pregnancy Consultation Center, or BackPax Medical
20 Center, or any other enterprise controlled by Paxton
21 Beale, including but not limited to the providing of
22 any documents or other types of information requested,
23 and shall truthfully and accurately testify at any
24 subsequent administrative, civil, or criminal
25 proceeding if asked to do so by the Board, for a period
26 of two years from the effective date of this decision.

27 Respondent further agrees that in the event he

1 violates this provision, the Board shall retain
2 continuing jurisdiction to seek discipline against him
3 for failing to comply with the terms and conditions set
4 forth herein, and to prosecute said matter to final
5 decision, which shall include any and all appeals.

6 (B) COST RECOVERY

7 Respondent shall agree to reimburse the Division
8 the amount of \$3,000 within 90 days from the effective
9 date of this decision for its investigative and
10 prosecution costs. Failure to reimburse the Division's
11 cost of its investigation and prosecution shall
12 constitute cause for the Board to seek discipline
13 against him for failing to comply with the terms and
14 conditions set forth herein, unless the Division agrees
15 in writing to payment by an installment plan because of
16 financial hardship. The filing of bankruptcy of
17 respondent shall not relieve respondent of his
18 responsibility to reimburse the Division for its
19 investigative and prosecution costs.

20 13. Respondent specifically acknowledges and
21 understands that the order for public reproof and reprimand as a
22 resolution to the charges in Accusation No. 03-93-28640 is
23 contingent on respondent's full compliance with each and every
24 condition specified above in paragraph 12 of this Stipulation.

25 14. Upon full compliance with the conditions specified
26 above in paragraph 12 of this Stipulation, respondent's
27 certificate shall be publicly reproofed and reprimanded by way of

1 a letter from the president of the Division, which shall be in
2 the same form as the letter attached as Exhibit B hereto.

3 15. IT IS FURTHER STIPULATED AND AGREED that the terms
4 set forth herein shall be null and void, and in no way binding
5 upon the parties hereto, unless and until accepted by the Board.

6
7 DATED: 2/26/96

DANIEL E. LUNGREN
Attorney General of the
State of California

9
10 David Lew
11 DAVID LEW
12 Deputy Attorney General

Attorneys for Complainant

13
14 DATED: 1/16/96

J. O. Seltzer
15 JAMES JAY SELTZER, ESQ.
16 Attorney for Respondent

17
18 DATED: 1/19/96

Forrest O. Smith M.D.
19 FORREST O. SMITH, M.D.
20 Respondent

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EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DAVID LEW
Deputy Attorney General
3 455 Golden Gate Avenue, Suite 6200
San Francisco, California 94102-3658
4 Telephone: (415) 703-2248

5 Attorneys for Complainant

6
7 BEFORE THE
8 DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation) No. 03-93-28640
Against:)
11)
FORREST O. SMITH, M.D.) ACCUSATION
12 5565 W. Los Positas, Suite 330)
Pleasanton, California 94588)
13)
Physician and Surgeon)
14 Certificate No. C35811)
15 Respondent.)
16 _____)

17 DIXON ARNETT, complainant herein, charges and alleges
18 as follows:

- 19 1. Complainant is the Executive Director of the
20 Medical Board of the State of California (hereinafter, "Board")
21 and makes these charges and allegations solely in his official
22 capacity.
- 23 2. On or about May 22, 1974, the Board issued to
24 respondent, Forrest O. Smith, M.D. (hereinafter, "respondent"),
25 Physician and Surgeon Certificate number C35811. The certificate
26 is current and has an expiration date of January 31, 1995. No
27 Board record exists of any prior disciplinary action having been

1 taken against respondent by the State of California. Respondent
2 is not a supervisor of a physician assistant.

3 STATUTORY AUTHORITY

4 3. Section 2001 of the Business and Professions Code^{1/}
5 provides for the existence of the Board.

6 4. Section 2003 provides for the existence of the
7 Division of Medical Quality (hereinafter, "Division") within the
8 Board.

9 5. Section 2004 provides, in pertinent part, that the
10 Division is responsible for the administration and hearing of
11 disciplinary actions involving enforcement of the Medical
12 Practice Act (§ 2000 et seq.) and the carrying out of
13 disciplinary action appropriate to findings made by a medical
14 quality review committee, the Division, or an administrative law
15 judge.

16 6. Section 2220 provides, in pertinent part, that
17 except as otherwise provided by law, the Division may take action
18 against all persons guilty of violating the provisions of the
19 Medical Practice Act (§ 2000 et seq.). The Division shall enforce
20 and administer the Medical Practice Act as to physician and
21 surgeon certificate holders, and its powers include, but are not
22 limited to, investigating complaints from the public, from other
23 licensees, or from health care facilities, that a physician and
24 surgeon may be guilty of unprofessional conduct.

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26
27 1. All references are to the Business and Professions
Code unless otherwise specified.

1 7. Section 2227 provides, in part, that the Board
2 shall take disciplinary action against a licensee charged with
3 and found guilty of unprofessional conduct.

4 8. Section 650 provides, in relevant part, as follows:

5 "Except as provided in Chapter 2.3 (commencing
6 with Section 1400) of Division 2 of the Health and
7 Safety Code, the offer, delivery, receipt, or
8 acceptance by any person licensed under this division
9 of any rebate, refund, commission, preference,
10 patronage dividend, discount, or other consideration,
11 whether in the form of money or otherwise, as
12 compensation or inducement for referring patients,
13 clients, or customers to any person, irrespective of
14 any membership, proprietary interest or co-ownership in
15 or with any person to whom these patients, clients or
16 customers are referred is unlawful."

17 9. Section 2234 provides, in relevant part, as
18 follows:

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

24 "(a) Violating or attempting to violate, directly
25 or indirectly, or assisting in or abetting the
26 violation of, or conspiring to violate, any provision
27 of this chapter.

 ".....

 "(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."

10 10. Section 2238 provides that the violation of any
11 federal statute or regulation or any state statute or regulation
12 which regulates dangerous drugs or controlled substances
13 constitutes unprofessional conduct.

14 //

1 11. Section 2261 provides that the making or signing
2 of any certificate or other document directly or indirectly
3 related to the practice of medicine which falsely represents the
4 existence or nonexistence of a state of facts constitutes
5 unprofessional conduct.

6 12. Section 2273 provides that the employment of
7 runners, cappers, steerers, or other persons to procure patients
8 constitutes unprofessional conduct.

9 13. Section 2285 provides, in relevant part, as
10 follows:

11 "The use of any fictitious, false, or assumed
12 name, or any name other than his or her own by a
13 licensee either alone, in conjunction with a
14 partnership or group, or as the name of a professional
15 corporation, in any public communication,
16 advertisement, sign, or announcement of his or her
17 practice without a fictitious-name permit obtained
18 pursuant to Section 2415 constitutes unprofessional
19 conduct."

20 14. Section 2286 provides as follows:

21 "It shall constitute unprofessional conduct for
22 any licensee to violate, to attempt to violate,
23 directly or indirectly, to assist in or abet the
24 violation of, or to conspire to violate any provision
25 or term of Article 18 (commencing with Section 2400),
26 of the Moscone-Knox Professional Corporation Act (Part
27 4 (commencing with Section 13400) of Division 3 of
Title 1 of the Corporations Code), or of any rules and
regulations adopted under those laws."

 15. Section 2415, subdivision (a), provides that any
physician and surgeon who wishes to practice under a false or
fictitious name may do so if a fictitious-name permit issued by
the Division of Licensing is obtained and maintained in current
status under the provisions of this section.

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1 San Francisco."

2 25. To this end, on or about August 1987, respondent
3 and another physician, Philip King, M.D., submitted to the Board,
4 pursuant to Business and Professions Code section 2415, an
5 application for a fictitious name permit, upon which it was
6 falsely declared under penalty of perjury that respondent and
7 other physicians "wholly owned and entirely controlled" the
8 Pregnancy Consultation Center and Medical Clinic of San Jose.
9 Respondent's name was also included on renewal applications for
10 fictitious name permits for the Pregnancy Consultation Center
11 facilities in San Francisco, San Jose, and Oakland, upon which it
12 was similarly falsely declared under penalty of perjury that
13 respondent and the other listed physicians "wholly owned and
14 entirely controlled" these facilities.

15 26. In fact, the Pregnancy Consultation Center
16 facilities were wholly owned by Paxton Beale, who was not
17 licensed by any of the health profession boards within the State
18 of California. Beale exercised total control over every aspect
19 of all of the Pregnancy Consultation Center facilities.

20 27. Under respondent's arrangement with Paxton Beale,
21 Pregnancy Consultation Center management service staff and
22 employees were responsible for advertising and soliciting
23 patients, counseling and screening patients, referring patients
24 for abortion procedures to those physicians, including
25 respondent, who had entered into business arrangements with
26 Beale, and billing patients. Pregnancy Consultation Center also
27 provided surgical staff and equipment.

1 28. Respondent performed abortion procedures for
2 Pregnancy Consultation Center on a part-time regular basis,
3 primarily at the San Jose facility. Respondent would present
4 himself at a clinic whenever the management staff scheduled
5 patients for him to see. Respondent was paid a fee for each
6 abortion, a small total of the surgical fee charged to the
7 patient by Pregnancy Consultation Center. The remaining fee was
8 retained by Pregnancy Consultation Center and Paxton Beale.

9 29. Respondent permitted management service staff to
10 store controlled substances ordered under his name at locations
11 unknown to him, transfer the controlled substance to other
12 locations without proper documentation, and maintain all records
13 of their use and disposition. Drugs would be assigned to
14 respondent by the management staff for surgical procedures on an
15 "as needed" basis.

16 30. On or about May 30, 1993, respondent purchased
17 Pregnancy Consultation Center of Oakland, Pregnancy Consultation
18 Center of San Jose, and Pregnancy Consultation Center of Fremont
19 from Paxton Beale.

20 31. On or about June 7, 1993, the Board received a
21 letter from Paxton Beale stating that all of the Pregnancy
22 Consultation Center facilities had been sold except for the San
23 Francisco facility which was in the process of a change of
24 ownership.

25 32. On or about July 7, 1993, Board Investigator
26 Gerald McClellan sent respondent a certified letter requesting
27 records of the Schedule II controlled substance ordered, shipped

1 to, and utilized by respondent at any facility of Pregnancy
2 Consultation Center and King Medical Center (another enterprise
3 owned and operated by Paxton Beale).

4 33. Respondent refused to provide access to the
5 requested records of ordering, shipping, and use of controlled
6 substances at the Pregnancy Consultation Center facilities in
7 Oakland, San Jose, and Fremont, notwithstanding that those
8 records were under respondent's custody and control.

9 34. Records from the Pregnancy Consultation Center
10 facility in San Jose indicate that respondent ordered the
11 administration of Fentanyl, a controlled substance, to patients
12 during February 1992 as follows:

13 A. On February 1, 1992, fifteen of respondent's
14 patients were administered Fentanyl.

15 B. On February 8, 1992, nineteen of respondent's
16 patients were administered Fentanyl.

17 C. On February 15, 1992, sixteen of respondent's
18 patients were administered Fentanyl.

19 D. On February 22, 1992, thirteen of respondent's
20 patients were administered Fentanyl.

21 E. On February 29, 1992, seventeen of
22 respondent's patients were administered Fentanyl.

23 35. The only recorded information regarding the
24 administration of Fentanyl to respondent's patients on February
25 8, 15, 22, and 29, 1992, consists of a listing of the patient
26 names and a number under a column labeled "Fentanyl." No
27 information is contained regarding the patients' addresses, the

1 strength or quantity of the drug which was administered, or the
2 purpose for its administration.

3 36. Respondent's actions, as outlined in paragraphs 23
4 through 35, constitute a violation of Section 650, in that
5 respondent engaged in the unlawful referral of patients. As a
6 result, respondent's Physician and Surgeon Certificate No.
7 C35811 is subject to discipline under Section 2234,
8 subdivision (e).

9 SECOND CAUSE FOR DISCIPLINARY ACTION

10 37. The allegations contained in the First Cause for
11 Disciplinary Action are incorporated by reference herein.

12 38. Respondent's actions, as outlined in paragraphs 23
13 through 35, constitute a violation of Section 2238, in that
14 respondent violated state and federal statutes and/or regulations
15 pertaining to dangerous drugs by: (1) dispensing drugs without a
16 proper accounting and a sufficient recording of patient
17 information, in violation of Health and Safety Code section
18 11190; and (2) failing to preserve his records of drug dispensing
19 for a sufficient period of time, in violation of Health and
20 Safety Code section 11191. As a result, respondent's Physician
21 and Surgeon Certificate No. C35811 is subject to discipline under
22 Section 2238 and Section 2234, subdivision (a).

23 THIRD CAUSE FOR DISCIPLINARY ACTION

24 39. The allegations contained in the First and Second
25 Causes for Disciplinary Action are incorporated by reference
26 herein.

27 //

1 40. Respondent's actions, as outlined in paragraphs 23
2 through 35, constitute a violation of Section 2261, in that
3 respondent obtained fictitious name permits from the Board
4 pursuant to Section 2415 by making false or misleading statements
5 including, but not limited to, representations that Pregnancy
6 Consultation Center facilities was "wholly owned and entirely
7 controlled" by respondent. As a result, respondent's Physician
8 and Surgeon Certificate No. C35811 is subject to discipline under
9 Section 2261 and Section 2234, subdivisions (a) and (e).

10 FOURTH CAUSE FOR DISCIPLINARY ACTION

11 41. The allegations contained in the First, Second,
12 and Third Causes for Disciplinary Action are incorporated by
13 reference herein.

14 42. Respondent's actions, as outlined in paragraphs 23
15 through 35, constitute a violation of Section 2273, in that
16 respondent contracted to use runners, cappers, steerers, or other
17 persons to procure patients for his medical practice. As a
18 result, respondent's Physician and Surgeon Certificate No.
19 C35811 is subject to discipline under Section 2273 and Section
20 2234, subdivision (a).

21 FIFTH CAUSE FOR DISCIPLINARY ACTION

22 43. The allegations contained in the First, Second,
23 Third, and Fourth Causes for Disciplinary Action are incorporated
24 by reference herein.

25 44. Respondent's actions, as outlined in paragraphs 23
26 through 35, constitute a violation of Section 2285, in that
27 fictitious name permits issued to respondent by the Board were

1 based upon applications which falsely represented that the
2 Pregnancy Consultation Center facilities were "wholly owned and
3 entirely controlled" by respondent and the other physician-
4 applicants, and thus were not obtained pursuant to Section 2415.
5 As a result, respondent's Physician and Surgeon Certificate No.
6 C35811 is subject to discipline under Section 2285 and Section
7 2234, subdivisions (a) and (e).

8 SIXTH CAUSE FOR DISCIPLINARY ACTION

9 45. The allegations contained in the First, Second,
10 Third, Fourth, and Fifth Causes for Disciplinary Action are
11 incorporated by reference herein.

12 46. Respondent's actions, as outlined in paragraphs 23
13 through 35, constitute a violation of Section 2286, in that
14 respondent aided and abetted the unlicensed practice of medicine
15 within the meaning of that section. As a result, respondent's
16 Physician and Surgeon Certificate No. C35811 is subject to
17 discipline under Section 2234, subdivision (a).

18 SEVENTH CAUSE FOR DISCIPLINARY ACTION

19 47. The allegations contained in the First, Second,
20 Third, Fourth, Fifth, and Sixth Causes for Disciplinary Action
21 are incorporated by reference herein.

22 48. Respondent's actions, as outlined in paragraphs 23
23 through 35, constitute a violation of Section 4232, in that
24 respondent failed, neglected, or refused to maintain records of
25 purchase or disposition of dangerous drugs, and\or when called
26 upon by an authorized officer of the Board, failed to produce
27 such records within a reasonable period of time. As a result,

1 respondent's Physician and Surgeon Certificate No. C35811 is
2 subject to discipline under Section 2234, subdivision (e).

3 EIGHTH CAUSE FOR DISCIPLINARY ACTION

4 49. The allegations contained in the First, Second,
5 Third, Fourth, Fifth, Sixth, and Seventh Causes of Action are
6 incorporated by reference herein.

7 50. Respondent's actions, as outlined in paragraphs 23
8 through 35, constitute a violation of Section 17200, in that
9 respondent engaged in unfair business competition within the
10 meaning of that section. As a result, respondent's Physician and
11 Surgeon's Certificate No. C35811 is subject to discipline under
12 Section 2234, subdivision (e).

13 COST RECOVERY

14 51. Business and Professions Code section 125.3
15 provides, in pertinent part, that in any order issued in
16 resolution of a disciplinary proceeding before any board within
17 the California Department of Consumer Affairs, the board may
18 request the administrative law judge to direct a licentiate found
19 to have committed a violation/violations of the licensing act to
20 pay a sum not to exceed the reasonable costs of the investigation
21 and enforcement of the case.

22 PRAYER

23 WHEREFORE, complainant prays that the Board hold a
24 hearing on the matters alleged herein, and following said
25 hearing, issue a decision:

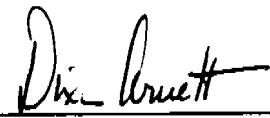
26 1. Suspending or revoking Physician and Surgeon
27 Certificate No. C-35811 issued to Forrest O. Smith, M.D.;

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2. Ordering the recovery for the Board of its
investigative and prosecutorial costs associated with this case
according to proof; and

3. Taking such other and further action as the Board
deems necessary and proper.

DATED: December 14, 1994.



DIXON ARNETT
Executive Director
Medical Board of California
Complainant