43-01-044385

STATE OF MICHIGAN

DEPARTMENT OF COMMERCE

BOARD OF MEDICINE

In the Matter of

ROBERT L. ALEXANDER, M.D. /

New Docket No. 92-0073
Old Docket No. 89-0416

AMENDED SUPERSEDING FINAL ORDER ON REMAND

WHEREAS, on or about December 15, 1988, the Attorney General filed an Administrative Complaint with the Board of Medicine, hereinafter Board, charging Robert L. Alexander, M.D., hereinafter Respondent, with having acted in violation of sections 16221(1)(a), (1)(b)(i), (1)(b)(v), (1)(b)(vi), (1)(c)(iii) and (1)(c)(iv) [now 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv)] of the Public Health Code, 1978 PA 368, as amended; and

WHEREAS, on or about August 3, 1990, the Board issued a Final Order revoking the license of Respondent to practice medicine in the state of Michigan, and ordering that Respondent pay a fine of Fifty Thousand Dollars ($50,000.00) prior to applying for reinstatement of his revoked license; and

WHEREAS, on or about November 2, 1990, the Board issued an Order Denying Motion for Reconsideration of Final Order and Request for Personal Appearance, hereinafter Order Denying Reconsideration; and

WHEREAS, on or about September 30, 1991, the Ingham County Circuit Court issued an Order which vacated both the Board's August 3, 1990 Final Order and the November 2, 1990 Order Denying Reconsideration, and remanded the matter back to the Board for further proceedings concerning the sanction imposed on Respondent; and

WHEREAS, on May 6, 1992, an administrative hearing following remand was held before an administrative law judge; and

WHEREAS, on July 15, 1992, at its regularly scheduled meeting the Board considered the record on remand including the administrative hearing transcript and all exhibits; and

WHEREAS, on or about July 21, 1992, the Board issued a Final Order on Remand which reaffirmed the Board's previous order of revocation of Respondent's license to practice medicine in the state of Michigan, commencing as of August 3, 1990; and

WHEREAS, on or about August 21, 1992, the Board issued a Superseding Final Order on Remand which reaffirmed the Board's previous order of revocation of Respondent's license to practice medicine in the state of Michigan, commencing as of August 3, 1990, and included the provision of the Board's previous Final Order of August 3, 1990, that Respondent pay a fine of Fifty Thousand Dollars and No Cents ($50,000.00) prior to applying for reinstatement of his license; and

WHEREAS, on or about October 18, 1993, the Ingham County Circuit Court issued an Order of Remand Vacating Superseding Final Order which vacated the Board's Superseding Final Order on Remand, dated August 21, 1992, remanded the matter

to the Board of Medicine, and instructed the Board to provide reasons for the Board's choice of sanction and fine consistent with Section 85, 1969 PA 368, as amended; and

WHEREAS, on February 16, 1994, at its regularly scheduled meeting the Board voted to issue an Amended Superseding Final Order on Remand with the attached Board's Findings of Fact and Conclusions of Law on Remand; now therefore

IT IS HEREBY ORDERED that the Board reaffirms its previous order of REVOCATION of Respondent's license to practice medicine in the state of Michigan, effective as of August 3, 1990, for each violation of section 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv) of the Public Health Code, supra.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is assessed a FINE in the total amount of Fifty Thousand Dollars and No Cents ($50,000.00), said fine to be paid by check, payable to the State of Michigan.

IT IS FURTHER ORDERED that the sanctions herein imposed shall run concurrently, commencing as of August 3, 1990.

IT IS FURTHER ORDERED that reinstatement of a license which has been revoked is not automatic and, in the event Respondent applies for reinstatement of his license, application for reinstatement shall be in accordance with 1980 AACS R 338.986. Further, Respondent shall supply to the Board, pursuant to section 16247 of the Public Health Code, supra, clear and convincing evidence that Respondent is of good moral character, is mentally and physically able to practice the profession with

reasonable skill and safety, and that it is in the public interest for Respondent to resume practice.

IT IS FURTHER ORDERED that this order shall be effective thirty (30) days from the date signed by the Board's Chairperson or authorized representative, as set forth below.

Signed this 9th day of March, 1994.

MICHIGAN BOARD OF MEDICINE

By Robert D. Ulieru
Robert D. Ulieru, Director
Health Licensing Division

This is the last and final page of the Amended Superseding Final Order on Remand in the matter of Robert L. Alexander, M.D., Docket Nos. 92-0073 and 89-0416, before the Michigan Board of Medicine, consisting of four (4) pages, this page included.

STATE OF MICHIGAN

DEPARTMENT OF COMMERCE

BOARD OF MEDICINE

In the Matter of

ROBERT L. ALEXANDER, M.D. /

Docket No. 92-0073

BOARD'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

By order of the Ingham County Circuit Court, dated October 18, 1993, this matter has been remanded to the Michigan Board of Medicine, hereafter Board, to make findings of fact and articulate its reasons for imposing the sanctions against Robert L Alexander, M.D., hereafter Respondent, set forth in the Board's Superseding Order on Remand, dated August 21, 1992. The Superseding Final Order on Remand stated that the Board reaffirmed its previous order of revocation of Respondent's license to practice medicine in the state of Michigan, commencing as of August 3, 1990, and imposed a fifty thousand ($50,000.00) fine against Respondent, payable prior to applying for reinstatement of his license.

The sanctions were based on Respondent's violation of six sections of the Michigan Public Health Code, 1978 PA 368, as amended, namely sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (d)(iv). In imposing the sanctions, the Board took into account all the evidence submitted into the record, including all the evidence submitted on remand, and followed the

requirements of section 16226(1) of the Public Health Code, as well as a Board of Medicine administrative rule, R 338.2308. The Board's further findings of fact and reasoning are set forth below for each sanction imposed.

Fine

The Board has imposed a fifty thousand dollar ($50,000.00) fine against Respondent. Under the provisions of section 16226(1) of the Public Health Code, supra, a fine is an available sanction for each of the violations established in this matter, namely sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv). Section 16226(3) provides the Board with the authority to impose a fine up to $250,000.00 for a violation of section 16621(a) or (b).

The Board of Medicine's Administrative Rule 18, R 338.2308, sets forth the basis for imposing a fine:

> "(1) When a fine has been designated as an available sanction for a violation of sections 16221 to 16226 * * *, in the course of assessing a fine a board shall take into consideration all of the following factors without limitations:
>
> "(a) The extent to which the licensee obtained financial benefit from conduct comprising part of the violation found by the board.
> "(b) The willfulness of the conduct found to be part of the violation determined by the board.
> "(c) The public harm, actual or potential, caused by the violation found by the board.
> "(d) The cost incurred in investigating and proceeding against the licensee." [Emphasis supplied].

In the instant matter, it is clear from Respondent's testimony at the May 6, 1992 administrative hearing that Respondent's "moonlighting" work at the Kai Medical Clinic, where the unlawful

distribution of controlled substances took place, was for purposes of obtaining extra income to pay off debts and living expenses. [5/6/92 Tr, p 16]. The exact financial benefit to Respondent from the unlawful distribution has not been established by the record, although the findings of fact set forth in the administrative law judge's Opinion, dated April 20, 1990, show that Respondent unlawfully distributed significant amounts of controlled substances on a number of occasions. [4/20/90 Opinion, pp 32-35]. Respondent was convicted by jury trial of conspiracy to deliver 8,490 Desoxyn, 1,260 Preludin, 2,260 Percodan/Percocet, 4,470 Valium, 3,200 Talwin, 446 Tussionex Hycodan, 160 Tuinal and 58 Tylenol #4. [Case No. 86-80328-04, U.S. District Court, Eastern District of Michigan, Southern Division, Indictment Count I, pp 8-9]. He was also convicted on ten counts of distribution or aiding and abetting distribution of the controlled substances of Preludin, Valium, Desoxyn and Percodan. [Indictment, Counts Seven - Seventeen, pp 13-18; November 21, 1988 Judgment and Probation/Commitment Order]. Clearly Respondent obtained some financial benefit from the unlawful activity for which he was convicted.

The next factor to consider is the willfulness of Respondent's conduct. At the hearing on remand to consider additional evidence in the matter, Respondent pointed to his now diagnosed bipolar illness as the reason why he was involved in the lawful activity in 1982. He explained his understanding of the bipolar disorder as follows:

> "Bipolar disorder, to my understanding is a mental illness that a person has and will always have once

> they are diagnosed with it. And they can go from extreme highs to extreme lows. And when they're in extreme highs they can have delusion of grandeur, auditory hallucinations. They can make bad judgment, have poor insight. If they're not treated, they can kill themselves, self destruct." [5/6/92 Tr, p 21; emphasis supplied].

Respondent also testified that psychotherapists who had treated him had related his unlawful activity to his bipolar illness:

> "Dr. Westrick * * * [said] if you had been treated back when you first were diagnosed and accepted this, then this probably never would have happened." [5/6/92 Tr, pp 28-29].
>
> * * *
>
> "* * * Dr. Somepalli said what they had said that the manic depression had started in 1977 and that the whole thing occurred because of the responsibility study." [5/6/92 Tr, p 29].

Yet, the psychiatric evaluation of Respondent by Dr. Joseph Daniels, M.D., Consulting Psychiatrist, dated November 7, 1990, includes some indication that Respondent's actions were not totally a matter outside of his will:

> "He [Respondent] indicated he found it hard to understand some of the things about his conviction since his involvement in the weight control clinic was prior to the classification of the amphetamines and, he felt, was appropriate at that time." [Deposition Exhibit B, p 3; emphasis supplied].

Dr. R.B. Somepalli, M.D.'s Psychiatric Evaluation of Respondent, dated August 8, 1989, was based on information supplied to him by Respondent. Dr. Somepalli listed under "Background Information" the following telling statement:

> "He [Respondent] states that at the time he was going through a manic phase and that he was using poor judgement and prescribing diet pills such as dextroamphetamines to patients at times without seeing them after the initial followup. He stated that he did not commit any crime and that he was

> inexperienced and used poor judgement when he renewed the prescriptions. He claims that the staff at the clinic took the prescriptions off the patients' charts and sold them illegally." [Respondent's Exhibit F, p 1].

This passage shows a disavowal by Respondent of any criminal wrongdoing as of 1989, as well as an attribution of his actions to being "inexperienced" as much as to "poor judgement." Dr. Somepalli concluded in part that,

> "Regarding his actions in 1982, at that time the patient seemed to be going through a manic phase which could have impaired his judgement and insight resulting in the illegal activities * * *." [Respondent's Exhibit F, p 3; emphasis supplied].

It is significant to note that neither Dr. Daniels nor Dr. Somepalli definitely stated that Respondent's bipolar disorder caused his unlawful activity.

Yet, even if the Board accepts that there was little willfulness in Respondent's unlawful activity in 1982, the Board must consider the remaining two factors set forth in Administrative Rule 18: the public harm, actual or potential caused by the violations, and the cost incurred in proceeding against the licensee. Clearly the unlawful prescribing of substantial quantities of controlled substances represents a serious harm to the public. The costs incurred in proceeding in the ongoing regulatory action against Respondent, although not calculated, are clearly not insignificant, given the ongoing nature of this matter.

In addition to the factors set forth in Administrative Rule 18, the September 20, 1993 Opinion of the Ingham County Circuit Court has instructed this Board to make findings of fact with

respect to Respondent's ability to pay the amount of the fine imposed. Respondent has testified that he is paying $10.00 per month on his $25,000.00 fine for his federal conviction. [5/6/92 Tr, p 20]. He testified that he is receiving $966.00 per month as social security disability benefits. [5/6/92 Tr, p 61]. He also testified that he required a court-appointed attorney because he could not afford to hire an attorney in a separate court matter. [5/6/92 Tr, 56-57].

Revocation of license

The Board has revoked Respondent's license for the violations of the Public Health Code discussed above. The basis of the revocation of license, effective August 3, 1990, is the severity of the offenses committed by Respondent. The revocation sanction also provides a deterrence to others committing similar offenses, to show that the type of activity Respondent engaged in will not be tolerated. The Board has taken into account all of the mitigating evidence submitted by Respondent, and found that the gravity of the offenses and the need to have the sanction fit the offenses outweighs the mitigating evidence.

Further, the mitigating evidence brought by Respondent concerning his bipolar disorder was considered by the Board. Dr. Somepalli's evaluation of Respondent in August of 1989 referred to Respondent as "fairly stable." [Respondent's Exhibit F, p 2]. Dr. Daniels testified that as of November, 1990, Respondent was in partial remission. [Daniels Dep Tr, p 11]. In an August 16, 1991 Summary Note, however, Dr. Daniels stated that Respondent

"remains disabled." [Daniels Dep, Exhibit D, p 1]. He stated that Respondent's "sleep disturbance remains, and his stress tolerance remains impaired." He further stated that Respondent's "emotional condition remains at risk." [Daniels Dep, Exhibit D, p 2]. In an Updated Summary Report of February 1, 1992, Dr. Daniels stated that Respondent's condition had remained "relatively stable * * *" and "* * * in a state of remission." [Daniels Dep, Exhibit E, p 1]. In April, 1992, Dr. Daniels testified that Respondent's use of Lithium put him within the therapeutic range. [Daniels Dep Tr, p 18].

The other four witnesses, Dr. Thomas L. Haynes, M.D., Rev. Donald Jansma, Robert Ezelle, and Dorsey Ligon, M.D., had only known Respondent for about one to one and one-half years. [Haynes Dep, p 6; 5/6/92 Hearing Tr, p 6; Ezelle Dep, p 5; and Ligon Dep, p 6]. Dr. Ligon indicated that his only source of information regarding Respondent was Respondent's own statements to him. [Ligon Dep, p 9]. The testimony of Rev. Jansma, and Mr. Ezelle, while positive regarding Respondent's current activities, are not relevant to Respondent's specific bipolar diagnosis. Dr. Haynes had only met with Respondent roughly four times prior to his deposition testimony. [Haynes Dep, p 7].

Respondent's own testimony indicated that he was unclear how long Lithium and psychotherapy had stabilized his judgment. He was not clear regarding when he became completely well as a result of the medication and psychotherapy. [5/6/92 Tr, pp 43-44, 46]. His testimony was inconclusive regarding whether he considered himself disabled at the time of the May 6, 1992 hearing. [5/6/92 Tr, p 60].

Summary

The mitigating evidence offered by Respondent was considered by the Board and was deemed insufficient to outweigh the nature of the misconduct enough to impose a sanction other than revocation. The Board is not persuaded by the mitigating evidence to impose less than revocation. The Board considers the proven violations to be so grievous that Respondent should be dealt with by the revocation of his license and fine.

Based on the severity of the offenses, taking fully into account all evidence brought forth in mitigation in the record, the Board finds that the revocation and fine sanctions were appropriate in this matter.