

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF MEDICINE

In the Matter of
ROBERT L. ALEXANDER, M.D.

ORDER DENYING MOTION FOR RECONSIDERATION OF
FINAL ORDER AND REQUEST FOR PERSONAL APPEARANCE

WHEREAS, the Board of Medicine, hereafter Board, issued its Final Order dated August 3, 1990; and

WHEREAS, on or about September 12, 1990, Robert L. Alexander, M.D., hereafter Petitioner, filed with the Board, a Motion for Reconsideration Of Final Order And Request For Personal Appearance Before The Michigan Board Of Medicine, hereafter Motion, in accordance with the provisions of 1980 AACSR 338.984; and

WHEREAS, on or about October 3, 1990, the Department of Attorney General by Richard M.C. Adams, Assistant Attorney General, filed with the Board a Response In Opposition To Respondent's Motion For Reconsideration Of Final Order And Request For Personal Appearance Before The Michigan Board Of Medicine, hereafter Response; and

WHEREAS, the Board, at a regularly scheduled meeting held in Lansing, Michigan, on October 17, 1990, considered the aforementioned Motion and Response; now, therefore

IT IS HEREBY ORDERED that Petitioner's Motion shall be and hereby is denied.

IT IS FURTHER ORDERED that this Order shall be effective on the date signed by the Board's Chairperson or authorized representative as set forth below.

Signed this 20th day of NOVEMBER, 1990.

MICHIGAN BOARD OF MEDICINE

BY Herman Fishman
Herman Fishman
Licensing Executive

This is the last and final page of the Order Denying Motion for Reconsideration of Final Order and Request for Personal Appearance Before the Michigan Board of Medicine in the matter of Robert L. Alexander, M.D., before the Michigan Board of Medicine, consisting of 2 pages, this page included.

43-01-044325
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Investigation File #
Bureau of Health Services
Dept. of Licensing & Health Care

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF MEDICINE

AUG 06 1990

In the Matter of
ROBERT L. ALEXANDER, M.D.

Docket No. 89-416

FINAL ORDER

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

WHEREAS, an administrative hearing on the aforesaid Complaint was held before a hearing examiner who, on April 20, 1990, filed his report, entitled "Opinion," setting forth recommended findings of fact and conclusions of law, a copy of which is attached hereto; and

WHEREAS, the Board, having read the administrative record, considered the within matter at regularly scheduled meetings held in Lansing, Michigan, on May 16, 1990 and July 18, 1990, and, at said meetings, rejected in part the hearing examiner's rulings and adopted said hearing examiner's findings

of fact and rejected in part the hearing examiner's conclusions of law, a copy of the Board's rulings, and conclusions of law is attached hereto; now, therefore

IT IS HEREBY ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(a) of the Public Health Code, supra, as alleged in Count I of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(a) of the Public Health Code, supra, as alleged in Count II of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(b)(i) of the Public Health Code, supra, as alleged in Count III of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(b)(v) of the Public Health Code, supra, as alleged in Count IV of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is

revoked for a violation of section 16221(1)(b)(vi) of the Public Health Code, supra, as alleged in Count V of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(c)(iii) of the Public Health Code, supra, as alleged in Count VI of the Administrative Complaint.

IT IS FURTHER ORDERED that Respondent's license to practice medicine in the State of Michigan shall be and hereby is revoked for a violation of section 16221(1)(c)(iv) of the Public Health Code, supra, as alleged in Count VIII of the Administrative Complaint.

IT IS FURTHER ORDERED that the sanctions herein imposed shall run concurrently, commencing on the effective date of this order.

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 (\$50,000.00), said fine to be paid by check, payable to the State of Michigan, prior to applying for reinstatement of his revoked license.

IT IS FURTHER ORDERED that the aforesaid fine shall be mailed to the Board, c/o Licensing Coordinator, Bureau of Health Services, Department of Licensing and Regulation, P. O. Box 30185, Lansing, Michigan 48909.

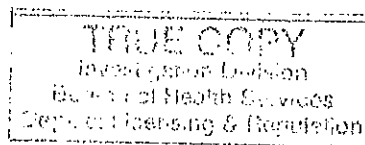
IT IS FURTHER ORDERED that reinstatement of a license which has been revoked is not automatic and, in the event Respondent applies for reinstatement of his license, application for reinstatement shall be in accordance with 1980 AACRS R 338.986. Further, Respondent shall supply to the Board, pursuant 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 on the date signed by the Board's Chairperson or authorized representative as set forth below.

Signed this 3rd day of August, 1990.

MICHIGAN BOARD OF MEDICINE

By Herman Fishman
Herman Fishman
Licensing Executive



This is the last and final page of a Final Order in the matter of Robert L. Alexander, M.D., Docket No. 89-416, before the Michigan Board of Medicine, consisting of 4 pages, this page included.

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MICHIGAN DEPARTMENT OF LICENSING AND REGULATION
BOARD OF MEDICINE

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATION
BOARD OF MEDICINE

In the Matter of
ROBERT L. ALEXANDER, M.D./

Docket No. 89-416

RULINGS ON RESPONDENT'S MOTION
TO DISMISS COUNTS I-III AND V-VIII
OF THE ADMINISTRATIVE COMPLAINT

COUNT I

Lack of Proof

On page 13 of the Opinion, the hearing examiner denies Respondent's Motion to Dismiss Count I for lack of proof. The Board approves this ruling.

The Need for Expert Testimony

On page 18 of the Opinion, the hearing examiner denies the Respondent's Motion to Dismiss and/or for Summary Decision, Summary Dismissal and/or Summary Judgment. The Board approves this ruling.

COUNT I AND II

The Counts are Multiplicitous

On page 16 of the Opinion, the hearing examiner grants the Respondent's Motion to Dismiss one of these counts. The hearing examiner joins Count II with Count I and denies the Motion to Dismiss Count I. However, the hearing examiner dismisses Count II. The Board rejects the hearing examiner's conclusion that Count I and Count II are multiplicitous.

Count I charges the Respondent with a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, in violation of section 16221(1)(a) of the Public Health Code, 1978 PA 368, as amended. Count II charges the Respondent with engaging in a conduct or practice which impairs, or may impair, his ability to safely and skillfully practice medicine in violation of section 16221(1)(a). The Board finds that Count I and Count II are not multiplicitous since it is conceivable that a licensee could violate his general duty as a physician yet not be engaged in a conduct or practice which impairs his ability to safely and skillfully practice his chosen profession.

Therefore, Counts I and II shall remain as separate allegations against Respondent and will be further addressed in the Board's findings of fact and conclusions of law, infra.

COUNT III

On page 19 of the Opinion the hearing examiner denies Respondent's Motion to Dismiss Count III for lack of proof and expert testimony. The Board approves these rulings.

COUNT IV

Respondent did not file a motion to dismiss Count IV. This count will be addressed in the Board's findings of fact and conclusions of law, infra.

COUNT V

Lack of Proof

On page 20 of the Opinion, the hearing examiner denies Respondent's Motion to Dismiss Count V for lack of proof. The Board approves this ruling.

Lacks any support other than the Fact of the Conviction

On page 25 of the Opinion, the hearing examiner grants Respondent's Motion to Dismiss Count V due to the fact that the Department of Licensing and Regulation has failed to properly promulgate rules for administering the Licensing Former Offenders Act, 1974 PA 381, as amended. The Board rejects this ruling.

The Licensing Former Offenders Act requires the Department to promulgate rules that prescribe the types of offenses that the Department believes would indicate a person is not likely to serve the public as a licensee in a "fair, honest, and open manner". The Former Offenders Act further states that prior to the promulgation of rules the Board shall consider all felonies to be relevant to the ability or likelihood of the person to serve the public in a fair, honest and open manner. With or without the application of administrative rules the fact that Respondent engaged in an ongoing conspiracy to illegally distribute controlled substances for no medical purpose and the fact that a conviction resulted from this conduct is sufficient evidence for the Board to conclude that Respondent is not likely to serve the public in a fair, honest, and open manner.

The Board agrees with the hearing examiner's statement on page 22, paragraph 3 that there is no argument that the Licensing Former Offenders Act applies to this case.

The Former Offenders Act provides Respondent with the ability to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed. Clearly, a conviction involving conspiracy to illegally distribute controlled substances is related to the licensee's medical profession. Further, the Board

finds that Respondent failed to rebut the evidence by attempting to establishing that he is able to serve the public in a fair, honest, and open manner.

Therefore, Count V shall remain and will be further addressed in the Board's findings of fact and conclusions of law, infra.

COUNT VI

On page 26 of the Opinion, the hearing examiner denies Respondent's Motion to Dismiss Count VI for lack of proof and expert testimony. The Board approves these rulings.

COUNT VII

Lack of Proof

On page 27 of the Opinion, the hearing examiner denies Respondent's Motion to Dismiss Count VII for lack of proof. The Board rejects this ruling.

On page 8 of the "People's Post-Hearing Brief", the State concedes that Count VII should be dismissed as there are no proofs to indicate that Respondent actually at any time obtained or possessed, or attempted to obtain or possess a controlled substance without lawful authority.

Based on the above, the Board grants Respondent's Motion to Dismiss Count VII based on lack of proof.

The Need for Expert Testimony

As indicated above Count VII is dismissed due to lack of proof.

Count VII AND VIII are Multiplicitous

On page 27 of the Opinion, the hearing examiner denies Respondent's Motion to Dismiss Count VII based on multiplicity. However, for the reasons stated in the discussion of Counts I and II of the Opinion, the hearing examiner joins Counts VII and VIII and denies the Motion to Dismiss Count VII. However, the hearing examiner dismisses Count VIII. The Board rejects these rulings.

As indicated above, Count VII is now dismissed due to lack of proof. The Board finds therefore that Count VIII cannot be joined with Count VII.

Based on the above, the Board denies Respondent's Motion to Dismiss Count VIII.

COUNT VIII

Lack of Proof

For all of the reasons stated in the hearing examiner's Opinion on pages 11-13, Respondent's Motion to Dismiss Count VIII for lack of proof is denied.

The Need for Expert Testimony

For all of the reasons stated in the hearing examiner's opinion on page 17-18, Respondent's Motion to Dismiss Count VIII for lack of expert testimony is denied.

Therefore, Count VIII shall remain and will be addressed in the Board's findings of fact and conclusions of law infra.

SUMMARY

On page 28 of the Opinion the hearing examiner summarizes his rulings. The Board approves the hearing examiner's denial of Respondent's motion to dismiss as to Counts I, III and VI. The Board overrules the hearing examiner's dismissal of Counts II, V, VIII. The Board takes note of the fact that although the Motion to Dismiss Count III was denied on page 19 of the Opinion, the hearing examiner's Summary on page 28 inadvertently indicates that Respondent's Motion to Dismiss Count III was granted. The Board overrules the hearing examiner's denial of the Motion to Dismiss Count VII based on lack of proof.

Therefore, Counts I, II, III, IV, V, VI and VIII shall be addressed in the findings of fact and conclusions of law. Count VII is dismissed.

MISCELLANEOUS MATTERS

REQUEST FOR AN OPPORTUNITY TO APPEAR
AND PRESENT PROOFS ON THE MERITS, OR IN
MITIGATION OF SANCTIONS AND CONTINUANCE

The Board has considered Respondent's Motion for Continuance. The record shows that adjournments and/or continuations were granted to the Respondent on June 14, 1989 and November 7, 1989. Further, Respondent was provided with a sufficient opportunity to present mitigation testimony at the December 20, 1989 hearing. Although the Respondent is available for parole in July 1990, there is no guarantee that Respondent will be paroled at that time.

Therefore, Respondent's Motion for Continuance is denied.

BOARD'S FINDINGS OF FACT

The Board adopts the hearing examiner's findings of fact on pages 32-35 of the hearing examiner's report dated April 20, 1990.

BOARD'S CONCLUSIONS OF LAW

The Board adopts the hearing examiner's conclusions of law pertaining to Counts I, IV and VI as set forth in his opinion dated April 20, 1990 and rejects the hearing examiner's conclusion of law pertaining to Count VII. Additional conclusions of law will be provided by the Board as necessary for each count.

COUNT II - BOARD'S CONCLUSIONS OF LAW

The State asserts in Count II that Respondent is guilty of engaging in a conduct or practice which impairs, or may impair, his ability to safely and skillfully practice medicine in violation of section 16221(1)(a) of the Public Health Code, supra. Clearly, Respondent's ongoing conspiracy to illegally distribute controlled substances, including those in schedule 2, is conduct which impairs his ability to safely and skillfully practice medicine.

Accordingly, the Board concludes that the State has proven by a preponderance of the evidence that Respondent violated section 16221(1)(a) of the Code as alleged in Count II of the Complaint.

COUNT III - BOARD'S CONCLUSIONS OF LAW

The State asserts in Count III that Respondent departed from, or failed to conform to, minimal standards of acceptable and prevailing practice of medicine in violation of section 16221(1)(b)(1) of the Code. Clearly, where a physician has engaged in criminal conduct in the distribution of controlled substances, and those controlled substances were distributed as part of his practice of medicine for non-medical purposes, he has failed to comply with the minimal standards of acceptable and prevailing medical practice.

Accordingly, the Board concludes that the State has proven by a preponderance of the evidence that the Respondent violated section 16221(1)(b)(i) of the Code as alleged in Count III of the Complaint.

COUNT V - BOARD'S CONCLUSIONS OF LAW

The Code defines good moral character in Section 16104(4):

"(4) 'Good moral character' means good moral character as defined and determined under Act No. 381 of the public acts of 1974, as amended, being sections 338.41 of the Michigan Compiled Laws."

That statute provides in pertinent part:

"Sec. 1. (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner."

"Sec. 2. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, by a licensing board or agency as proof of a person's lack of good moral character. It may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he or she has the ability to, and is likely to, serve the public in a fair, honest, and open manner, that he or she is rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he or she seeks to be licensed." (emphasis added)

In Count V of the Complaint, the State alleges that Respondent lacks good moral character in violation of section 16221(1)(b)(vi) of the Code. Clearly, a physician who engaged in an ongoing conspiracy to violate the law by illegally distributing controlled substances, is not acting in a fair, honest, and open manner. Respondent's conviction and underlying conduct of knowingly, intentionally and unlawfully distributing Preludin, Desoxyn, Percodan and Valium by delivering prescriptions for those drugs, which Respondent knew were not issued in the usual course of medical practice for a legitimate medical purpose, is clear and substantial evidence of Respondent's lack of good moral character.

Accordingly, the Board concludes that the State has proven, by a preponderance of the evidence, that the Respondent violated section 16221(1)(b)(vi) of the Public Health Code as alleged in Count V of the Complaint.

COUNT VIII - BOARD'S CONCLUSIONS OF LAW

In Count VIII of the Complaint the State alleges that the Respondent's conviction and the underlying conduct involving the intentional and unlawful distribution of controlled substances, are in violation of section 16221(1)(c)(iv) of the Code. The record as a whole on this matter establishes, by a preponderance of the evidence, that the Respondent knowingly, intentionally, and unlawfully distributed controlled substances in violation of section 16221(1)(c)(iv) of the Code.

Accordingly, the Board concludes that the State has proven, by a preponderance of the evidence, that the Respondent, by his conduct, did violate section 16221(1)(c)(iv) of the Code as alleged in Count VIII of the Complaint.

SUMMARY:

As indicated above, Count VII of the Administrative Complaint is dismissed.

The record as a whole clearly establishes, by a preponderance of the evidence, the State's allegations as contained in Counts I, II, III, IV, V, VI and VIII of the Administrative Complaint.

The record, then, shows that the Respondent has violated Sections 16221(1)(a), 16221(1)(b)(1), 16221(1)(b)(v), 16221(1)(b)(vi), 16221(1)(c)(iii) and 16221(1)(c)(iv) of the Public Health Code, supra.