

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

In the Matter of the Accusation)
of:) File No. 03-2009-202098
)
) OAH No: 2010100927
JESSE JAMES JOPLIN, M.D.)
)
Physician's & Surgeon's)
Certificate No. G 41971)
)
)
Respondent.)
_____)

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 22, 2011.

ORDERED March 24, 2011

MEDICAL BOARD OF CALIFORNIA



Shelton Duruisseau, Ph.D.
Chair, Panel A

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

In the Matter of the Accusation Against:

JESSE JAMES JOPLIN, M.D.

Physician's & Surgeon's
Certificate No. G 41971

Respondent.

Case No. 03-2009-202098

OAH No. 2010100927

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on January 31, 2011, in Oakland, California.

Jane Zack Simon, Deputy Attorney General, represented Complainant Linda K. Whitney, Executive Director of the Medical Board of California.

Respondent Jesse James Joplin, M.D., represented himself.

The record closed on January 31, 2011.

FACTUAL FINDINGS

1. Complainant Linda K. Whitney issued the Accusation in her official capacity as Executive Director of the Medical Board of California (Board).

2. On June 11, 1980, the Board issued Physician's and Surgeon's Certificate No. G 41971 to Jesse James Joplin, M.D. (Respondent). Respondent's certificate will expire on February 29, 2012, unless renewed.

Criminal convictions

3. On December 12, 2007, in the Santa Clara County Superior Court, Respondent was convicted by his plea of nolo contendere of a misdemeanor violation of Vehicle Code section 23103, subdivision (a), reckless driving involving alcohol, drugs, or both. Respondent

was placed on probation for two years under conditions that included completing a first offender drinking driving program.

4. The 2007 conviction followed Respondent's arrest on July 4, 2007, at approximately 8:00 p.m. He was stopped by a California Highway Patrol officer for speeding. The officer observed a plastic baggie of marijuana in the center console area. He also smelled alcohol on Respondent and coming from the vehicle, as well as other signs of alcohol use. Respondent eyes were red and watery and his speech was thick. Two hours later, a breath test administered to Respondent revealed .09 percent blood alcohol.

5. On March 5, 2010, in the Santa Clara County Superior Court, Respondent was convicted of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of .08 percent or higher. This conviction was enhanced by Respondent's prior conviction for a DUI offense and by a blood alcohol content in excess of .18 percent, in violation of Vehicle Code section 23578. Respondent was placed on probation for two years pursuant to conditions that included completing a multiple offender drinking driving program.

6. The 2010 conviction followed Respondent's arrest on September 14, 2009, at approximately 9:00 a.m. Respondent's erratic driving drew the attention of another motorist, who called 911. The responding police officer also observed Respondent to be driving erratically, including weaving and following another vehicle too closely. After the stop, the officer observed Respondent's speech to be slurred and a strong odor of alcohol. The officer assisted Respondent out of his car and found him disoriented as to time and place. A blood test revealed Respondent's blood alcohol content to be .24 percent.

Respondent's evidence

7. Respondent was driving home from parties both of the times he was arrested. He testified that he made a lot of poor choices in his personal life during that time period. He also said that deaths in his family and other family matters were causing a lot of stress. At that time in his life, he did not go out very much, but when he did, he liked to enjoy himself with "rowdy friends." Respondent did not recall learning previously that when he was arrested in 2009 his blood alcohol level was .24 percent. He had been up all night drinking with friends. But after his second conviction, Respondent deliberately chose to go to jail instead of utilizing the alternative work program, in order to "learn a lesson."

8. Respondent was a bit unclear in describing his relationship with alcohol. He said that any problem drinker can be an alcoholic, and that he is a problem drinker in that he makes bad decisions when he drinks. Respondent was still drinking occasionally after the 2009 arrest, but stopped completely at the time he served his jail sentence. He identified his sobriety date as "about May 2010." Respondent initially attended Alcoholics Anonymous meetings only occasionally, but for the past year or so, has attended three times each week.

9. Presently, Respondent is doing everything he can think of to take care of himself. He believes that his problems were rooted in part in the fact that he was trying to take care of everyone else, but not himself. After a divorce, he isolated himself by moving to San Mateo County. Respondent was concerned about depression, and his internist prescribed anti-depressants, which helped for about two months. They made him tired, so he stopped taking them, and “things have been fine.” Respondent is in the process of moving back to San Jose, where he will be closer to people who care about him. He has mended fences with his ex-wife and his children and is trying to keep himself “on an even keel” by exercising and just taking better care of himself in general. He has lost 30 pounds in the last year and is taking medication for his high blood pressure.

10. Respondent is a supervising physician for Planned Parenthood. He has worked for that company pursuant to a contract for 27 years, mainly as a gynecologist in a clinic setting. Respondent mainly works with nurse practitioners and physician assistants, but on most days another physician is present as well.

12. Respondent does not want to go to jail again. He loves practicing medicine and does everything he can to keep his patients safe. Respondent is aware that his drinking put himself and others in jeopardy. He is “willing to do anything to keep” his license to practice medicine.

13. Respondent submitted no evidence except his testimony.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2234 provides that unprofessional conduct is grounds for discipline of a physician’s certificate. Respondent committed unprofessional conduct by driving his vehicle while intoxicated and in a dangerous manner on two occasions. Cause for license discipline exists by reason of the matters set forth in Findings 3 through 6.

2. Pursuant to Business and Professions Code section 2239, unprofessional conduct includes the use “of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public” Respondent used alcoholic beverages in a manner dangerous to himself and the public on two occasions. Cause for license discipline exists under section 2239 by reason of the matters set forth in Findings 3 through 6.

3. Pursuant to Business and Professions Code section 2236, subdivision (a), “the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter.”

Respondent was convicted twice in a three-year period of alcohol-related crimes. The second offense was enhanced due to the prior conviction and a very high blood alcohol content. Driving after ingesting alcohol placed Respondent’s own life and the lives of others in real

danger. The offenses were thus substantially related to his profession as a physician. Cause for license discipline exists pursuant to Business and Professions Code section 2236, subdivision (a), as that section interacts with section 2234, by reason of the matters as set forth in Findings 3 through 6.

4. It appears that Respondent is, at best, in the early stages of recovery from a serious problem with alcohol. Respondent's attempts to deal with the problem are commendable, but insufficient to ensure public safety. The circumstances require that he complete a term of probation that includes appropriate conditions designed to address his alcohol problem.

ORDER

Physician's and Surgeon's Certificate No. G 41971 issued to Respondent Jesse James Joplin, M.D., is revoked; however, revocation is stayed and Respondent is placed on probation for seven years upon the following terms and conditions.

1. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

2. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. Prior to practicing medicine, Respondent shall, at Respondent's expense, contract with a laboratory or service - approved in advance by the Board or its designee - that will conduct random, unannounced, observed, urine testing a minimum of four times each month. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent. Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation.

3. Psychiatric Evaluation

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of this Decision shall not be accepted towards the

fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

4. Psychotherapy

Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations. Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

5. Solo Practice

Respondent is prohibited from engaging in the solo practice of medicine.

6. Monitoring – Practice

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name, and qualifications

of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision, and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within three calendar days after being so notified by the Board or designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

7. Notification

Prior to engaging in the practice of medicine Respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities, or insurance carrier.

8. Supervision of Physician Assistants

During probation, Respondent is prohibited from supervising physician assistants.

9. 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.

10. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

11. Probation Unit Compliance

Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's certificate.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

12. Interview with the Board or its Designee

Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

13. Residing or Practicing Out-of-State

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Probation Monitoring Costs.

Respondent's certificate shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's certificate shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

14. Failure to Practice Medicine - California Resident

In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's certificate shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

15. Completion of Probation

Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

16. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. License Surrender

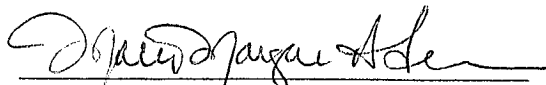
Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee

no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: February 17, 2011



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 14 2010
BY Charles Benjamin ANALYST

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9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 03-2009-202098

14 **JESSE JAMES JOPLIN, M.D.**
15 P.O. Box 3551
SARATOGA, CA 95070

FIRST AMENDED ACCUSATION

16 PHYSICIAN'S AND SURGEON'S CERTIFICATE NO.
17 G41971

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20 Complainant alleges:

21 **PARTIES**

22 1. Linda K. Whitney (Complainant) brings this First Amended Accusation
23 (Accusation) solely in her official capacity as the Executive Director of the Medical Board of
24 California, Department of Consumer Affairs.

25 2. On or about June 11, 1980, the Medical Board of California issued Physician's
26 and Surgeon's Certificate Number G41971 to respondent Jesse James Joplin, M.D. (Respondent).
27 Said certificate is renewed and current, with an expiration date of February 29, 2012.

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2 **JURISDICTION**

3 3. This Accusation is brought before the Medical Board of California¹ (Board),
4 Department of Consumer Affairs, under the authority of the following laws. All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 2227 of the Code provides that a licensee who is found guilty
7 under the Medical Practice Act may have his or her license revoked or suspended for a period not
8 to exceed one year; or the licensee may be placed on probation and may be required to pay the
9 costs of probation monitoring or may have such other action taken in relation to discipline as the
10 Division deems proper.

11 5. Section 2234 of the Code provides that the Medical Board shall take action
12 against any licensee who is charged with unprofessional conduct. Unprofessional conduct
13 includes, but is not limited to:

14 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
15 abetting the violation of, or conspiring to violate, any provision of this chapter
16 [Chapter 5, the Medical Practice Act].

17 6. Section 2239 of the Code provides that the use of alcoholic beverages to
18 the extent or in such a manner as to be dangerous or injurious to the licensee or to any other
19 person or to the public, or to the extent that such use impairs the ability of the licensee to practice
20 medicine safely or more than one misdemeanor or any felony involving the use, consumption or
21 self-administration of alcohol, constitutes unprofessional conduct.

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27 ¹ The term “Board” means the Medical Board of California. “Division of Medical
28 Quality” shall also be deemed to refer to the Board.

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3. Taking such other and further action as deemed necessary and proper.

Dated: June 14, 2010



LINDA K. WHITNEY
Executive Director
Medical Board of California