

BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-09-0198-MED REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1395-2009
TREATMENT OF THE LICENSE OF)	
MOHAMMAD H. M. SAID, M.D.,)	
License No. 4795.)	
)	

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) seeks to impose sanctions against the license of Mohammad Said, MD, on the basis that his Washington license to practice medicine had been sanctioned by that state's licensing board and the sanction had not been set aside.

On January 20, 2010, Hearing Examiner Gregory L. Hanchett held a hearing in this matter. Michael Fanning, agency legal counsel, represented BSD. Dr. Said appeared on his own behalf. Prior to the hearing, BSD filed a motion for partial summary judgment on the question of whether sanctions should be imposed against Dr. Said's license based upon his Washington license having been sanctioned by the medical licensing board in the State of Washington. After reviewing the complaint, the moving party's memorandum and exhibits (Exhibits 1 through 3), and hearing the arguments of the parties, motion for summary judgment was granted for the reasons stated below. After granting the motion for summary judgment, sworn testimony was elicited from Dr. Said and LaVelle Potter. Based on the testimony, sanctions against Dr. Said's license should be imposed as outlined below.

II. FINDINGS OF FACT

I. Dr. Said was licensed to practice medicine in Montana until the end of March 2009, at which time his Montana license terminated by application of Mont. Code Ann. § 37-1-141(8). Dr. Said is licensed to practice medicine in the State of Washington and has been since 1980.

2. On July 4, 2008, Dr. Said entered into a stipulated consent decree with the Washington Medical Quality Assurance Commission, the professional licensing board for physicians in the State of Washington. Under the consent decree, Dr. Said's Washington license was sanctioned for committing unprofessional conduct in violation of Washington statutes governing professional conduct for licensed physicians. Specifically, he agreed that he failed to meet minimum standards of care required of a licensed physician in managing chronic pain patients.

3. As a result of the consent decree, Dr. Said's Washington license was sanctioned, which sanction included placing his license on probation for a period of five years with the terms that he discontinue managing the chronic pain of patients, that he not prescribe controlled substances, and that he obey all federal, state, and local laws governing the practice of his medical profession in the State of Washington. In addition, Dr. Said agreed that he would not apply to modify the terms and conditions of the consent decree until a period of 18 months from the effective date of the order.

4. On July 10, 2008, the Medical Quality Assurance Commission entered its order accepting Dr. Said's consent decree.

5. The sanctions imposed on Dr. Said's Washington license have not been set aside. Dr. Said conceded this fact at hearing.

6. As a result of the sanctions against Dr. Said's Washington license, the Business Standards Division initiated the instant complaint against Dr. Said's Montana license on January 27, 2009, prior to the date his Montana license terminated.

7. A notice of hearing setting this matter for hearing issued on February 20, 2009. At the urging of Dr. Said, and with the concurrence of BSD counsel, the hearing in this matter was continued for several months in order to permit Dr. Said to rectify the issues with his Washington license prior to the completion of the Montana sanction proceeding. The purpose was to permit Dr. Said to rectify the sanction against his Washington license and thereby avoid or at least substantially reduce any sanction against his Montana license.

8. Dr. Said was unsuccessful in rectifying the sanction against his Washington license. Accordingly, this matter proceeded to hearing.

III. CONCLUSIONS OF LAW

A. *Summary Judgment As To The Existence Of Violations Is Appropriate.*

1. Summary judgment is an appropriate method of dispute resolution in administrative licensing proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where “the pleadings . . . and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

2. The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state . . . if the action is not on appeal, under judicial review, or has been satisfied.

4. Mont. Code Ann. § 37-1-319 provides that the Board is authorized to adopt rules that define acts of unprofessional conduct, in addition to those contained in Mont. Code Ann. § 37-1-316.

5. Admin. R. Mont. 24.156.625(7) provides that unprofessional conduct includes “having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based on acts or conduct by the licensee that would constitute grounds for disciplinary action under Title 37, chapter 3, MCA”

6. The undisputed evidence in this matter shows that Dr. Said’s license has been sanctioned in the State of Washington. By the consent decree’s own terms, that sanction has not been set aside. Accordingly, there is no material dispute that Dr. Said’s license has been sanctioned by the State of Washington and as a matter of

law, that sanction constitutes a violation of Mont. Code Ann. § 37-1-316(7) and Admin. R. Mont. 24.156.625(7). BSD has demonstrated that there is no material dispute of fact and as a matter of law BSD is entitled to summary judgment on the issue of whether Dr. Said violated Montana professional regulation statutes.¹

B. *The Appropriate Sanction.*

7. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may restrict or limit a licensee's practice and may impose probation upon the license.

8. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

9. As BSD counsel argued at hearing, and Dr. Said agreed, the appropriate remedy to ensure protection of the public and to Dr. Said's rehabilitation is to impose upon him a term of probation which requires him to comport with all requirements outlined in the Washington consent decree in any Montana practice and that he not be permitted to apply for reinstatement in Montana until such time as he comports with applicable statutory and administrative requirements which include that he successfully reinstate his license in Washington.

IV. RECOMMENDED ORDER

BSD's motion for partial summary judgment should be granted. As a matter of undisputed fact and law, Dr. Said violated Mont. Code Ann. § 37-1-316(7) and

¹ Though not raised an issue by the parties, the termination of Dr. Said's license prior to the completion of this disciplinary proceeding does not affect that Board's jurisdiction to impose sanctions against his license. Where, as here, a complaint is filed prior to the termination of a professional license and the hearing is then continued at the behest of the licensee to a point after the time his license terminates, the Board retains jurisdiction to prosecute the sanctions against the licensee. *See, e.g., Nims v. Board of Registration for Professional Engineers*, (2002), 113 Wn. App. 499, 507, Note 17, 53 P.3d 52, 56, Note 17 (Courts generally have held that a disciplinary board may complete a proceeding that it commenced while the licensee held his or her license). Nothing in the language of Mont. Code Ann. § 37-1-141(9) compels a contrary result, particularly here where the delay was attributable to the licensee's request for continuances in order to resolve the underlying suspension in Washington and thereby avoid or substantially lessen any sanctions that might be applied to his Montana license in this proceeding.

Admin. R. Mont. 24.156.625(7) and the hearing examiner recommends that the Board find that Dr. Said violated said statute and rule as described. Based on the evidence and argument adduced at hearing, the hearing examiner recommends that prior to approving any application for licensure from Dr. Said, the Board require proof that:

(1) Dr. Said has comported with all statutory and administrative requirements for licensure in the State of Montana;

(2) Dr. Said has fulfilled all terms and conditions of the Washington consent decree dated July 10, 2008 (a copy of which is attached to this order as Exhibit A).

DATED this 29th day of January, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.