

IN THE MATTER OF
MICHAEL Q. STEARNS
Respondent
License Number: D33966

* BEFORE THE BOARD
* OF PHYSICIAN
* QUALITY ASSURANCE
* Case Number: 95-0611
*

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FINAL OPINION AND ORDER

Background of Previous Suspension Order

On May 28, 1997, the Maryland State Board of Physician Quality Assurance (the "Board") suspended Dr. Stearns' license to practice medicine in Maryland pursuant to Md. Code Ann., Health Occ. ("HO") § 14-404(b)(1) (1994 Repl. Vol. & Supp. 1996), which requires the Board to suspend any physician who has pled guilty to or has been convicted of a crime of moral turpitude. HO § 14-404 (b)(1) provides:

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction of plea set aside.

Dr. Stearns had pled guilty to four counts of assault and battery before a General Court-Martial convened by the United States Navy. Each of these four counts arose from inappropriate sexual touching during the medical examinations of female patients who were under Dr. Stearns' care while he was in the Navy. Dr. Stearns' guilty plea was the basis for the Board's finding that Dr. Stearns had been convicted of a crime of moral turpitude pursuant to HO § 14-404(b) (1). (The

Board's May 28, 1997 "Final Opinion and Order" is incorporated by reference into this Final Opinion and Order and is attached as Appendix A.) The State and Dr. Stearns submitted substantial pleadings and memoranda regarding the suspension of Dr. Stearns' medical license. On February 26, 1997, the State and Dr. Stearns, through counsel, appeared before the Board and argued their respective positions. Following this hearing, the Board issued its May 28, 1997, Final Opinion and Order suspending Dr. Stearns' medical license. Dr. Stearns then sought judicial review in the Circuit Court for Baltimore City of the Board's May 28, 1997 Final Opinion and Order suspending his license to practice medicine in Maryland. Those proceedings in the Circuit Court have been stayed.

Current Issue: Revocation of Dr. Stearns' Medical License

On May 22, 1996, the United States Navy-Marine Corps Court of Criminal Appeals had affirmed the findings of guilty and the sentence imposed by the convening Court-Martial below. Dr. Stearns, however, still retained the right to petition the United States Court of Appeals for the Armed Forces. Dr. Stearns did file a petition in that court. On February 28, 1997, however, that court denied Dr. Stearns' petition for a grant of review. Dr. Stearns has thus exhausted all appeal rights in his criminal case. On July 17, 1997, the Office of the Attorney General filed with the Board a petition to revoke Dr. Stearns' medical license pursuant to HO § 14-404 (b)(2) based on the fact that he had exhausted all criminal appeals available to him in the military judicial system. HO § 14-404 (b) (2) provides:

(2) After completion of the appellate process if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney General.

The Board issued a Show Cause Order requiring Dr. Stearns to show why his medical license should not be revoked pursuant HO § 14-404(b)(2). Dr. Stearns then filed a Memorandum of Response in Opposition to Show Cause Order To Revoke Respondent's Medical License (Response Memorandum) with the Board on September 16, 1997.

The only differences between this action to revoke and the prior action to suspend Dr. Stearns' medical license are the passage of time, Dr. Stearns' exhaustion of the criminal appeals process, and, thus, satisfaction of the criteria for mandatory revocation set forth in HO § 14-404 (b)(2). The issues which formed the basis for the Board's May 28, 1997, Final Order and Opinion suspending Dr. Stearns' medical license overlap, to some degree, those underlying the State's Petition to Revoke Respondent's Medical License now before the Board.

The Board adopts the Findings of Fact set forth in its prior May 28, 1997 Final Opinion and Order, which is incorporated by reference into this Final Opinion and Order and is attached as Appendix A, and adds: (1) additional findings of fact, and (2) further conclusions of law based upon these additional findings of fact.

ADDITIONAL FINDINGS OF FACT

The Board makes the following additional Findings of Fact:

1. On August 29, 1996, Dr. Stearns filed a Petition for a Grant of Review in the United States Court of Appeals for the Armed Forces of the decision of the Navy-Marine Corps Court of Criminal Appeals, under Art. 66 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, pursuant to the provisions of Art. 67(a) (3), UCMJ, 10 U.S.C. § 867(a)(3) (1989).

2. On February 28, 1997, the United States Court of Appeals for the Armed Forces, denied Dr. Stearns' Petition for Grant of Review of the decision of the United States Navy-Marine Corps Court of Criminal Appeals.

3. There is no further appeal available to Dr. Stearns with respect to this conviction.

4. Dr. Stearns' conviction has not been reversed, and his plea has not been set aside.

CONCLUSIONS OF LAW

The Board adopts the Conclusions of Law set forth in its prior May 28, 1997, Final Opinion and Order (See Appendix A) with respect to the issues of: (a) moral turpitude, and (b) HO § 14-401(I) as a "statute of limitations" bar to Board action not completed within 18 months of receiving a complaint. This "statute of limitations" issue, however, does not apply in the revocation action now before the Board because only eight months have passed since the State filed its petition to revoke Dr. Stearns' license to practice medicine on July 17, 1997.

In addition, the Board concludes that based on the findings of fact adopted and set out above, the case meets the criteria for mandatory revocation pursuant to HO § 14-404(b)(2).

Dr. Stearns argues that his guilty plea, and agreed Stipulation of Facts, and sworn statement at his court martial, and unsworn statement made at his court martial, should all be disregarded, as they were made under "duress". The Board has no doubt that the prospect of facing multiple felony charges is a situation which places pressure on any defendant. Dr. Stearns admits that he believed, after receiving the advice of his attorney, that he would be convicted of even more serious crimes if he did not plead guilty. This is not the kind of pressure that amounts

to “duress” which would invalidate his plea or statements to the court martial. And, in any case, Dr. Stearns had the opportunity to raise all such issues in the appeals of his court martial conviction, but has failed to convince the higher courts that his guilty plea was in any way defective.¹ The Board is not empowered under HO § 14-404 (b)(2) to question the guilty plea itself, or the judgment of conviction entered upon such a plea. The Board is not empowered to decide issues of postconviction criminal relief.

Dr. Stearns argues that he is in fact innocent, and that he has medical witnesses who would testify in his favor. He asserts that the U.S. Navy did not produce an expert witness to testify against him. The Medical Practice Act, however, does not contemplate relitigation of a case in which there has already been a criminal conviction. *See* HO § 14-404(b)(2). And, of course, there was no reason for the U.S. Navy to produce any witnesses, since he pled guilty.

Dr. Stearns argues that the term “moral turpitude” is unconstitutionally vague. The Board disagrees, for the reasons cited in its May 28, 1997 Final Opinion and Order. *See* Appendix A at pp. 10-14. Dr. Stearns further argues that there is no language specifying the materials to be considered by the Board in determining the actual conduct which was committed and resulted in the conviction. This is incorrect. The Board considered the appropriate materials as set forth in COMAR 10.32.02.04B(2) in determining the underlying conduct.

Dr. Stearns argues that the Board must establish a criminal motive for the crime to which he pled guilty. This argument is inconsistent with the plain language of HO § 14-404(b). Dr. Stearns cites case law for the proposition that proof of the crime of battery requires proof that the

¹Dr. Stearns' allegation that a conflict of interest existed within his Navy attorney's office was also an issue which he had the right to raise in his criminal appeals.

perpetuator intended to cause harm or offensive contact. But Dr. Stearns, in fact, pled guilty, admitting by that plea that all required elements of assault and battery existed.

Finally, Dr. Stearns argues that HO § 14-401(1) requires dismissal of charges not disposed of within 18 months of the date the complaint is received by the Board. This argument ignores the fact that, in this case, thirteen (13) months have elapsed since he exhausted his last criminal appeal, and only eight (8) months have elapsed since the Board was officially notified of that fact. And, in any case, the 18-month period is not a statute of limitations. See Appendix A at pp. 7-10.²

For the foregoing reasons, the Board concludes as a matter of law that revocation of Dr. Stearns' license to practice medicine is mandated by Md. Health Occ. Ann., §14-404(b)(2).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 25th day of March 1998, by a majority of the full authorized membership of the Board:

ORDERED that the medical license of MICHAEL Q. STEARNS, M.D. (License No. D33966) is hereby REVOKED pursuant to H.O. § 14-404(b)(2); and it is further


ORDERED that this is a Final Order of the Board of Physician Quality Assurance, and, as such, is a PUBLIC DOCUMENT.

² The Board has excluded from consideration, and from the record, page 21 of Dr. Stearns' Response Memorandum, as Dr. Stearns makes allegations on page 21 which violate the confidentiality afforded statements made at a Case Resolution Conference in a related case. See COMAR 10.32.02.03C (9).

The effective date of the REVOCATION of Dr. Stearns' license to practice medicine imposed in this case is effective this date.

SO ORDERED.

3.25.98
Date


Suresh C. Gupta, M.D.

NOTICE OF RIGHT TO APPEAL

Pursuant to Maryland Health Occupations Code Ann. §14-408, Respondent has the right to take a direct judicial appeal. A petition for appeal shall be filed within thirty days from the receipt of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. Code Ann., State Government Article §§ 10-222 et. seq., and Title 7, Chapter 200 of the Maryland Rules of Procedure.