

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In Re: Lawrence S. Krain, M.D.

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Docket No. MPC 52-0693

AMENDED SPECIFICATION OF CHARGES

COMES NOW the State of Vermont, by and through Attorney General William H. Sorrell and undersigned counsel, Assistant Attorney General James S. Arisman, and amends the previously filed Specification of Charges in the above-captioned matter to allege the following:

1. Lawrence S. Krain, M.D., (Respondent) holds Vermont Medical License Number 042-0003386, issued on January 20, 1967.
2. Jurisdiction vests in the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353, 1354, 1356, 1365, 1366 & 1398 and 3 V.S.A. § 814(c).

I. Background.

3. Lawrence S. Krain, M.D., held an unencumbered license to practice medicine in the State of Vermont until November 30, 1994, at which time this license lapsed and was not renewed.
4. The State of Vermont in 1995 filed a Specification of Charges alleging that Respondent Krain answered falsely and failed to disclose on his 1988 and 1992 Vermont medical license renewal applications that he had been convicted in California of felony solicitation of subornation of perjury.¹

1. The State's original charges against Respondent Krain were filed by then-Assistant Attorney General Geoffrey Yudien.

5. The State's Specification of Charges also alleged that Respondent answered falsely and failed to disclose in his 1992 Vermont medical license renewal application that disciplinary charges were then pending against him before the State of Illinois Department of Professional Regulation for having failed to disclose there that he had been convicted of a felony in the State of California.

6. The Vermont Board of Medical Practice renewed Respondent's medical license in 1988 and in 1992 based at least in part on the false representations made by Respondent in his applications in Vermont for renewal of his medical license.

7. The hearing on the State of Vermont's charges against Respondent was continued by agreement of the parties until all appeals by Respondent of disciplinary actions against him in other states had been completed. All such appeals by Respondent now have been completed, and all disciplinary actions taken against Respondent in sister states have been affirmed.

II. Out-of-State Disciplinary Actions Against Respondent.

A. California Revocation.

8. Respondent Krain was convicted on October 23, 1987 in California following his plea of guilty to felony charges of solicitation of subornation of perjury.² Subsequently, the

2. Pursuant to an order of the California Superior Court on November 26, 1990, Respondent was permitted to withdraw his earlier plea of guilty, a new plea of not guilty was entered, and the Court then dismissed the pending action pursuant to Section 1203.4 of the California Penal Code. Under Section 1203.4, when a convicted defendant, who has been placed on probation fulfills the conditions of probation, a court may, after termination of probation allow the defendant to withdraw his guilty plea, set aside the conviction and dismiss the indictment or information against the defendant. However, entry of an order under Section 1203.4 does not relieve a party of the obligation to truthfully disclose the conviction on any application for licensure filed with state and local agencies. Respondent in seeking an order of dismissal of the original charges against him was required to certify that he understood that he would not be relieved of the obligation to truthfully disclose his conviction in response to any direct question contained in any application for licensure by any state or local agency.

Medical Board of California filed disciplinary charges against him. Following protracted litigation and appeals, Respondent's medical license was revoked by the Medical Board of California by order dated on or about October 23, 1996 based on (1) his conviction; and (2) other disciplinary action that earlier had been taken against him in the State of Illinois. The California Board found the offense of conviction was "one . . . of moral turpitude and, as it has as its hallmark a basic act of dishonesty, it is also substantially related to the functions and qualifications of a medical doctor." The revocation of Respondent's California medical license became final on or about May 10, 1999. See Exhibit 1 (certified order).

B. Illinois: Indefinite Suspension.

9. The Illinois Department of Professional Regulation on March 22, 1993 indefinitely suspended Respondent's license to practice medicine in that State based on his felony conviction in the State of California. The Illinois suspension has remained in effect continuously since that date. The Illinois order also included a determination that due to disease or disability Respondent was unable to practice medicine with reasonable skill and safety. See Exhibit 2 (certified order).

C. Ohio: Indefinite Suspension.

10. The State Medical Board of Ohio on July 2, 1997 determined that Respondent Krain had engaged in unprofessional conduct by failing to acknowledge on three separate Ohio renewal applications in 1988, 1990, and 1992 his felony conviction in the State of California and the discipline of his license by the State of Illinois. The State of Ohio entered an indefinite order of suspension of Respondent's medical license that became final following appeals on August 17, 1999. See Exhibit 3 (certified order).

D. New York: Revocation.

11. The State of New York Department of Health, by order dated November 18, 1999, revoked Respondent's license to practice medicine in that State based on his misconduct in another state, revocation and suspensions of his license in other jurisdictions, moral unfitness, practicing medicine fraudulently, and willfully filing a false report. The New York order concluded that Respondent Krain in 1988, 1992, and 1994 had provided false information on license renewal applications in that State. See Exhibit 4 (certified order).

E. Continuation of Vermont Hearing During Out-of-State Appeals.

12. Respondent contested the disciplinary actions in California, Illinois, Ohio, and New York against his medical license through a lengthy series of hearings and/or appeals in those jurisdictions. As a result of the uncertainty related to these legal actions the State of Vermont and Respondent agreed on September 25, 1995 to a continuation of the hearing on the Vermont charges against Respondent until the appeals in other States had become final.

13. All disciplinary actions against Respondent Krain in California, Illinois, Ohio, and New York have now become final. See, e.g., Krain v. Department of Professional Regulation, 291 Ill. App.3d 988, 225 Ill. Dec. 835, 684 N.E.2d 826, *reh'g denied*, 176 Ill.3d 575, 229 Ill. Dec. 54, 690 N.E.2d 1381, *petition denied* (cases consolidated), *cert. denied*, 118 S.Ct. 2345 (1998); and see Krain v. Medical Board of California, 71 Cal. App. 4th 1416, *appeal dismissed, reh'g denied* (1999); Krain v. State Med. Bd. Of Ohio, 85 Ohio St. 3d 1425, 707 N.E. 2d 515 (1999).³

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

3. There is no indication that Respondent appealed the New York State revocation of his medical license.

14. The charges originally filed against Respondent by the State of Vermont remain pending. No final action has ever been taken with regard to Respondent's medical license in this State. By this filing the State amends its original charges against Respondent and additionally charges him with unprofessional conduct based on the revocation or suspension of his medical license in California, Illinois, Ohio, and New York.

15. Respondent persistently has failed to cooperate with or respond to the State's efforts seeking resolution of the charges against him by voluntary surrender of his Vermont medical license. The State's present, amended charges of unprofessional conduct are set forth below.

III. Amended Allegations by State of Vermont.

Count 1.

16. Paragraphs 1 through 15, above, are incorporated by reference.

17. On or about December 13, 1988, Respondent executed his renewal application for his license to practice medicine in Vermont. On that application, Respondent falsely answered "no" to the question, "During the previous 2 years, have you...had any convictions other than for minor traffic violations?" Respondent's answer was false in light of his conviction in California on October 23, 1987 on felony charges of solicitation of subornation of perjury under California Penal Code, § 653f(a). Based at least in part on the content of Respondent's application for license renewal, the Vermont Board issued a license renewal for the period of February 1, 1989 to November 30, 1990.

18. Respondent provided a false answer in 1988 on his Vermont license renewal application and by this action "fraudulent[ly] procur[ed]...a license." 26 V.S.A. § 1354(1).

Count 2.

19. Paragraphs 1 through 18, above, are incorporated by reference.

20. By his actions, as described in Paragraphs 1 through 18, above, with regard to his false answer on his license renewal application in 1988, Respondent also “deceptive[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 3.

21. Paragraphs 1 through 20, above, are incorporated by reference.

22. On October 1, 1992, Respondent executed his renewal application for his license to practice medicine in Vermont. By this application, Respondent certified that, “all information contained in this renewal application...is true and accurate to the best of my knowledge.” On the application, Respondent falsely answered “no” to the question, “Have you, at any time, been a defendant in any criminal proceeding other than minor traffic offenses?” Based at least in part upon Respondent’s application for license renewal, the Vermont Board issued a license for the period of December 1, 1992 to November 30, 1994.

23. As indicated, Respondent answered falsely on his 1992 on his license renewal application and by that action Respondent “fraudulent[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 4.

24. Paragraphs 1 through 23, above, are incorporated by reference.

25. By his actions, as described in Paragraphs 1 through 23, above, with regard to his false answer on his license renewal application in 1992, Respondent “deceptive[ly] procur[ed]...a license.” 26 V.S.A. § 1354(1).

Count 5.

26. Paragraphs 1 through 25, above, are incorporated by reference.

27. On May 30, 1990, the Illinois Department of Professional Regulation filed disciplinary charges against Respondent for failing to disclose that he had been convicted earlier in California of a felony. Notwithstanding the existence of the pending Illinois disciplinary charges, Respondent on October 1, 1992 signed his Vermont license renewal application and falsely answered "no" to the question, "Are any formal disciplinary charges pending or has any disciplinary action ever been taken against you by any governmental authority...?" Based at least in part upon Respondent's application for Vermont license renewal, the Vermont Board issued a license for the period of December 1, 1992 to November 30, 1994.

28. As described above, Respondent answered falsely on his 1992 Vermont license renewal application, and thereby, Respondent "fraudulent[ly] procur[ed]...a license." 26 V.S.A. § 1354(1).

Count 6.

29. Paragraphs 1 through 28, above, are incorporated by reference.

30. By his actions as described above, with regard to his false answer on his Vermont medical license renewal application in 1992, Respondent "deceptive[ly] procur[ed]...a license." 26 V.S.A. § 1354(1).

Count 7.

31. Paragraphs 1 through 30, above, are repeated and incorporated by reference.

30. The State of California revoked Respondent's medical license in 1996 in

part on grounds of that Respondent had pled guilty to criminal subornation of perjury and that such conduct was substantially related to the practice of medicine. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as then set forth in 26 V.S.A. § 1354(23); and see 26 V.S.A. § 1354(3) (criminal conviction related to practice of medicine).

Count 8.

32. Paragraphs 1 through 31, above, are repeated and incorporated by reference.

33. The Illinois Department of Professional Regulation indefinitely suspended in 1993 Respondent's license to practice medicine based both on his felony conviction in the State of California and professional incompetence due to physical or mental impairment. Respondent Krain thereby engaged in unprofessional conduct as set forth in 26 V.S.A. § 1366 in that he was suspended from the practice of medicine in another jurisdiction on grounds for which a licensee may be disciplined under 26 V.S.A. § 1354. See 26 V.S.A. § 1354(20) (professional incompetency); 26 V.S.A. § 1354(3) (criminal conviction related to practice of medicine).

Count 9.

34. Paragraphs 1 through 33, above, are repeated and incorporated by reference.

35. The State Medical Board of Ohio entered in 1999 a final order of indefinite suspension of Respondent's medical license on grounds that he intentionally provided false information to that Board by failing to acknowledge on three separate Ohio renewal applications in 1988, 1990, and 1992 his conviction in the State of California and the discipline of his license by the State of Illinois.

36. By virtue of such license suspension by the State of Ohio Respondent Krain has engaged in unprofessional conduct as set forth in 26 V.S.A. § 1366 in that he has been suspended from the practice of medicine in another jurisdiction on grounds for which a licensee may be disciplined under 26 V.S.A. § 1354. See 26 V.S.A. § 1354(1) (fraudulent or deceptive procuring of a license).

Count 10.

37. Paragraphs 1 through 36, above, are repeated and incorporated by reference.

38. The State of New York Department of Health, Office of Professional Medical Conduct revoked in 1999 Respondent's medical license on grounds that the conduct underlying Respondent's original plea of guilty in California to charges of subornation of perjury evidenced moral unfitness to practice medicine. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(a)(23). See 26 V.S.A. § 1354(7) (unfitness to practice medicine).

Count 11.

39. Paragraphs 1 through 38, above, are repeated and incorporated by reference.

40. The State of New York Department of Health, Office of Professional Medical Conduct revoked Respondent's medical license on grounds that the conduct underlying Respondent's suspension of his medical license in Illinois constituted professional misconduct by practicing medicine while impaired by a mental disability. By virtue of such revocation, Respondent Krain has engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(23). See 26 V.S.A. § 1354(20) (professional incompetency due to physical or mental impairment).

Count 12.

41. Paragraphs 1 through 40, above, are repeated and incorporated by reference.

42. The State of New York Department of Health, Office of Professional Medical Conduct revoked Respondent's medical license on grounds that included a finding that he knowingly, willfully, and with intent to deceive, provided false answers on his 1988, 1992, and 1994 New York registration applications. By virtue of such revocation, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(23). *And see* 26 V.S.A. § 1354(1) (fraudulent or deceptive procuring or use of a license).

Count 13.

43. Paragraphs 1 through 42, above, are repeated and incorporated by reference.

44. Respondent was convicted in the Superior Court of the State of California on or about October 23, 1987 following his plea of guilty to felony charges of solicitation of subornation of perjury under California Penal Code, § 653f(a). *See* Exhibit 5 (certified judgment of conviction). By virtue of such conviction, Respondent Krain engaged in unprofessional conduct as set forth in 26 V.S.A. § 1354(3) (conviction of a felony, whether or not related to the practice of medicine).

IV. Hearing on Charges.

45. The State renews its previously filed motion praying that this matter be set for hearing by the Board on the Specification of Charges against Respondent.

WHEREFORE, Petitioner, the State of Vermont, moves the Board of Medical Practice to set this matter for hearing and, based on the evidence, to REVOKE the medical license of Respondent Krain or take such other disciplinary action as may be warranted in this matter.

Dated at Montpelier, Vermont this 6th day of August 2003.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


JAMES S. ARISMAN
Assistant Attorney General

Foregoing Charges Issued:


HON. HILTON H. DIER, JR.
Secretary, Board of Medical Practice

Signed and Dated at RANDOLPH, Vermont this 6 day of AUGUST, 2003.
Amended Krain Charges: JSA 7/03\