

ORIGINAL

Michael L. Fanning
Special Assistant Attorney General
DEPARTMENT OF LABOR AND INDUSTRY
Office of Legal Services
301 South Park Avenue
P.O. Box 200514
Helena, MT 59620-0514
Telephone: (406) 841-2054, 841-2312
Fax: (406) 841-2313
E-mail: mfanning@mt.gov

**BEFORE THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA**

In the Matter of the Proposed Disciplinary Treatment of the License of MARK CATALANELLO, Medical Doctor, License No. 7315.	Case No. 2015-MED-LIC-931 NOTICE OF PROPOSED BOARD ACTION, SUMMARY SUSPENSION, AND OPPORTUNITY FOR HEARING
---	--

TO: Mark Catalanello
PO Box 211
Warm Springs, MT 59756

On October 2, 2015, the Screening Panel of the Montana Board of Medical Examiners (the Screening Panel) considered information presented by the Montana Department of Labor and Industry (Department) and directed this *Notice of Proposed Board Action, Summary Suspension, and Opportunity for Hearing* (Summary Suspension Notice) be served upon you.

SUMMARY SUSPENSION ORDER

Summary suspension of a license is authorized by **Mont. Code Ann. § 2-4-631**, which provides:

- (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

. . . .

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Due to the nature and circumstances of the factual assertions set forth below, the Screening Panel finds that public health, safety, or welfare imperatively requires emergency action.

IT IS ORDERED that the Medical Doctor license of Mark Catalanello to practice in the state of Montana be **IMMEDIATELY AND SUMMARILY SUSPENDED** for an indefinite period pending further investigative and disciplinary proceedings or other resolution of this matter.

Licensee shall return all documentation of licensure in person or by mail to the Board office within 24 hours of receiving this Summary Suspension Notice.

DATED this 2 day of October 2015.


ANNA EARL, M.D., Chair, Screening Panel
MONTANA BOARD OF MEDICAL EXAMINERS

A. FACT ASSERTIONS

1. On or about May 22, 1993, the Montana Board of Medical Examiners (Board) issued Licensee a Medical Doctor license, number 7315. Licensee's license is active through March 31, 2017.
2. By letter dated September 29, 2015, Michael J. Ramirez, M.S., clinical director of the Montana Professional Assistance Program (MPAP) advised the Board that Mark Catalanello,

M.D. (Dr. C), had breached his contract with MPAP. MPAP is required by Montana regulations to report suspected relapses to the Board. Admin. R. Mont. 24.156.444. Mr. Ramirez catalogued a number of issues that could amount to unprofessional conduct including Dr. C's refusal to undergo a toxicology screening through urine and hair follicle samples monitored and collected by Mr. Ramirez personally.

3. Based on MPAP's report, on September 29, 2015, staff scheduled an emergency meeting of the Board's Screening Panel. Staff sent notice of that meeting by regular post and certified mail on September 29 and contacted Dr. C by phone and email. Dr. C received notice of the Screening Panel meeting as evidenced by the voice message reply left with Board staff at 3:05 p.m. on October 1, 2015. Dr. C did not submit a written response to the complaint. The Screening Panel attempted to call Dr. C's telephone number just prior to and at the beginning of the meeting to allow him to participate, but only reached his voice mail message.

4. In March 2004, the Department initiated disciplinary action against Dr. C, alleging that Dr. C's substance abuse amounted to unprofessional conduct. *In the Matter of the Disciplinary Treatment of the License of Mark Jay Catalanello, M.D., License No. 7315*, Board of Medical Examiners Docket No. CC-04-0118-MED. Dr. C admitted committing unprofessional conduct and the Board entered a *Final Order* dated May 21, 2004, approving the parties' stipulation and ordering an indefinite suspension of Dr. C's Montana medical license. The Board revisited the matter and by *Final Order Reinstating License*, dated May 25, 2007, the Board reinstated Dr. C's Montana medical license.

5. After he was suspended, Dr. C engaged with MPAP. On December 14, 2005, Dr. C entered an *Aftercare Agreement* with MPAP which was renewed on January 7, 2011, by a written *Extended Continuing Care Agreement for Chemical Dependency*. In that agreement, Dr.

C admitted that he suffered from chemical dependency as well as certain psychological disorders. That MPAP Agreement imposed a number of binding restrictions and conditions on Dr. C's conduct and practice including his agreement to submit to toxicology testing.

10. I agree to participate in a random body fluid and/or bloodscreening, breath analysis or hair analysis program. All requested specimens will be submitted on demand voluntarily and without question in the presence of a MPAP approved observer. I understand that initially there will be a minimum of forty (40) random screens per year. **I understand that failure to submit a specimen will be construed as a "positive test result"** and reported to the Board as provided herein. Poppy seed ingestion is not an acceptable explanation for an opiate positive urine. **I agree that the MPAP staff and/or the other parties listed in this agreement may request additional breath, urine, saliva, blood or hair specimens for testing on demand at any time.** I authorize release of the results of any said testing to MPAP.

(emphasis added). That Agreement specifically provided that Dr. C understood that any violation of the agreement would be reported to the Board.

6. The Screening Panel heard the unrebutted report from Mr. Ramirez of MPAP charging that:

- Beginning in August, MPAP began to receive reports of concern about Dr. C from associates regarding delinquent charting, disheveled appearance, and distractions in the workplace, but a toxicology study of August 10, 2015, was negative;
- Following an MPAP retreat on September 11 to 13, 2015, the manager of the host facility contacted MPAP to report that a housekeeper found a cosmetic bag that contained what appeared to be illicit drugs in the hotel room that Dr. C and his girlfriend had occupied;
- Dr. C tested negative for drugs on a September 21, 2015, toxicology screen, but there was no assurance of the validity of the sample because the collection process was not monitored;
- The following day, September 22, 2015, Mr. Ramirez confronted Dr. C about his concerns and Dr. C denied any use, but stated that his girlfriend, a former drug user, had relapsed and was using marijuana and hydrocodone;
- On September 26, 2015, an anonymous source reported to Mr. Ramirez that Dr. C had not appeared for duty when called in to treat a patient and had been exhibiting bizarre behavior;
- Mr. Ramirez corroborated that report through an official at the Montana Chemical Dependency Center in Butte where Dr. C is employed who confirmed that Dr. C did not report for duty on September 25, 2015, and when the official questioned Dr. C in a telephone call, Dr. C slurred his speech and did not respond with coherent thoughts,

leaving the official with the conclusion that he was under the influence of some form of intoxicant; and

- That same official at MCDC reported that Dr. C was behind on many of his patient charts.

7. Based on the foregoing facts, Mr. Ramirez traveled to Warm Springs, Montana, to meet with Dr. C on September 28, 2015. Dr. C admitted that working at both the State Hospital and MCDC was a strain and issues with his girlfriend were timeconsuming, but he rated his work as satisfactory. Dr. C conceded that if tested he might test positive for cannabinoids, the active ingredient in marijuana, because his girlfriend regularly smoked marijuana in his presence. Mr. Ramirez noted that the longer they spoke the more pressured, tangential and animated Dr. C became.

8. Mr. Ramirez demanded urine and hair sample collected under his supervision to insure forensic integrity of the toxicology testing. Dr. C refused and pleaded for “a pass.” Mr. Ramirez insisted upon collecting the samples and cautioned Dr. C that a refusal to undergo an examination is deemed a positive test. Dr. C refused the request for samples, exited his office and left the Warm Springs campus.

9. At the Screening Panel meeting, Mr. Ramirez reported that he had offered Dr. C the chance to change his mind and submit to testing by the following day. Dr. C did not relent and has not supplied the samples necessary to conduct verifiable toxicology testing.

10. Mr. Ramirez offered the Screening Panel his opinions that:

- He cannot assure the Screening Panel of Dr. C’s ability to practice medicine with reasonable safety;
- Dr. C has demonstrated relapse behavior sufficient to warrant further forensic evaluation;
- There is strong evidence that he may have returned to use of illicit substances in proximity to performing his duties as a physician; and
- Dr. C’s refusal to submit to toxicology demonstrates his inability to comport himself with the requirements of continued practice.

11. Based on the foregoing, Mr. Ramirez advised the Screening Panel that MPAP can no longer serve as an advocate for Dr. C. Mr. Ramirez recommended that Dr. C immediately cease practicing medicine or, failing that, that the Screening Panel summarily suspend Dr. C's license to practice medicine in Montana.

12. The Screening Panel considered all of the facts presented in the written materials, as well as the report Mr. Ramirez offered at the meeting and concluded that Dr. C's conduct presents an immediate risk to the public requiring emergency action because there is unrebutted evidence that he has failed to report for duty, he may have practiced medicine while under the influence of an intoxicant, he refused a reasonable request from MPAP for a toxicology test leading to the presumption of a positive test, there is significant evidence that he has relapsed, and he has failed to keep current on charting in his work with a particularly vulnerable patient population.

B. CHARGE OF STATUTES, RULES, OR STANDARDS VIOLATED

1. The Board has subject matter jurisdiction and legal authority to bring this action under Mont. Code Ann. §§ 37-1-131, 37-1-136, 37-1-307, 37-1-309, and Title 37, ch. 3. For disciplinary purposes, the Board retains jurisdiction over the license for two years after lapse. Mont. Code Ann. § 37-1-141.

2. Based on the foregoing fact assertions, the Screening Panel found reasonable cause to believe Licensee violated each of the following statutes, rules, or standards, justifying disciplinary proceedings:

Montana Code Annotated

§ 37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

. . .

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; . . .

(18) conduct that does not meet the generally accepted standards of practice.

§ 37-3-323. Suspension of license -- investigation. (1) The department may investigate whenever the department learns of a reason to suspect that a license applicant or a person having a license to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;

Administrative Rules of Montana

24.156.625 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 3, MCA:

(c) conduct likely to deceive, defraud, or harm the public;

(i) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

(v) failing to comply with an agreement the licensee has entered into with the program established by the board under 37-3-203, MCA;

(ad) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

C. STATEMENT OF RIGHTS AND PROCEDURES

1. You may request a hearing to determine whether your license should remain suspended pending further proceedings to contest these charges and present evidence and arguments on whether the suspension or revocation should be made permanent. To exercise your right to a hearing, you must send a written request within 20 days of your receipt of this Summary Suspension Notice, addressed as follows:

Sarah J. Braden, Acting Compliance Unit Supervisor
Business Standards Division

Department of Labor and Industry
301 South Park Avenue
P.O. Box 200514
Helena, MT 59620-0514

2. Failure to request a hearing within 20 days of the receipt of this Notice constitutes a default and allows the Board to enter a Final Order of discipline against you on the basis of the facts available to it.

3. If you request a hearing within 20 days, the Commissioner of Labor and Industry will appoint an impartial hearings examiner to conduct the hearing. The hearings examiner will notify you and the Department of the time and place of the hearing. You have the right to appear in person or by or with counsel.

4. Procedural and substantive requirements governing this matter may be found at Mont. Code Ann. Title 2, ch. 4, pt. 6 (Montana Administrative Procedure Act); Title 37, ch. 1, pt. 1 and 3; and Title 37, ch. 3, including the right to a hearing before an impartial hearings examiner, the right to present evidence and testify and confront and cross-examine witnesses at the hearing, the right to be represented by legal counsel, the right to subpoena witnesses, and the right to request judicial review and appeal.

5. After a proposed decision of a hearings examiner, a default, or a stipulated agreement, the Board will issue a Final Order imposing one or any combination of the sanctions under rules adopted by the Board under Mont. Code Ann. §§ 37-1-136 and 37-1-312(1) as follows:

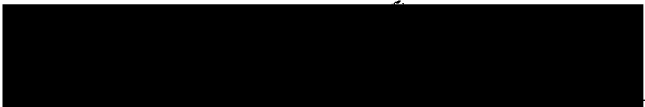
- a. revocation of the license;
- b. suspension of the license for a fixed or indefinite term;
- c. restriction or limitation of the practice;
- d. satisfactory completion of a specific program of remedial education or treatment;
- e. monitoring of the practice by a supervisor approved by the disciplining authority;
- f. censure or reprimand, either public or private;
- g. compliance with conditions of probation for a designated period of time;

- h. payment of a fine not to exceed \$1,000.00 for each violation (deposited in the state general fund);
- i. denial of a license application; and/or
- j. refund of costs and fees billed to and collected from a customer.

6. You may request judicial review of a Final Order of the Board entered after consideration of a proposed decision of a hearings examiner by filing a petition in district court within 30 days of the issuance of a Final Order.

7. In lieu of a hearing, you may enter into a stipulated agreement resolving potential or pending charges that include one or more sanctions authorized by law.

DATED this 2nd day of October 2015.


Michael L. Fanning
Special Assistant Attorney General
DEPARTMENT OF LABOR AND INDUSTRY

CERTIFICATE OF SERVICE

I certify I served a true and accurate copy of the foregoing ***NOTICE OF PROPOSED BOARD ACTION, SUMMARY SUSPENSION, AND OPPORTUNITY FOR HEARING*** by email delivery and by placing it in the United States Postal Service mail, certified with return receipt requested and postage prepaid, addressed to the following:

MARK CATALANELLO
PO BOX 211
WARM SPRINGS MT 59756
catalanello@msn.com

DATED this 2nd day of October 2015.


Department of Labor and Industry