

Good Physician Barred From Practicing Medicine

By Joanne Benzor, MD

It’s been tough at times, juggling medicine and motherhood. I never wanted children until I hit 30. Then I wanted four of them. I had four kids in seven years while being in solo practice that didn’t include inpatient care, didn’t take any managed care patients, and was literally five minutes from home. I was sole proprietor/owner of Family Medical Clinic of Perris, a small city in Riverside County. Those were busy but wonderful years.

After a divorce and the sale of my practice, I found myself working 10 hour days, five or six days a week. My kids’ grades started to slip and my second oldest started behaving badly in school and at home. In November of 2005 I saw a posting on Craigslist for a “420 Friendly Physician Assistant.” I replied and tried to convince them that hiring an MD would be to their advantage.

I was the first doctor hired by Jean Talleyrand, MD, the owner of MediCann, a chain comprised at the time of eight clinics throughout California. MediCann had previously employed physician assistants (PAs) to see patients. Talleyrand reviewed and signed off on the diagnoses and letters of approval and saw patients himself in Oakland, Ukiah, Santa Cruz, and, occasionally, in Southern California.

Since the law allows a physician to supervise no more than four PAs at any moment in time, my hiring allowed MediCann clinics to see more patients on more days than before. Talleyrand occasionally joked that his goal was to become “the McDonalds of Medical Marijuana Clinics.”

Working for MediCann allowed me to work only three or four days a week and to concentrate on parenting again. For the first five or six months I saw patients in the Los Angeles, Long Beach, and San Diego Offices. Typically, each location held clinic one day a week.

It was a good job: great hours (usually four p.m. to eight p.m. on weekdays, noon to five p.m. on the weekends), good pay (\$100 per hour), full medical and dental insurance for myself and my family, 401K with matching contributions, reimbursement for travel to and from each clinic, and occasional paid trips to the San Francisco Bay Area for company conferences.

In the spring of 2006 the Medical Board of California decided that only physicians, not physician assistants, were allowed to recommend cannabis to patients. So Talleyrand hired two more physicians—one each for the Long Beach and Los Angeles Clinics—and I saw patients only at the San Diego Clinic. Business was booming and soon each clinic was seeing patients three-to-four days a week.

The physician assistant I had previously supervised was kept on as an educator and helped put together information packets that were given to each patient. She also was quite vocal about the company’s need to revamp policy in order to be more compliant with the medical board’s guidelines regarding the recommendation for the use of medical marijuana. I suspect this was a major factor in her being fired.

My patients confirmed over and over again the therapeutic benefits of Cannabis. I saw a young father whose limbs (both legs and one arm) had been amputated in order to save his life when he was in a septic coma. After recovery he considered suicide. None of the many opiate, anti-convulsant, or antidepressant medications were effective in controlling his phantom pain. As a last resort his doctor suggested he try marijuana—but like most MDs, wasn’t willing to provide a written recommendation. Cannabis literally saved his life and allowed him to be a father again. When I saw him, he strolled in, with three limb prostheses and his young daughter in his arms. He was loving life again and had been able to taper and discontinue all his prescription medications.

Another patient, a single mother of three,

told me how cannabis had saved her family. A few years before I saw her she had fractured her right lower leg and ankle at work. Surgery and physical therapy had restored normal function of her leg but she developed Reflex Sympathetic Dystrophy (RSD) Syndrome, causing chronic unbearable burning pain in the affected leg. The opiates her doctors prescribed had made the pain tolerable but impaired her overall function so much that Child Protective Services had taken her children from her.

A friend shared some pot with her and



DR. BENZOR DESCRIBES HER BROOD (FROM LEFT): “Patrick the oldest, and the future writer/journalist; Billy (William), the budding photographer/psychologist; mom, Dan the Man (Daniel second oldest) vegetarian musician/farmer, and my Lovely Rita.”

to her surprise the pain lessened. It took a few months for her to get to the point where she was taking only an occasional Vicodin tablet for pain along with daily use of small amounts of cannabis. She was able to return to work and her children were returned to her. Her doctor had referred her to us for the proper paperwork requested by Family Court.

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We later found out that five of those patients were undercover San Bernardino sheriff’s deputies. Only two of the five were given recommendations. One had migraines and had brought his Rx bottle with Imetrex as documentation of a diagnosis. The other had chronic post-traumatic pain in one shoulder and came in with his prescribed Oxycontin.

Later they would complain to the medical board that they had been given recommendations without having a “complete” physical exam performed and before the PA had reviewed their medical records.

No doctor would be investigated if they had seen these patients in an Emergency Room and either refilled their prescriptions or prescribed something similar without performing a “complete” physical exam or waiting for medical records to arrive. So why did I end up with five years on probation?

Mainly because I could not afford an attorney when I went before an administrative law judge working for the medical board. I had been fired from MediCann, along with the San Diego office manager/receptionist just before Thanksgiving 2006. Our accounts receivable were way below the other offices because I refused to see more than three or four patients per hour. I had asked MediCann for help from their

I was naive enough to believe that if I was completely honest in my dealings with the medical board, everything would be fine since, after all, I had done no harm.

attorneys—my “gross negligence” had occurred while I was working for them. But I was told that since I was no longer an employee, I was on my own, and they wished

excessive. She furiously started flipping through the mound of paperwork in front of her, as if the answer would be there. When I complained about the inconvenience of having to take time off work and was assigned a different monitor.

My next probation monitor was nice enough to visit me in my office. On our first visit she looked anxious and refused to shake my hand. The visit was otherwise short and courteous. I later found out she had a germ phobia and was upset about having to wait 10 minutes in our waiting room before meeting with me. For our future visits she waited in her car and then entered through the back door when I was ready. She later took a medical leave (I guess all those germs finally got to her).

The third and final monitor assigned to my case was an ill-tempered, angry woman, who took an obvious dislike to me, my staff, and my boss on her first visit. She stated things I knew to be untrue concerning the number of CME units I needed and the number of charts that had to be reviewed each quarter. She turned out to be wrong, but never apologized. She did, though, restrict most of our subsequent communication to email, which enabled her to ignore most of my queries.

When meeting in person she often addressed me as Mrs. or Ms. Benzor, instead of doctor. After receiving several snappy and unprofessional emails from her, I called her immediate supervisor to complain. She stated that if I was unhappy with my monitor, I should call Sacramento.

After several days of trying, I finally was able to speak to the Director of Physician Monitoring. When I brought up the issue of being addressed as Mrs. instead of doctor, she said she probably shouldn’t discuss this with me without first “getting the other side’s version.” Then she added, “Maybe she forgot you were a doctor.”

I’m not one to put on airs, but it was demeaning for a bureaucrat to deny me my hard-earned title. I had successfully completed four years of undergraduate studies, majoring in psychobiology, followed by four years of medical school at UC Irvine, followed by an Internship in Internal Medicine at the Long Beach Veterans Hospital. I have been practicing medicine for 28 years. I like what I do and I’m good at it. I have helped thousands of people resolve or manage their medical problems. I have made life-saving diagnoses and improved the quality of many lives. Neither of my transgressions in any way violated my Hippocratic oath.

My Downfall

My ideal work situation deteriorated after my boss’s wife became the office manager in January 2010. She clearly resented the flexibility I’d been given to be with my family. One day—soon after the protracted death of my mother and her funeral (which brought in family from out of state)—the boss’s wife notified me that my hours were being cut to 15/week. I cleaned out my desk and left. I later spoke to her husband and he and I parted on good terms and have remained friends.

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There were many times during the next year that I almost regretted walking out. Finding employment isn’t so easy when you are a physician on probation. “Only doctors with clean records need apply.”

I did find part time work as a Sub Investigator for CiTrials and also worked for

continued on next page

Good Physician from previous page

a new Home Health Care Company doing house calls for homebound (largely vegetative) patients. I was unable to keep up with payments to the medical board and borrowed from my siblings just to stay afloat.

In this period —the summer of 2009— I was arrested for Driving Under the Influence. I had gone out to eat with friends at a local restaurant that had reopened under new management. We were seated in the bar instead of the dining room. The waitress recommended their pomegranate martini. I like pomegranates and had never in my life drank a martini, and I was still on vacation, so I ordered one. It was quite tasty, certainly did not taste like pure alcohol.

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I ordered another and sometime between the second and third martini I went into an alcoholic blackout, which would last until I was booked into the Riverside jail hours later. I have no memory at all of what occurred in those hours. I previously thought that only alcoholics had alcoholic blackouts. I've since learned that they are most likely to occur in non-drinkers when their blood alcohol level increases rapidly in a short period of time. I later learned I had behaved badly for four to five hours. The arresting officer tape recorded me in the squad car saying very rude things, some involving his genitals.

For the misdemeanor DUI I was fined and sentenced in September '09 to three years of summary probation, five consecutive weekends washing police cars, first-offender classes (weekly for four months), and ordered to "submit to chemical test of

your blood, saliva, breath or urine or any reasonable physical test upon request of any law enforcement or probation officer." I duly notified the medical board. It would be almost a year before they responded.

One morning in August of 2010 a senior investigator from the medical board's enforcement division and her assistant appeared at my home unannounced and demanded that I provide a urine sample to test for drugs. I refused.

I was subsequently ordered by subpoena to appear before the Superior Court for Riverside County in October, 2010. The paperwork stated I had violated the terms of my summary probation by refusing a "peace officer's" request for a drug test. I hadn't realized that the board's senior investigators are "peace officers." The presiding judge seemed puzzled —he had no paperwork in my name, and said that only a blood test would have been acceptable evidence. I was sent away with an apology for the inconvenience.

In June 2011 I was hired on a full-time basis by Clinica Medica Familiar. I worked at their Ontario Clinic and quickly settled in. It is an extremely busy clinic, but so well run that all the doctors have to do is to practice medicine. The staff were all friendly and competent, it felt like home. I'd go to sleep each night looking forward to going to work in the morning. I was slowly but surely repaying my loans, catching up on my mortgage payments, and trying to be compliant with my probation. But I was behind on my paying my probation fees to the tune of roughly \$6,000.

In March 2012, two-and-a-half years after I had been arrested for DUI, an administrative hearing was held and the medical board's "accusation" against me was presented to a judge employed by the medical board. I mentioned to the judge that if the board really thought I

was a danger to the public they probably shouldn't have waited that long to protect the public.

I expected that my probation would be extended or, at worst, I would be suspended from practicing medicine for 30 days.

I'd been unable to come up with the \$5,000 retainer that the attorneys wanted. I was unsuccessful in finding an attorney who would take my case pro bono. There is no equivalent of a public defender in administrative law proceedings. I expected that my probation would be extended or, at worst, I would be suspended from practicing medicine for 30 days.

The Deputy Attorney General assigned to my case, Abraham Levy, who had been pleasant and informative beforehand, turned into a fighting cock at the hearing, hellbent on revoking my license permanently. He was especially eager that my drunken vulgar utterances be repeated in court —as if the judge couldn't read the police report. After several unsuccessful attempts to get the arresting officer to repeat them, Levy enthusiastically read them aloud for the judge. One would have thought I was up on murder charges.

Five-and-a-half weeks after the hearing, the judge's recommended decision arrived by mail. There are no words to describe how I felt when I read that my license was to be permanently revoked in 30 days.

On May 18, 2012 my license to practice medicine was revoked. That was the last day I worked.

I lost my license for recommending a safe alternative treatment to a couple of fake patients and for being a drunken fool for the first, and last, time in my life.

I thought I would be able to find alternative employment fairly easily, but four

In my case what, exactly, are they protecting the public against?

months have passed and I have not had one serious job offer. Trying to live on unemployment benefits is impossible. I wrote the judge asking for reconsideration and was advised to contact the medical board. I have written letters to the MD members of the board asking only that they take a personal look at my case. None have even given me the courtesy of a reply.

Throughout my nearly seven years of being under the state of California's watchful eye, I have never had contact with a single MD representing the medical board. Not in person, not by phone, not by email, not by fax. Not a one.

I did receive a letter from an administrator citing sections of the Business and Professions Code that was addressed to Ms. Benzor. And I did receive an email from an attorney representing the board citing the same sections of the code and adding that it didn't matter anyways because the 30 days I had to contest the decision had come and gone. He reiterated that the board's purpose is to protect the public, not to punish doctors.

In my case, what, exactly, are they protecting the public against? The chance that I will ever again recommend medical marijuana to an undercover cop? Zero. The chance that I will ever overdose on martini again? Zero.

My kids are all happy, healthy, and wise. The youngest will graduate from high school this year, my oldest will graduate from UC Riverside, and the two in the middle are in community colleges. The second-to-the-oldest, the one that caused me to question my parental abilities many years ago, has just offered to drop his classes and work full time in order to lighten my load.



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About the Medical Board

The Medical Board of California (MBC) is the state agency that issues doctors' licenses and can revoke or suspend them. Its policies are voted on by physicians appointed by the governor; its day-to-day operations are conducted by Investigators who are career law-enforcement officers. The board is part of the state's Department of Consumer Affairs. Its stated mission is "to protect health care consumers through the proper licensing and regulation of physicians and surgeons and certain allied health care professions and through the vigorous, objective enforcement of the Medical Practice Act, and, to promote access to quality medical care."

The MBC has 15 members: eight physicians and five "public members" appointed by the governor, plus two public members appointed by the Speaker of the Assembly and the Senate Rules Committee, respectively. They serve four-year terms. Not all the positions are filled as of January, 2013.

Board member	Originally appointed (when and by who)
President Sharon Levine, MD	February 2009 Gov. Arnold Schwarzenegger
V.P. Gerrie Shipske, RNP, JD	June 2007 Sen. Don Perata (Rules Committee)
Secretary Silvia Diego, MD	August 2010 Gov. Edmund G. Brown, Jr.
Michael Bishop, MD	December 2011 Brown
Dev GnanaDev, MD	December 2011 Brown
Reginald Low, MD	August 2006 Schwarzenegger
Denise Pines	September 2012 Brown
Janet Salomonson, MD	August 2006 Schwarzenegger
David Serrano Sewell, JD	September 2011 Brown
Barbara Yaroslavsky	September 2003 Herb Wesson, Jr. (Assembly Speaker)

The board provides two basic services to consumers:

(1) Public-record information about California-licensed physicians on the board's website, www.mbc.ca.gov/board/members/Index.html. This enables people to look up a particular physician and see if s/he has ever been accused of wrongdoing or disciplined by the board.

(2) Investigation of complaints against physicians. Investigations are carried out by the board's "Enforcement Division," which consists of 76 armed "peace officers" (plus a tier of supervisors) who investigate complaints, and an equally large clerical support staff based in Sacramento and regional offices throughout the state.

While the appointed board members officially set policy at quarterly meetings, the reality —as in many government agencies— is that the career staff members make key decisions. As Dr. Benzor points out in the accompanying article, a physician whose license is revoked does not get to deal with fellow physicians but with Enforcement Division investigators and then lawyers from the Attorney General's office.

—Frank Lucido, MD

California Social Services Department Acknowledges MMJ Users in Care Facilities

The California Department of Social Services (DSS) has recognized the right of people who reside in licensed residential facilities to use medical marijuana. In June 2011 DSS accredited a class taught by Liz McDuffie of the Medical Cannabis Caregivers Association (MCC) for owners, operators and administrators of state-licensed residential care facilities.

McDuffie's class, "California's Medical Marijuana Program and How It Relates to Adult Residential Facility Access," provides four hours of credit toward the 40-hour continuing education requirement for licensing renewal.

California's Medical Marijuana Program (MMP) was created by SB-420, which the legislature passed in 2003 with the stated intention of implementing the Compassionate Use Act (Prop 215) passed by the voters in 1996.

McDuffie says the action by DSS is "groundbreaking...and will help many of the patients to participate in the MMP. Most residential care facility licensees have little or no understanding of California's Medical Marijuana Program or their important role and protection as 'primary caregivers' under SB-420.

Her class explains how the state program works, how Title 22 regulations (which govern licensed residential care facilities) support the client's participation in the MMP, and the role of the collective and cooperative in assuring safe and legal compliance.

The class was developed by the MCC Health Care Facilities Committee chaired

by Susan O'Leary. McDuffie teaches it twice a month at the MCC Training Center in Pasadena.

The MCC is working to offer the class online "in order to reach the majority of bed and board licensees," McDuffie says.

"We are also focusing on senior centers in an effort to put information directly into the hands of patients who reside in licensed residential care facilities regarding their right to participate in the MMP under Title 22 Regulations." The MCC will help patients approach their residential care facility regarding participation in the MMP.

Through the MCC, operators of residential care facilities can enable patients to participate in the MMP by connecting with collectives and cooperatives. McDuffie says, "It's important for collectives and cooperatives to understand Title 22 regulations as they apply to participation in the MMP.

"Collectives and cooperatives provide a structure that supports security, non-diversion and compliance with state and local laws. In addition, the collective or cooperative is able to provide business liability insurance, product quality assurance, and serve as an informational resource for licensees and participants in the MMP."

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—O'Shaughnessy's News Service