STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:	Docket No.: 14-007765-BHCS
Bureau of Health Care Services, Health Professions Division, Petitioner	Case No.: 43-12-125776
v	Agency: Bureau of Health Care Services
Robert Lewis Alexander, M.D., Respondent _______________________________/	Case Type: BHCSHP-Complaint
	Filing Type: Administrative Complaint

Issued and entered
this 9th day of September, 2014
by:
Shawn Downey
Administrative Law Judge

ATTORNEY GENERAL
LICENSING AND
REGULATION DIVISION
SEP 09 2014
LANSING OFFICE
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PROPOSAL FOR DECISION

Procedural History

The present matter commenced with the filing of an Administrative Complaint on November 14, 2013. The Administrative Complaint alleged that Robert Lewis Alexander was licensed to practice as a medical doctor in the State of Michigan and was subject to the provisions of the Public Health Code, 1978 PA 368, as amended: MCL 333.1101 *et seq.* The Complaint alleged violations of provisions of the Public Health Code.

The Administrative Complaint with attachments was served upon the Respondent by Certified Mail on November 22, 2013.

A request for a formal hearing was received by the Michigan Administrative Hearing System on April 17, 2014, and a Notice of Hearing was issued on April 25, 2014, which scheduled a hearing for June 16, 2014.

On June 2, 2014, Respondent's legal counsel filed a motion to withdraw as attorneys and on June 4, 2014, an Order of Allowing Withdrawal and Order of Adjournment was issued. The Order of Adjournment rescheduled the hearing for July 22, 2014.

On June 23, 2014, Respondent was represented by Wachler & Associates and a request for adjournment was filed because of the lack of time to prepare for the pending

hearing. On June 25, 2014, an Order of Adjournment was issued which rescheduled the hearing for September 3, 2014.

On September 2, 2014, Respondent sought an adjournment asserting that Dr. Alexander was unable to fully participate in the hearing. The request for adjournment was denied.

On September 3, 2014, the hearing was conducted at the time set forth in the Adjournment Order of June 25, 2014. The hearing was held at the Michigan Administrative Hearing System offices located at 611 W. Ottawa Street, Lansing, Michigan.

Appearances:

The Bureau of Health Care Services, Health Professions Division, was represented by Thomas P. Clement, Assistant Attorney General for the State of Michigan. Mr. Clement called Christine Murray, Regulation Agent/Investigator for the Bureau of Health Care Services; David Robinson, Patrol Officer, City of Muskegon Police Department; Major Metcalf, Fire Marshall, City of Muskegon Fire Department; Clay Orrison, Detective, City of Muskegon Police Department; Elizabeth Manurs, former employee of Respondent; and, Misty Noyes, former employee of Respondent, as witnesses.

Dr. Robert Lewis Alexander, M.D., appeared on his own behalf and was represented by Jesse A. Markos, Attorney at Law, Wachler & Associates, P.C.. Royal Oak, Michigan. Mr. Markos called Carl Hedger Breed, former landlord, and the Respondent, Robert Lewis Alexander, M.D., as witnesses.

Exhibits

Petitioner submitted the following items which were admitted to the record:

1. Compact disc of photographs taken by Detective Clay Orrison of the City of Muskegon Police Department.

2. Compact disc of photographs taken by Detective Clay Orrison of the City of Muskegon Police Department.

3. City of Muskegon Police Department incident report.

4. Printed color photographs taken by Detective C. Orrison. (Printed from CD's, Exhibits 1 & 2). Exhibit 4 consists of 87 color photographs.

5. Photographs of medical records found in 863 E. Apple Avenue. Photos taken by Christine Murray, Bureau Investigator.

6. Curriculum Vitae of Major D. Metcalf, Fire Marshall, City of Muskegon Fire Department.

7. Copy of correspondence from Fire Marshall Metcalf to Dr. Robert Lewis Alexander, dated: December 27, 2012.

8. Copy of correspondence from Fire Marshall Metcalf to Dr. Robert Lewis Alexander, dated: January 4, 2013.

9. Copies of certificates received by Detective Clay Orrison following additional training.

The Respondent submitted the following items which were admitted to the record:

A. Copy of lease agreement for previous clinic at 95 Washington Street, Ypsilanti, Michigan.

B. Copy of correspondence to Respondent's lessor, dated February, 2006.

C. Copy of Affidavit of Gwendolyn Jenkins, former employee of Respondent.

D. Copy of receipt/invoice from Center Medical Supply, order date: March 25, 2011.

E. Copy of correspondence from Marilyn Mittenthal, D.O., dated: September 2, 2014.

F. Copy of correspondence from Peaceway Counseling Center, PLC, dated: August 29, 2014.

Upon admission of the above items, the record was closed for the submission of exhibits.

Issues and Applicable Law

The issue is whether the Respondent violated the Michigan Public Health Code as alleged in Petitioner's Administrative Complaint?

Petitioner's Administrative Complaint alleges both negligence and incompetence.

> **333.16221 Investigation of licensee, registrant, or applicant for licensure or registration; hearings, oaths, and testimony; report; grounds for proceeding under MCL 333.16226.**

Sec. 16221.

The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

333.16226 Sanctions; determination; judicial review; maximum fine for violation of MCL 333.16221(a) or (b); completion of program or examination; permanent revocation.

Sec. 16226.

(1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221	Sanctions
Subdivision (a), (b)(ii), (b)(iv), (b)(vi), or (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (b)(viii)	Revocation or denial.
Subdivision (b)(i),	Limitation, suspension,

(b)(iii), (b)(v), (b)(ix), (b)(x), (b)(xi), or (b)(xii)	revocation, denial, probation, restitution, community service, or fine.
Subdivision (b)(xiii)	Probation, limitation, denial, suspension, revocation, restitution, community service, fine, or, subject to subsection (5), permanent revocation.

(Note: Sections 16221 and 16226 have been amended effective July, 2014. Provisions shown above were effective at the time of the alleged violations.)

Findings of Fact

Based upon the entire record in this matter, including the pleadings and exhibits admitted to the record and the testimony of the witnesses, the following findings of fact are made:

1. Respondent is licensed by the State of Michigan to practice as a medical doctor, subject to provisions of the Public Health Code and further subject to the provisions for discipline by the Michigan Board of Medicine.

2. Respondent maintained a medical office located at 863 E. Apple Avenue, Muskegon, Michigan, prior to December 26, 2012, known as the "Women's Medical Services Clinic".

3. On December 26, 2012, Respondent's landlord at the Apple Avenue location reported to the City of Muskegon Police Department that the premises was broken into by unknown persons. (See Petitioner's Exhibit 1).

4. Officers of the City of Muskegon Police Department arrived and investigated the apparent break-in. The investigation was ultimately conducted by Detective Clay Orrison. (See Petitioner's Exhibits 1, 2, 3 & 4).

5. Upon entry into the premises of 863 E. Apple Avenue to investigate the crime, patrol officers found the interior to be in complete disarray. The investigation revealed biohazard material unsecured, unsecured used needles, unsecure and unsanitary medical instruments, blood on the floor and walls, patient records strewn about, uncovered buckets containing unknown fluids, unsecured medications throughout the premises, multiple biohazard bags containing used hypodermic needles

and water leaking into the clinic from the room in several locations. The responding patrol officers requested assistance by detectives and the City of Muskegon Fire Marshall to determine the safety of the building. (Petitioner's Exhibit 3 and photographs in Exhibits 1, 2 and 4).

6. Following examination of the interior of the Respondent's clinic on December 26, 2012, the Muskegon Fire Marshall, Major D. Metcalf found the clinic to be unsafe and issued a Cease and Desist Order which forbade the occupation of the facility. (See Petitioner's Exhibit 7).

7. Respondent determined to close the clinic in Muskegon.

8. The Bureau of Health Care Services received a complaint concerning Respondent in September, 2012, and assigned Christine Murray to investigate the complaint. The Bureau was also contacted by the Muskegon Police Department during the course of their investigation.

9. Two former employees of Respondent testified that they were employed by Dr. Alexander while he operated the clinic in Muskegon. Both testified that the conditions seen in the photographs contained in the compact discs and printed in Exhibit 4 were the normal and customary conditions of the premises when Dr. Alexander rendered medical services to patients.

<u>Conclusions of Law</u>

The burden of proof in this matter falls upon the Bureau of Health Services. It must show, by a preponderance of evidence, that there has been a violation of the provisions of the Michigan Public Health Code. Petitioner asserts that Dr. Alexander is responsible for negligence (Section 16221(a)) and incompetence (Section 16221(b)(i)).

I am persuaded that the Muskegon Police officers were repelled by their discovery of the interior of Dr. Alexander's clinic. Their testimony was credible and detailed. Detective Clay Orrison was qualified as an expert in crime scene investigations and he testified that he was not certain that any perpetrator actually entered the clinic interior. Detective Orrison testified that he was convinced that the disarray found in the clinic on December 26, 2012 had not been "staged".

Initially, Dr. Alexander claimed that he was the victim of "Right to Life" activists who entered his clinic and caused the damage. Later however, Dr. Alexander stated that his employees had failed to follow his instructions to clean the debris and remove the garbage. Dr. Alexander asserted that it was his last employee, Elizabeth Manurs who had caused the destruction. He further testified that patients were only treated in one smaller treatment room and did not see and were not treated in the other examination rooms. Respondent claimed that the other rooms in the clinic were used as "storage".

Dr. Alexander testified that he did not use the autoclave to sterilize his medical instruments because he used the "cold" method, and left his tools in disinfectant. Dr. Alexander claimed that he did not use the instruments shown in the photographs which were piled on trays or tables, that they had been left from a previous physician, and that he later used "disposable" medical instruments.

The police officers, fire marshal and Bureau investigator testified that the clinic was littered with used hypodermic needles, some thrown in containers that should have been secured with tops which prevented further contamination, others simple thrown in plastic bags or left on the benches or floor.

The conditions found the Muskegon Police Department and the Fire Marshall were so compelling that the Fire Marshall determined that the building could not be occupied and issued an Cease and Desist Order which ordered that the premises could not be used in its current condition as it was unsafe and dangerous to human life. (See Petitioner's Exhibit 7).

Although the Respondent claimed that he intended to close the clinic, he admitted under oath that he had performed an abortion on December 15, 2012, as evidence that he had received payment on that date as shown in the photographs.

The Respondent maintained that the conditions found were the responsibility of someone else. Dr. Alexander argued that his receptionist, Elizabeth Manurs and her husband had been hired to clean the clinic and failed to do so. Dr. Alexander claimed that Stericycle had failed to pick up the used needles. Dr. Alexander stated that his landlord was responsible for the roof leaks. Dr. Alexander was questioned by Bureau investigator Christine Murray, who insisted that patient files be collected from the disarray and maintained in a safe and secure location. (See Exhibit 5). Respondent claimed that he hired a firm to do so, but they failed to follow up and left the files at the clinic. Finally, Dr. Alexander maintained that he has been diagnosed with Bipolar Disorder and that his condition was responsible for the conditions seen at his clinic. (Although, it is noteworthy that Dr. Alexander's psychiatrist maintains that she has treated him for eight years, and "he has done well under the supervision of myself." See Respondent's Exhibit E).

I do not find that Robert Lewis Alexander is a credible witness. I do not find this man to be honest or trustworthy. At each turn, Respondent blamed someone else for the conditions found at his medical clinic. Two previous employees credibly testified that the conditions shown in the eighty-plus photographs in Exhibits 1, 2, 4 & 5 were the conditions that existed every day while this man operated his clinic and performed medical services.

The Public Health Code contains a definition of incompetence, found in Section 16106:

Sec. 16106.

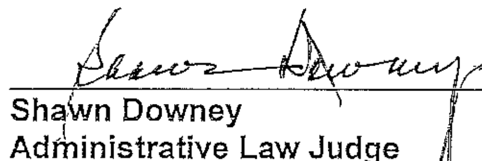
> *(1) "Incompetence" means a departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for a health profession, whether or not actual injury to an individual occurs.*

The evidence is overwhelming that Dr. Alexander failed to adhere to the most minimal standards of cleanliness and sanitary conditions. He failed to safeguard patient confidentiality, and the allowed dangerous medications to be unsupervised and dangerous conditions to exist by allowing the unsafe disposal of needles and syringes. The Petitioner further alleged that Dr. Alexander was negligent under the terms of the Public Health Code.

I find that Petitioner has shown overwhelming evidence that Respondent failed to exercise due care by failing to properly supervise his staff and those persons he claims to have directed to remove dangerous items from his clinic.
I do not believe Respondent's testimony that all the various other persons or entities were responsible for the conditions which existed. The evidence is clearly to the contrary. The testimony of the Fire Marshall, police officers and former employees is convincing that these conditions existed for months and months prior to the incident of December 26, 2012.

The ultimate responsibility lies with Robert Alexander and he failed miserably in his obligation of due care.

I find that the Bureau of Health Care Service has shown, by overwhelming evidence, that Robert Lewis Alexander, M.D. is responsible for negligence under Section 16221(a) of the Public Health Code and is further responsible for incompetence under Section 16221(b)(i) of the Public Health Code.



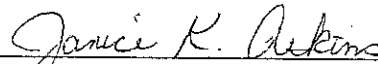
Shawn Downey
Administrative Law Judge

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after the Proposal for Decision is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within five (5) days after the Exceptions are filed. All Exceptions and Response to Exceptions must be filed with the Michigan Administrative Hearing System, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 9th day of September, 2014.



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