

DEPARTMENT OF HEALTH

714 P STREET
SACRAMENTO, CALIFORNIA 95814

December 2, 1975

Dear Colleague:

Enclosed for your information are copies of: (1) The proposed decision of the Hearing Officer in the Dr. Stewart M. Jones license accusation; and (2) The Cancer Advisory Council's amicus curiae brief requesting the Board of Medical Examiners to reconsider their acceptance of this recommendation and our reasons for the request.

I believe this amicus curiae expresses in formal terms the position of the Cancer Advisory Council. Since there may be considerable public interest in this matter, you may wish to review the enclosures before filing them. The Board of Medical Examiners met in San Diego on November 21, 1975.

Both the Department of Health and the Attorney General's Office have each intervened with an amicus curiae. Dr. Stewart Jones and his attorney George Kell also met with the Board and expressed their intent to seek a writ if the Board did not remove the two-year probationary requirement. Our view is presented by Mr. Castro supplemented somewhat by Dr. Lawrence. After a fairly long executive session, the Board of Medical Examiners convened the meeting and denied petitions from both participants.

As things now stand unless Stewart Jones seeks a writ which would give us an opportunity to intervene and possibly obtain a reversal, the Board's acceptance of the Hearing Officer's decision is final.

I have grave forbodings for the medical profession if we cannot control our members more effectively than this in matters of such deceptive practices, particularly when being examined through our own Board of Medical Examiners.

Sincerely,

(Signed) Joseph F. Ross, M.D.
Chairman
Cancer Advisory Council

Enclosures

FFB
11/17/75
November 13, 1975

Board of Medical Examiners
State of California
Room 434
1020 N. Street
Sacramento, California 95814

Re: Decision In the Matter of the Accusation
Against Stewart M. Jones, M.D.
No. D-1509

Gentlemen:

The undersigned is the Deputy Director, Health Protection Division, of the State Department of Health. The department is charged with the duty of protecting and preserving the health of the people of this state. One of the most serious health problems confronting the people today is the multifaceted problem of cancer. One of the facets of that problem which is a particular concern to the Department of Health is cancer quackery, i.e., the practice of purveying worthless or unproven remedies to those afflicted with the disease. The Department of Health is vested with the duty of enforcing the laws pertaining to cancer quackery. This responsibility is a vital part of the department's overall task of protecting and preserving the health of the people of this state.

A recent decision of the Board of Medical Examiners in an administrative proceeding -- In the Matter of the Accusation Against Stewart M. Jones, M.D., No. D-1509 -- will seriously impair the Department of Health's ability to carry out its duty of protecting and preserving the public health in regard to cancer quackery. For that and all the other reasons set forth hereinafter, the Department of Health respectfully requests that the Board reconsider the decision it rendered in that administrative proceeding.

In order to comprehend the problems created by the above-mentioned decision, it is necessary to set forth briefly California law pertaining to cancer quackery. In Health and Safety Code Section 1700, the Legislature has declared that:

"The effective diagnosis, care, treatment or cure of persons suffering from cancer is of paramount public importance. . . .

"Despite intensive campaigns of public education, there is a lack of adequate information among the public with respect to presently proven methods for the diagnosis, treatment, and cure of cancer. Various persons in this state have represented and continue to represent themselves as possessing medicines, methods, techniques, skills, or devices for the effective diagnosis, treatment, or cure of cancer, which representations are misleading to the public, with the result that large numbers of the public, relying on such representations, needlessly die of cancer, and substantial amounts of the savings of individuals and families relying on such representations are needlessly wasted. . . ."

Because of the existence of these problems, the Legislature has provided in Health and Safety Code Section 1707.1 that "The sale, offering for sale, holding for sale, delivering, giving away, prescribing or administering of any drug, medicine, compound or device to be used in the diagnosis, treatment, alleviation or cure of cancer is unlawful and prohibited . . ." unless an application to use the drug, medicine, etc., has been filed and approved with either the state or federal government.

In the above-mentioned administrative proceeding, the physician in question was charged with administering a substance known commonly as Laetrile. No application to use this substance has ever been filed or approved. As well, all the scientific evidence gathered demonstrates that it is of no value in the treatment of cancer.

However, the purpose of this letter is not to argue for or against efficacy of that particular substance. That is a matter which is best left to the experts in the field of cancer research, e.g., the National Cancer Institute and the Cancer Advisory Council. Rather, the purpose of this letter is to highlight when the use of that substance is a violation of California law.

The physician in question was charged with violations of a number of California laws, including Health and Safety Code Sections 1707.1 and 26650. With respect to the alleged violation of Health and Safety Code Section 1707.1, the evidence recited in the decision reveals that the physician held himself out as one who treated cancer with Laetrile. Not surprising then, patients with cancer came to him expecting to have him treat their cancer with Laetrile. Upon arrival, they were, in fact, treated with Laetrile. However, they were told it is not for the purpose of treating their cancer as statutorily defined (i.e., a malignant neoplasm, Health and Safety Code Section 1705), but rather for the purpose of treating the symptoms of their cancer, e.g., pain, weight loss, decreased appetite.

It is submitted that this distinction between treatment of the disease and treatment of its symptoms is, in this context, pure sophistry. If accepted,

the express purpose of the Legislature in enacting the cancer quackery laws -- the proscription of unproven or worthless remedies -- will be thwarted. Moreover, the Department of Health's ability to carry out its duty of protecting the public health in this regard will be impaired; to wit, prosecutions of violation of Health and Safety Code Section 1707.1 will be frustrated. For those reasons, the Department of Health urges that the Board reconsider its treatment of Health and Safety Code Section 1707.1.

In addition to the charge of violating Health and Safety Code Section 1707.1, respondent was also charged with violation of Health and Safety Code Section 26650, which provision proscribes the sale or offering for sale of misbranded drugs. Pursuant to Health and Safety Code Section 26010, a drug is defined as:

"(a) Any article which is recognized in an official compendium.

"(b) Any article which is used or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or any other animal.

"(c) Any article other than food, which is used or intended to affect the structure or any function of the body of man or any other animal.

"(d) Any article which is used or intended for use as a component of any article designated in subdivision (a), (b), or (c) of this section. The term "drug" does not include any device."

The decision made two findings with respect to the alleged violation of Health and Safety Code Section 26650: First, the evidence introduced is "inconclusive" on the question of whether Laetrile is a drug; second,

"more important, however, is the fact that it is not necessary to find one way or the other on this issue by reason of the facts and law applicable to this case. . . ." (Decision at p. 3)

There are two problems with these findings. First, as noted above, a substance is a drug if it is used in the "diagnosis, cure, mitigation, treatment, or prevention of disease in man . . ." A reading of the decision reveals that the physician in question used Laetrile to mitigate the symptoms of a "disease", for which his attorney coined the phrase "Nitriloside Deficiency Disease". As such, the decision's "inconclusive" finding on the question of whether Laetrile is a drug is not supported by the evidence. Second, the finding that the question of whether Laetrile is a drug is immaterial, is itself erroneous. At page 12 of the decision it is noted that:

November 13, 1975

"It is true that the Laetrile (amygdalin) used in the manner hereinabove found by respondent in the preceding findings was in each instance misbranded within the meaning of Health and Safety Code Section 26650, insofar as such term would be applicable herein if Laetrile were found to be a drug . . ."

Thus, contrary to the earlier finding in the decision, the question of whether Laetrile is a drug is material to the disposition of the case. As such, a reconsideration is necessary to resolve that seeming inconsistency and the question of whether Laetrile is a drug in the first instance.

In summary, for the reasons set forth heretofore, the above decision of the Board could have profoundly negative effects on the Department's ability to carry out its mandate of protecting the people from cancer quackery. For that reason, it is respectfully submitted that the Board reconsider its decision.

Very truly yours,

original signed by
Frederick B. Hodges, M.D.

Frederick B. Hodges, M.D.
Deputy Director
Health Protection Division

JRS:jlh

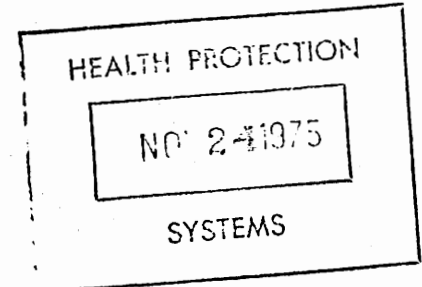
bcc: James D. Claytor
Deputy Attorney General

DEPARTMENT OF HEALTH

CANCER ADVISORY COUNCIL



November 17, 1975



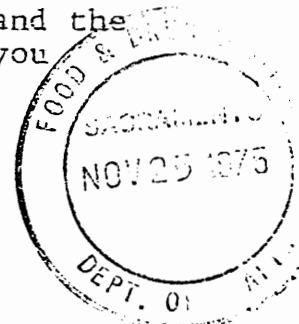
Board of Medical Examiners
State of California
1020 N Street, Room 434
Sacramento, California 95814

Re: Decision of the Board of Medical
Examiners in the Proceeding Against
Stewart M. Jones, M.D.

Gentlemen:

The practice of administering worthless drugs and medicines to persons afflicted with cancer, i.e., cancer fraud or cancer quackery, poses a grave health hazard. The hazard exists because persons afflicted with cancer will take these worthless substances in lieu of proven methods of treatment, as a consequence of which many of them die needlessly.

In order to help deal with this problem, the Legislature created the Cancer Advisory Council which consists largely of experts in the field of cancer, chosen from the leading medical schools and other institutions of the state. One of their main functions is to provide knowledgeable evaluation of devices, drugs or procedures which may be used in cancer fraud. Recently, the Council has been made aware of the decision of the Board of Medical Examiners in the disciplinary proceeding against Stewart M. Jones, M.D., wherein the issue was whether or not this physician had engaged in the practice of cancer quackery. After carefully reviewing this decision, the Council has concluded that it is an erroneous decision in several important respects. But more important, the effect of this erroneous decision will be to cause a proliferation of cancer quackery. It is for these reasons, and because of a profound sense of responsibility to our colleagues and the public welfare, that the Council urgently requests you reconsider your decision in the matter.



Board of Medical Examiners
November 17, 1975
Page Two

The decision actually has a number of very troublesome aspects. For example, its conclusion that Laetrile is not a drug is a conclusion which is in contradiction with all the available medical evidence, the statutory definition of a drug (see Health and Safety Code section 26010(b): "Drug" means (b) Any article which is used or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or any other animal), and established case law.

However, there is one aspect of the decision which is transcendental in its importance, and as such, I would like to focus in the main on that aspect of the decision.

The decision states that it was specifically proven that the physician treated his cancer patients with Laetrile. The physician conceded that Laetrile, like the earlier nostrums Krebiozen and the Hoxsey method of treatment had no antineoplastic effect. He was then engaging in the practice of treating his cancer patients with a worthless drug.

However, this practice was not found by the Hearing Officer to be in violation of the relevant provision of Health and Safety Code section 1707.1. His reason: The physician's claim that he was not treating his patient's cancer, rather he was merely treating the patient's "Nitriloside Deficiency Disease". In support of this claim, the physician cited a portion of the findings of the California Cancer Commission quoted in the Cancer Advisory Council's 1963 Report (page 10):

"The information thus recorded shows that no objective benefit was realized by the use of this agent in cancer. The clinical observations of several members of the Cancer Commission who reviewed the information collected, and in some instances had an opportunity of seeing the patients thus treated, indicated that Laetrile may exert a temporary metabolic effect, probably on nitrogen metabolism. Thus some of the patients have an increase in sense of well being and appetite, and temporary gain in weight of the sort that is frequently observed with the use of any of a number of non-specific agents." (Emphasis supplied.)


The underscored portion of the quotation is critical. The Commission on Cancer did not find that Laetrile had an effect on any disease, only that Laetrile, like any of a number of non-specific agents, affected some of the signs and symptoms caused by the underlying neoplastic condition. The "Nitriloside Deficiency Disease" was then a complete fiction. In fact, the physician was treating a symptomatic expression of the underlying carcinomatous condition. Thus, contrary to the holding in the decision, the physician was violating both the letter and the spirit of Health and Safety Code section 1707.1.

If this and other errors in the decision are not corrected there will be a profusion of cancer quackery, for to avoid prosecution all that one need do is state that he is treating some fictitious disease, not the underlying cancerous condition. This will surely result, as the Legislature predicted, in:

"large numbers of the public, relying on such representations, needlessly (dying) of cancer, and substantial amounts of the savings of individuals and families relying on such representations are needlessly wasted. . . ."
Health and Safety Code section 1700.

Both the Cancer Advisory Council and the Board of Medical Examiners are made up largely of practicing physicians. We have a unique responsibility to our colleagues and the public as we are well aware of the vulnerability of the patient in his dependence and trust in the patient-physician relationship. This is particularly true in cases of cancer. Consequently cases of alleged cancer fraud must be strictly scrutinized by the Board because of the potentially dire consequences. Furthermore, there are other matters pending or about to be pending before the Board where the aforementioned evaluations must be made.

For all of these reasons it is imperative that the Board reconsider its decision in this proceeding. As such the Council respectfully requests the Board take that action.



JOSEPH F. ROSS, M.D.
Chairman
Cancer Advisory Board
State of California

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF CALIFORNIA

In the Matter of the Accusation

against

STEWART M. JONES, M.D.
145 N. California Street
Palo Alto, California
License No. G-6277

Respondent.

NO. D-1509

N 4594

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted by the Board of Medical Examiners as its Decision in the above-entitled matter.

This Decision shall become effective on November 26, 1975.

IT IS SO ORDERED October 27, 1975.

BOARD OF MEDICAL EXAMINERS

By: Harold A. Oberhelman, Jr. 40

BEFORE THE BOARD OF MEDICAL EXAMINERS

STATE OF CALIFORNIA

In the Matter of the Accusation)	
)	
against)	
)	
STEWART M. JONES, M.D.)	NO. D-1509
145 N. California Street)	
Palo Alto, California)	N 4594
License No. G-6277)	
)	
Respondent.)	
_____)	

PROPOSED DECISION

The above-entitled matter came on regularly for hearing upon an Accusation on February 13, 14, 19, 20, 21, 24, 25, 26, 27, and 28, 1975, and on June 2 through June 6, 1975, June 9 through June 13, 1975, June 16 through 19, 1975, and June 23 through June 27, 1975, at San Francisco, California, before Jerome P. Herst, Hearing Officer, Office of Administrative Hearings. Present were Stewart M. Jones, M.D., respondent above-named, George W. Kell, Attorney at Law of Modesto, California, representing respondent, and Louis C. Castro, Deputy Attorney General, representing the California Board of Medical Examiners. Evidence both oral and documentary was introduced. Oral closing arguments were made on the record, and the parties were given additional time to submit written arguments to the Hearing Officer. Complainant's Closing Brief was received by the Hearing Officer on July 16, 1975, and is hereby marked complainant's

Exhibit 53 for identification. Respondent's Closing Brief was also received by the Hearing Officer on July 16, 1975, and is hereby marked respondent's Exhibit NN(1) for identification. Additional documents in answer to Complainant's Closing Brief were received by the Hearing Officer from respondent's counsel on July 21, 1975, and are hereby marked respondent's Exhibits NN(2), NN(3) and NN(4) for identification. On July 22, 1975, the Hearing Officer received an Amendment to the Accusation from attorney for the Board, which amendment is now attached to the Accusation as a part of complainant's Exhibit 1 and received in evidence for the same limited purpose as the Accusation was received, as more specifically set forth in the record. The hearing having been closed, the matter is now submitted, and after due consideration the Hearing Officer makes the following findings of fact:

GENERAL FINDINGS OF FACT

Because of the large number of interrelated issues, side-issues, and nonissues raised by both sides at the hearing in written and oral arguments, motions, and objections; and in the oral testimony and voluminous documentary evidence introduced into the record, much of the latter being hearsay received under Section 11513(c) of the Administrative Procedure Act (Government Code) of the State of California, the following observations, findings of fact, conclusions, and rulings are hereby made preliminarily to and as explanatory of the specific findings and determinations of the specific issues raised by the Accusation and Special Notice of Defense of Respondent made a part of the record herein:

(1) All references to Laetrile in the Accusation shall be taken to refer to the substance Amygdalin, and the same shall be true for all such references herein.

(2) The question of the efficacy of Laetrile as a cure for cancer in humans or animals is not an issue in this case, and no findings will be made as to its efficacy or nonefficacy as such.

(3) Whether orthodox methods of treating cancer, i.e., by surgery, radiology, or chemotherapy have been, are now, are not, or have ever been successful; or whether such methods are or are not gaining in efficacy in treating cancer, are not issues in this case, and no findings will be made herein with respect thereto.

(4) The question whether Laetrile is a drug or a food is an issue in this case, but it is hereby found that the evidence introduced into this record and upon which findings may be made under Section 11513(c), Administrative Procedure Act, supra, is inconclusive on that issue. In explanation, eminent expert witnesses distinguished in their respective professions have disagreed wholly on this question, and the testimony of individual experts has been contradictory of itself. More important, however, is the fact that it is not necessary to find one way or the other on this issue by reason of the facts and law applicable to this case.

(5) The question whether Laetrile is a vitamin is an issue only insofar as determining whether Laetrile is a drug or a food. Respondent's position is that Laetrile is a vitamin and therefore a food component, therefore a food by statutory definition. The contrary position urged by complainant is that a vitamin

by statutory definition is a drug per se. The statutes and single regulation referred to in the Accusation do not refer to vitamins as such; thus the only relevancy respecting vitamins is whether they are drugs or food, but again the evidence in the record as to this issue is conflicting and inconclusive.

(6) The burden of proving that Laetrile is a drug within the meaning of the statutes and regulations governing that issue is on the Accuser herein, and in order that these findings as to this matter are certain, it is hereby found that this burden has not been met by the weight of the evidence.

(7) Respondent's administering of Laetrile has been proved, as hereinafter specifically found. Respondent's position is that he administered Laetrile for the treatment of the general well-being of his patients in connection with other nutritional, dietary, and mega-vitamin therapy. In so doing he was following the legal advice given to him by his legal counsel concerning the prohibitions in the law against furnishing Laetrile to patients for the prevention, diagnosis, arrest, treatment, alleviation or cure of cancer. Following such legal advice, respondent declared his purpose in furnishing, administering, or selling Laetrile to his patients with or without cancer to be the improvement of their general health and for those patients suffering from cancer to aid them in achieving a sense of well-being, to gain weight, to increase appetite, and to decrease pain. Together with his counsel, he formulated the name "Nitriloside Deficiency Disease" to describe the nature of the conditions which he was treating in administering

nutritional therapy including Laetrile to cancer patients; but this name is merely a convenient label coined by respondent's counsel to describe the conditions respondent sought to remedy by his regimen of nutritional substances.

(8) The conception of nutritional thereapy applied to cancer patients is derived by respondent and counsel from the Report on the Treatment of Cancer with Beta-Cyanogenetic Glucosides ("Laetriles") dated May 20, 1963, by the California Cancer Advisory Council, which the California Department of Public Health in 1963 adopted as its own. The Department by regulation in 1963, 17 California Administrative Code, Section 10400.1(b) adopted the finding in said Report that "Laetriles" (including the Laetrile "amygdalin," with which this case is concerned) "are of no value in the diagnosis, treatment, alleviation, or cure of cancer. . . ." The regulation further declares that the Department of Public Health "is satisfied beyond a reasonable doubt that the findings therein are true." The Report contains the conclusion that "No satisfactory evidence has been produced to indicate any significant cytotoxic effect of Laetrile on the cancer cell." The Report also states, however, that several members of the Cancer Commission of the California Medical Association who reviewed the information collected, and in some cases had seen the patients, "indicated that Laetrile may exert a temporary metabolic effect, probably on nitrogen metabolism. Thus some of the patients have an increase in sense of well being and appetite, and temporary gain in weight of the sort that is frequently observed with the use of any of a number of non-specific

agents." The Report also notes that ". . . all of the physicians whose patients were reviewed spoke of increase in the sense of well-being and appetite, gain in weight and decrease in pain." These patients were suffering from cancer and had been treated with Laetrile. The Report considered that all of the above benefits derived from Laetrile were subjective and had no effect on the "neoplastic disease," which latter description fits the definition of cancer under Section 1705 of the California Health and Safety Code as "all malignant neoplasms"

(9) The foregoing conclusions of the Cancer Advisory Council and the State Board of Health form the genesis of respondent's conception, derived from his counsel, of what function and purpose are served by administering Laetrile to patients; namely, that treatment with Laetrile does enable the patient to achieve an improved sense of well-being, a gain in weight, an increase in appetite, and a decrease in pain. Respondent and counsel adopt the conclusion that Laetrile has no cytotoxic effect on the "malignant neoplasm," and in fact respondent's defenses to the Accusation rest mainly on the point that he has not been treating the malignant neoplasm but has been treating what the Report describes as the subjective responses of the patients to Laetrile although respondent does not concede these responses are subjective; rather that they evidence the existence of "Nitriloxide Deficiency Disease," or a systemic disease and not "merely" a malignant neoplasm, or a metabolic deficiency or deficiency syndrome that responds favorably to Laetrile treatment. Finally, respondent contends that he is

treating the whole body, and seeks by such treatment to improve the general health of the patient; hence, to these ends, respondent has administered mega-vitamins and other substances along with Laetrile to patients, and the evidence indicates this to be true for the patients mentioned in paragraphs 4 and 5 of the Accusation.

(10) Respondent caused his patients to sign a written acknowledgement that they were not being treated for cancer but for general health, that they understood that it was against the law for Laetrile to be used as a cancer agent, and, inter alia, that respondent did not diagnose, treat, alleviate, or cure cancer, and that if they wanted treatment for cancer they should consult an oncologist. Respondent uniformly did not examine the cancer; i.e., the neoplasm or the "lump or bump" as it was referred to by respondent and his counsel, but sent patients to or back to physicians for treatment of the neoplasm or other cancerous conditions defined in Health and Safety Code 1705. Whether patients went along with respondent's planned avoidance of violating cancer laws, for the purpose of obtaining Laetrile to cure their cancers, or whether they were satisfied to seek improvement of their general health by being treated nutritionally with Laetrile and other substances is a matter for conjecture only, as the witnesses called under paragraphs 4 and 5 of the Accusation were reluctant to implicate respondent in any way in the violations of any of the cancer laws. It could only be ascertained from the evidence with certainty that the patients involved wanted help for the physical condition caused by their cancers and believed or hoped that Laetrile would at least

alleviate their symptoms and at most might arrest or cure their cancers. But the beliefs and hopes of the patients are not transferable to respondent without overt conduct and demonstrable intent of respondent, who consistently, except for the facts alleged in paragraph 3 of the Accusation, maintained his stance that he was providing nutritional therapy for the general well-being of his patients and was not professionally concerned with such "mundane" (respondent's wording) things as their cancers. Up to about mid-1973, respondent admitted that he believed that Laetrile cured or arrested cancer; he thereafter changed his viewpoint, and his sworn testimony at the hearing was that his view since late 1973 and up to the present has been and now is that Laetrile has no effect on the malignant neoplasm (the "lump or bump") defined as cancer by Health and Safety Code Section 1705. Any gain by the patient with cancer treated by respondent with Laetrile nutritional therapy as described which arrested or diminished the neoplasm is to be regarded, in respondent's and his counsel's view, as a beneficial "side-effect," but respondent did not offer the hope of such benefit to the patients mentioned in paragraphs 4 and 5 of the Accusation, insofar as this record discloses.

(11) The findings of fact general and specific, determinations of issues, and proposed order herein are based solely on the evidence introduced into the record of this hearing upon which findings may be predicated under Administrative Code Section. 11513(c), and are determinative only of the provable facts in this record and the laws pertaining thereto.

SPECIFIC FINDINGS OF FACT

I

Raymond Reid was at the time of the making of said Accusation and now is the Executive Secretary of the Board of Medical Examiners of the State of California, and he did make the same in his official capacity as such and not otherwise.

II

On or about September 12, 1960, the said Board of Medical Examiners issued to Stewart M. Jones, M.D., respondent herein referred to, License No. G-6277. Said license is and has been at all times mentioned herein in full force and effect.

III

With respect to the allegations of paragraph 3 of the Accusation, respondent on or about March 21, 1973, furnished Laetrile, also referred to by respondent in the record as B-17, to Gene A. Reinhardt, also known as Jean Hart, representing said substance as effective for the prevention of cancer. Said Gene A. Reinhardt or Jean Hart was sent by the State Department of Public Health to respondent to obtain evidence to be used against respondent respecting his furnishing of Laetrile to patients and such other evidence as might be developed by said agent against respondent respecting his advocacy of Laetrile as an anti-cancer agent. Respondent made the representation to said agent that Laetrile would prevent cancer on said date, but at that time respondent believed that Laetrile was effective for the prevention of cancer. Respondent did not make said representation with any intent to deceive said

agent and did not therein make an intentionally false statement with the object of deceiving said agent. Although wilfully made, respondent's said representation was therefore not falsely made.

IV

With respect to the allegations of paragraph 4 of the Accusation, respondent from on or about January 20, 1974, to on or about July 6, 1974, furnished Laetrile to Josephine E. Bergman, a known cancer patient. The evidence, however, fails to show that respondent furnished the same for the reasons alleged in paragraph 4 of the Accusation, in that "cancer" therein referred to must be taken to mean what Health and Safety Code Section 1705 defines "cancer" to be; namely, "all malignant neoplasms regardless of the tissue of origin, including malignant lymphoma, Hodgkin's disease, and leukemia." Respondent has not been shown by the evidence to have been dealing with cancer as so defined, but instead has been shown to have been treating the patient, in this case Josephine E. Bergman, with Laetrile as a part of an overall regimen of nutritional therapy designed to help her achieve a sense of well-being, an increase in appetite, a gain in weight, and a decrease in pain. Additionally, there is no evidence in the record that respondent made any representation that the administering of Laetrile with or without additional substances would prevent, arrest, alleviate, or cure cancer, and he did not diagnose her cancer with Laetrile or otherwise.

V

With respect to the allegations of paragraph 5 of said Accusation as amended, respondent as of March 1973 furnished Laetrile

to other known cancer patients whose names are as follows:

1. Arletta Casalet
2. John Barker
3. Arnold True
4. Marion Fox
5. Dawn Sparling
6. Cyril Collins
7. Patricia Traub
8. Tom Hambey
9. Irene Maxwell
10. Tom Connolly
11. Beverly Zane Seely
12. Vivian Landry

Again, however, the evidence fails to show that respondent furnished the same for the reasons, here alleged in paragraph 5 of the Accusation, in that "cancer" therein referred to must be taken to mean what Health and Safety Code Section 1705 defines it to be, as above set forth in Finding IV. Respondent has not been shown by the evidence to have been dealing with cancer as so defined, but instead to have been treating these patients, above-listed, with Laetrile as a part of an overall regimen of nutritional therapy designed to help said patients each achieve a sense of well-being, an increase in appetite, a gain in weight, and a decrease in pain. Additionally, there is no evidence in the record that respondent made any representations to any of the patients referred to in this finding that the administering of Laetrile with or without additional

substances would prevent, arrest, alleviate, or cure cancer, and he did not in any of the cases involving said patients listed in this finding diagnose such patients' cancer with Laetrile or otherwise.

VI

It is true that the Laetrile (amygdalin) used in the manner hereinabove found by respondent in the preceding findings was in each instance misbranded within the meaning of Health and Safety Code Section 26650, insofar as such term would be applicable herein if Laetrile were found to be a drug. It is true that none of the prerequisites of Section 1707.1 of the Health and Safety Code have been met with respect to the Laetrile (or amygdalin) held for sale, delivered, given away, prescribed, or administered by respondent to any of the patients named in each of the preceding findings of fact herein, and that while Laetrile has not been shown to be a drug, said Section 1707.1 refers as well to "compound," within which classification Laetrile properly falls. It is true that each of the patients mentioned in Findings IV and V had cancer as the term is defined in Section 1705, Health and Safety Code, at the times that respondent furnished Laetrile to them as aforesaid. The evidence shows that harrng unreasonably large doses of the substance, Laetrile is nontoxic to humans.

* * * * *

Pursuant to the foregoing findings of fact, the Hearing Officer makes the following determinations of the issues presented:

I

The facts hereinabove set forth in Findings III through VI fail to constitute grounds for disciplinary action against

respondent under Sections 2361(c) and 2372 of the Business and Professions Code of the State of California for the following reasons:

(1) The evidence fails to show, as hereinabove found, that Laetrile is a drug, and hence no violation of Section 26650, Health and Safety Code, has been proved, since the latter is only applicable to a drug or device. (Laetrile is of course not a device.)

(2) The furnishing of Laetrile by respondent in the manner aforesaid and for the reasons aforesaid fail to show that respondent has committed any act involving moral turpitude. Respondent's endeavors to help the aforementioned patients mentioned in Findings IV and V above cannot under any stretch of the imagination be regarded as acts of baseness, vileness, or depravity which are the ingredients of the charge of conduct constituting moral turpitude. It is no more tenable to hold respondent guilty of acts constituting moral turpitude in these matters than it is to hold, as contended by and on behalf of respondent, that those responsible for the laws suppressing the use of Laetrile as a cancer cure are prompted by the profit motive, as exemplified by respondent's published pamphlet (Exhibit 2A) bearing the legend, "It is far more profitable to look for a cancer cure than to find one." To suggest that "Bureaucracies" and organizations such as the American Cancer Society and The National Cancer Institute are wilfully suppressing cancer cures for the sake of perpetuating a multi-million dollar cancer research industry is as unfounded a charge, as the

charge that respondent's efforts on behalf of his cancer patients through the use of Laetrile are morally base, vile, or depraved. With respect to Finding III, since respondent's representation was not shown to have been intentionally untrue, it does not constitute moral turpitude.

II

State Department of Public Health Section 10400.1(c) of Title 17, California Administrative Code, prohibits the prescription, administration, sale, or other distribution of Laetrile "to any patient who has or who believes that he has or may have cancer . . ."; and in this instance there can be no doubt that "cancer" means the "malignant neoplasm" referred to in Section 1705 of the Health and Safety Code as that section read in 1963, the year the regulation became effective, and thereafter. Unfortunately for respondent, no amount of evidence showing that respondent did not treat the "malignant neoplasm" will help him avoid the prohibition contained in this regulation. He furnished; i.e., prescribed, administered, sold, or otherwise distributed Laetrile to each of the patients named in Findings IV and V, all of whom, as found in Finding VI, had cancer, the malignant neoplasm of Health and Safety Code Section 1705, and respondent's intentions with regard thereto are of no consequence except as mitigating evidence. It is contended on behalf of respondent that the regulation contains its own remedy; namely, that the Department of Health shall take steps to cause respondent to cease and desist therefrom; that no cease and desist proceedings have ever been brought against respondent by the Department for any

of the foregoing matters or otherwise, and that accordingly, it is contended, the Board of Medical Examiners has no grounds upon which to discipline respondent. The Board, however, is empowered under Section 2378.5 of the Business and Professions Code to determine that either the violation of the prohibition or of such cease and desist order constitutes unprofessional conduct and thus grounds for disciplinary action under Section 2372 of the Business and Professions Code. The Department of Health itself under Section 1712, Health and Safety Code, may apply to the Superior Court for an injunction against the violation of any regulation or of a cease and desist order. The procedure to be followed by that Department, however, is not the issue here, which is the power of the Board of Medical Examiners to discipline the violator of the prohibition regardless whether the Department has obtained a cease and desist order against him; and that power is vested in the Board under Section 2378.5, Business and Professions Code together with Section 2372 thereof.

Contentions on behalf of respondent that the regulation (17 C.A.C. 10400.1(c)) is unconstitutional and void for a number of reasons were made in the Special Notice of Defense and respondent's closing briefs, and elsewhere in the record. Respondent's chief argument is that the regulation exceeds the scope of the authority granted by the Legislature to the Department, in that the legislative authority empowers the Department only to deal with "lump or bump" cancer, the malignant neoplasm, and not to prohibit administering Laetrile to cancer victims for nutritional purposes

only. But the statutory authority, Section 1704, Health and Safety Code, requiring the Department to adopt regulations in 1963 when the regulation in question was adopted is general in terms: "The Department shall: (a) Prescribe reasonable rules and regulations with respect to the administration of this chapter" (enacted in 1959). Section 1700, Health and Safety Code, enacted the same year, provides ". . . there is a lack of adequate and accurate information among the public with respect to presently proven methods for the diagnosis, treatment, and cure of cancer. Various persons in this State have represented and continue to represent themselves as possessing medicines, methods, treatment, or cure of cancer, which representations are misleading to the public, with the result that large numbers of the public, relying on such representations needlessly die of cancer . . ." Thus, as in the case at hand, while patients will often conceal their motives by acquiescing in the offer by nutritional exponents of Laetrile to treat not the malignant neoplasm but the bodily malfunctions above referred to with the object of making the patient more healthy and feel better, many patients will nevertheless enter upon a regimen of nutritional therapy which includes Laetrile because they seek to cure or arrest their malignant neoplasm itself. The regulation therefore is directed to prevent such patients from choosing Laetrile therapy to the exclusion of more orthodox methods of treatment of the cancer, the malignant neoplasm, regardless of the counsel given them by the Laetrile exponents. The contention that the regulation is unconstitutional and void is therefore not clear-cut or satisfactorily shown.

Therefore, respondent's conduct hereinabove set forth in Findings IV and V jointly and severally is a violation of Section 10400.1(c) of Title 17 of the California Administrative Code and Health and Safety Code Section 1712, and thereby constitutes unprofessional conduct and grounds for disciplinary action under Sections 2378.5 and 2372 of the State of California.

III

With respect to the third cause for disciplinary action, the only representation shown by the evidence within the purview of Section 1714 of the Health and Safety Code is the representation made by respondent to Gene A. Reinhardt, also known as Jean Hart, that Iactrile is effective for the prevention of cancer. The facts in Finding III show that this representation was not made with intent to deceive said agent, was therefore not falsely made, and is therefore neither violative of Health and Safety Code Section 1714 nor grounds for disciplinary action as unprofessional conduct under Sections 2378.5 or 2372 of the Business and Professions Code or otherwise.

IV

The facts hereinabove set forth in the General Findings and Specific Findings III, IV, and V fail to show that respondent has been guilty of the sale, offering for sale, delivering, giving away, prescribing or administering of any drug, medicine, compound, or device to be used in the diagnosis, treatment, alleviation or cure of cancer as the latter term is defined in Section 1705 of the Health and Safety Code; and accordingly none of the other matters set forth in Section 1707.1 become relevant to the issue of whether respondent

violated Health and Safety Code Section 1707.1 as charged. Accordingly, no unprofessional conduct has been shown thereby and no grounds for disciplinary action exist under Sections 2378.5 and 2372 of the Business and Professions Code or otherwise.

V

The mitigating facts hereinabove found have been considered in determining the order herein.

* * * * *

WHEREFORE, the Hearing Officer proposes the following order:

1. That License No. G-6277 heretofore issued by the Board of Medical Examiners of the State of California to Stewart M. Jones, M.D., respondent above-named, authorizing him to practice medicine and surgery in the State of California, be and the same is hereby suspended for a period of one (1) year; provided, however, that said order of suspension shall be and the same is hereby stayed and respondent shall be and he is hereby placed on probation to said Board for a period of two (2) years from and after the effective date hereof upon the following terms and conditions:

(a) That respondent shall comply with all laws of the United States and of the State of California and its political

subdivisions, and all rules and regulations of the Board of Medical Examiners of the State of California.

(b) In addition and in particular, respondent shall comply with all provisions of Chapter 7 (commencing at Section 1700) of Division 2 of the Health and Safety Code and any injunction or cease and desist order issued under said Chapter; and he shall comply with all provisions of the Health and Safety Code contained in Division 2 thereof, known as the California Sherman Food, Drug, and Cosmetic Law, which may be applicable to respondent's activities as a licensee of the Board of Medical Examiners; and respondent shall obey all rules and regulations promulgated by the State Department of Health that may be applicable to his activities as a licensee of the Board of Medical Examiners.

(c) Respondent shall report in person to the Board of Medical Examiners at its regular annual meetings held in San Francisco, commencing in 1976 and continuing thereafter during said period of probation.

(d) Respondent shall submit to the Board of Medical Examiners, at quarterly

intervals, commencing on or about January 1, 1976, an affidavit to the effect that he has fully and faithfully complied with all of the terms and conditions of the probation imposed herein.

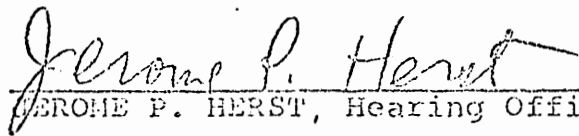
2. That in the event respondent does not comply with the conditions of probation hereinabove set forth, and during the period of probation, the Board of Medical Examiners, after due notice to respondent and opportunity to be heard, may terminate said probation effective immediately, and place said order of suspension immediately into effect, or make such other order modifying or changing the terms of probation herein as it deems just and reasonable in its discretion. Otherwise, upon expiration of the period of probation, the stay of the order of suspension will become permanent and respondent's license fully restored.

3. That this Proposed Decision, if adopted by the Board of Medical Examiners of the State of California, shall be effective upon the date ordered by said Board.

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter as the result of

a hearing held before me at San Francisco, California, on February 13, 14, 19, 20, 21, 24, 25, 26, 27, and 28, 1975, and on June 2 through June 6, 1975, June 9 through June 13, 1975, June 16 through 19, 1975, and June 23 through June 27, 1975, and I hereby recommend its adoption as the decision of the Board of Medical Examiners of the State of California.

DATED: July 30, 1975



GEROME P. HERST, Hearing Officer