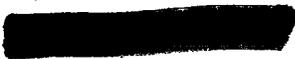


**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION**

In the Matter of the Appeal by


Chief Medical Officer
To Set Aside Resignation

Respondent:

Department of Veteran Affairs
Personnel Management Division
1227 "O" Street
Sacramento, CA 95814

Case No. 99-K-0099

Represented by:

Carl Shapiro
Attorney
Shapiro & Shapiro
404 Anselmo Avenue
San Anselmo, CA 94960

Represented by:

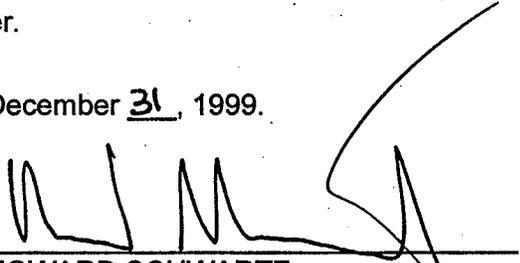
Bruce A. Crane
Attorney
Department of Veteran Affairs
Legal Affairs
P.O. Box 942895
Sacramento, CA 94295-0001

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Department's Decision in the above matter.

IT IS SO ORDERED:

December 31, 1999.



HOWARD SCHWARTZ
Chief Counsel
Department of Personnel Administration

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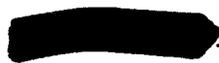
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PROPOSED DECISION

This matter was heard before Mary C. Bowman¹, Administrative Law Judge (ALJ), Department of Personnel Administration (DPA) at 10:00 a.m. on November 16, 1999, at Yountville, California.

Appellant, , was present and was represented by Carl Shapiro, Attorney.

Respondent, Department of Veteran Affairs (VA), was represented by Bruce A. Crane, Attorney.

Evidence having been received and duly considered, the ALJ makes the following findings of fact and Proposed Decision.

¹ Now known as Mary C. Campisi.

I

JURISDICTION

On August 26, 1999, appellant submitted a memorandum to the Interim Administrator at the Veterans Home of California at Yountville (VHC-Yountville) requesting to resign from her position as Chief Medical Officer (CMO) effective October 1, 1999. The Interim Administrator accepted the resignation on the same day. On September 13, 1999, appellant requested to withdraw her resignation. The Interim Administrator denied the request on September 14, 1999. Appellant filed a timely petition (appeal) to set aside the resignation. The appeal complies with the procedural requirements of Government Code section 19996.1.

II

WORK HISTORY

Appellant began working as CMO at VHC-Yountville approximately two years before her resignation. From 1992 to the present she has also acted as an Associate Clinic Professor of Medicine at the University of California, San Francisco.

At the time of her appointment, appellant had no prior State employment. However, she has had extensive education and experience in the field of geriatric and internal medicine. She received her bachelor of arts and doctor of medicine degrees from Bryn Mawr College and the University of Colorado. She served an internship at St. Luke's Hospital, Denver Colorado and a residency at Oregon Health Sciences University, Portland, Oregon. She obtained additional professional training at Goodmayes Hospital, Ilford, Essex England; Wittington Hospital, London, England; Oregon Health Sciences University, Portland Oregon; and the University of Washington. She is Board Certified in Internal Medicine (1982) and Geriatric Medicine (1988).

Prior to her appointment as CMO she was also an Assistant Clinical Professor at Stanford University (Department of Medicine); Director, Nursing Home Care Unit, VA Medical Center (San Francisco); Director of Internal Medicine, National Center for Post-Traumatic Stress Disorder, VA Medical Center (Palo Alto); Medical Director, Senior Focus, Mills-Peninsula Hospital (San Mateo); Director, Hospital Based Home Care, VA Medical Center (Palo Alto); a Private Practice Physician (Sunnyvale); and Director, Division of Geriatric medicine, St. Luke's Hospital (Denver, Colorado).

VHC-Yountville is one of two medical facilities operated by the State of California for California's veterans of foreign wars. It serves approximately 11,000 veterans. The position of CMO is defined in the State Personnel Board's (SPB) specification as follows.

"Under the direction of the Administrator, Veterans Home and Medical Center, to plan, organize and direct the medical care program of the facility; and to do other work as required."

The typical tasks for CMO include: planning, assigning, coordinating and directing the work of the medical, surgical, diagnostic, therapeutic, and pharmaceutical services; advising the Administrator and Director of the Department of Veterans Affairs on the professional medical aspects and implications of current and proposed programs; establishing and maintaining the highest possible standards of professional medical care consistent with statutory and accreditation requirements, departmental policy and program objectives, available resources and resident veterans' needs; on an ongoing basis, evaluating medical care delivery and recommending policy and operation changes to effectively attain the medical care standards desired within the limits of available resources and consistent with the needs of the personnel requirements and making recommendation concerning changing needs for staffing, equipment, supplies and supportive services and maintenance and repair; ensuring that staff have the opportunity to keep abreast of new developments, technology and trends in modern medical care delivery through in-service conferences, specialized out-service education, and maintenance and utilization of a reference medical library; evaluating staff performance and taking or recommending appropriate action as required.

III

CAUSE FOR APPEAL

Appellant filed her appeal to challenge respondent's refusal to allow her to withdraw her resignation submitted before the effective date stated in the resignation. She also challenged the underlying resignation as given or obtained by reason of duress and undue influence or as not otherwise freely and voluntarily given.

IV

CIRCUMSTANCES SURROUNDING RESIGNATION

Appellant testified that during the early part of her tenure as CMO she performed satisfactorily and helped to improve the quality of health care provided the residents at VHC-Yountville. On or about April 1, 1999, a new Interim Administrator was appointed to run VHC-Yountville.

Appellant served on an interview panel with the new Interim Administrator in July 1999. During a break the Interim Administrator advised her that he expected appellant to quit seeing patients. At that time appellant personally provided care for patients in one of the wards of the facility. She did so in order to keep abreast of the care being provided by her staff and to maintain her skills as a practicing physician.

Appellant testified she was shocked by the outrageous statement and did not take it seriously at the time.

On August 24, 1999, appellant met with the Interim Administrator for several hours regarding the facility. He made no mention of his prior request that she give up her patient caseload. However, on her return to her office, she was delivered a memorandum from the Interim Administrator. It stated as follows.

"You may recall my speaking with you several weeks ago concerning your having a patient workload, and my feeling that you not have such.

During the course of my meetings with the nursing staff, it was brought to my attention that excessive vital sign taking, other excessive testing, etc. may be occurring by some medical staff. In addition, we are aware of the pressure sore outbreak on one of the wards.

It is my opinion that were you to conduct ward/chart reviews with medical staff on a routine basis, you may be able to preclude such events from happening, and you may uncover other practices and conditions that would preclude regulatory discovery.

I consider this oversight to be one of the primary responsibilities and duties of the CMO. You cannot exercise this duty with a patient workload requiring mandatory daily attention on your part.

Please advise how you will accomplish this needed oversight."

Appellant attempted to contact, but was unable to meet with, the Interim Administrator after she received the memorandum. She was shocked by its contents, not only by his request that she give up actually practicing medicine, but also by his implications that the problems identified were in some way caused by failings on her part.

On August 26, 1999, appellant sent the Interim Administrator a memorandum setting forth her feelings. It stated the following:

"It is with no small degree of sadness and frustration that I submit my resignation as Chief Medical Officer of the Veterans Home of California, Yountville. Your demand that I discontinue my small practice would make me unable to effectively serve in my role as being responsible for the quality of medical care in this institution. In fact, my daily contact with the issues and problems of the patients and staff are key to my effective fulfillment of my role. Furthermore, I think you should understand that clinical problems such as the pressure sores were virtually undiscoverable from a chart audit on ward 2D, so that to believe that would solve the problems of the Home is most unrealistic. In reality, until you have a major housekeeping of your senior nurses, care at the Home is in great peril.

Had you had the courtesy to meet with me personally, I would have asked that this not be made public until I have a chance to meet with my patients and

service chiefs to personally inform them of my resignation, which will be effective October 1, 1999. I hope you will honor this request nonetheless."

The Interim Administrator responded by sending her a memo that same day stating he was accepting the resignation effective October 1, 1999.

V

CIRCUMSTANCES FOLLOWING RESIGNATION

On September 13, 1999, after obtaining legal advice, appellant submitted a written withdrawal of her resignation to the Interim Administrator. That same day she received a memorandum from him stating he had appointed the Chief of Medicine (a subordinate employee) as Acting CMO effective September 13.

The next day the Interim Administrator notified appellant he would not accept a withdrawal of her resignation.

Effective September 13 through October 1, 1999, the Interim Administrator effectively relieved appellant of her duties as CMO, even though she was present at the facility.

Shortly before September 13, the Interim Administrator directed the Personnel Officer to begin recruitment for a new permanent CMO. On or about September 13, the Personnel Officer updated an old flyer by changing the dates on it and distributed it to staff throughout the state. As of the date of hearing, no one has been appointed as permanent CMO.

The Personnel Officer testified that in the past employees who had requested to withdraw resignations before the effective date at the VHC-Yountville had been allowed to do so. She was unaware of anyone being denied the opportunity to withdraw a resignation before the effective date.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT THE ALJ MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19996.1 provides:

"Resignations from state civil service are subject to department rule. ... No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set aside is filed with the department [Personnel Administration] within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power whichever is later."

DPA Rule 599.825 provides:

"An employee may resign from state service by submitting a written resignation to the appointing power. A copy of such resignation shall immediately be filed by the appointing power in a manner prescribed by the Department of Personnel Administration."

A. Authority to Withdraw Resignation

Appellant contends she should have been permitted to withdraw her resignation before it became effective and that respondent abused its discretion in not allowing her to withdraw the resignation. The California Supreme Court in *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 206, addressed the same issued and concluded:

"... unless valid enactments provide otherwise, an employee is entitled to withdraw a resignation if she or he does so (1) before its effective date, (2) before it has been accepted, and (3) before the appointing power acts in reliance on the resignation."

It was undisputed that the withdrawal was requested before the effective date. However, respondent argued that it had the discretion to deny the withdrawal because it was prejudiced. (No argument was made as to the effect of the Interim Administrator's memo of August 26, 1999, purportedly accepting the resignation.)

The only prejudice, if any, demonstrated was that the Personnel Office sent out an updated flyer for appellant's soon-to-be-vacated position on or about the time she asked to withdraw.² This prejudice is not considered significant enough to allow respondent to exercise its discretion in such an arbitrary and capricious manner.

In *California Teachers Association v. Governing Board of Mariposa County Unified School District* (1977) 70 Cal.App.3d 833, 843-844, the court makes clear that discretion conferred by a statute on an administrative agency is not a whimsical and uncontrolled power, but is a legal discretion that is subject to reversal where no reasonable basis for the discretionary act is shown.

In this case there would have been no real prejudice to allowing appellant to withdraw her resignation when she requested it. Therefore, it is concluded that respondent demonstrated no reasonable basis for denying appellant the opportunity to withdraw her resignation and no legally cognizable prejudice.

² The Interim Administrator was clearly without authority (acted outside his authority) to remove appellant from her duties before the resignation became effective and without cause.

B. Duress, Undue Influence, Not Otherwise Free and Voluntary

In the alternative appellant contended she was subjected to undue influence and duress and the act of resigning was not otherwise free and voluntary. In order to determine whether the resignation was free from duress or undue influence or not otherwise free and voluntary, a trier-of-fact must look to the actions of the appellant at the point of resignation. Civil Code section 1567 provides that an apparent consent is not "free" when obtained through duress, menace, fraud, undue influence, or mistake. Duress or menace supposes some unlawful action by a party that causes the other party to consent by fear. *Odorizzi v. Bloomfield School District* (1966) 246 Cal.App.2d 123, 128. Undue influence involves the taking of an unfair advantage of another. *Id.* at 132, citing Civil Code section 1575.

In this case, the Interim Administrator took unfair advantage of his authority over a licensed physician³ by imposing a restriction on her that would require her to either stop practicing medicine or resign. Although he testified he did not "order" her to quit treating patients, the documentation and the testimony of the appellant, made clear that appellant was under the impression that he had given her that directive when she executed her original resignation. Appellant credibly testified that she felt professionally challenged and that it was "impossible" to do her job under the circumstances. For that reason, it is concluded in the alternative that the original resignation was the result of undue influence by respondent's representative, the Interim Administrator.

For the reasons set forth above, the resignation should be set aside.

* * * * *

WHEREFORE IT IS DETERMINED that the appeal of ██████████ to set aside her resignation from the position Chief Medical Officer effective October 1, 1999, is granted. She shall be reinstated to her former position and paid her salary for the period she was removed from State service as the result of such resignation, consistent with the provisions of Government Code section 19996.1(a). Further, DPA shall retain jurisdiction in the event the parties are unable to resolve any back pay issues which may arise regarding this matter.

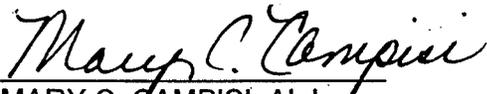
* * * * *

³ The Interim Administrator was not a licensed physician. He holds an Engineering degree from the U.S. Naval Academy. He previously served as Chief of Plant Operations at VHC-Yountville and Chief of the Farm and Home Loan Division at Sacramento.

continued)

The above constitutes my Proposed Decision in the above-entitled matter. I recommend its adoption by DPA as its decision in the case.

DATED: December 13, 1999



MARY C. CAMPISI, ALJ
Statutory Appeals Unit
Department of Personnel Administration