

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL
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FILED H2

April 18, 2019

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Public Matter

IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA

IN THE MATTER OF THE) OCTC Case No. SBC-19-C-30164
CONVICTION OF:)
) Transmittal of Records of Conviction of Attorney (Bus. & Prof.
ROBIN DOUGLAS DAKAN,) Code §§ 6101-6102; Cal. Rules of Court, rule 9.5 et seq.)
No. 76181)
) (OCTC Case No. 19-C-11053)
)
A Member of the State Bar) [X] Felony;
) [X] Crime(s) involved moral turpitude;
) [] Probable cause to believe the crime(s) involved moral
) turpitude;
) [] Crime(s) which may or may not involve moral turpitude or
other misconduct warranting discipline;
[] Transmittal of Notice of Finality of Conviction.

To the CLERK OF THE STATE BAR COURT:

1. Transmittal of records.

- [X] A. Pursuant to the provisions of Business and Professions Code, section 6101-6102 and California Rules of Court, rule 9.5 et seq., the Office of Chief Trial Counsel transmits a certified copy of the record of convictions of the following member of the State Bar and for such consideration and action as the Court deems appropriate:
- [] B. Notice of Appeal
- [] C. Evidence of Finality of Conviction (Notice of Lack of Appeal)
- [] D. Other



Name of Member: Robin Douglas Dakan

Date member admitted to practice law in California: December 21, 1977

Member's Address of Record: PO Box 33244

Los Gatos, CA 95031-3244

2. Date and court of conviction; offense(s).

The record of conviction reflects that the above-named member of the State Bar was convicted as follows:

Date of entry of conviction: December 12, 2018

Convicting court: California Superior Court, County of Santa Cruz

Case number(s): 16CR02756

Crime(s) of which convicted and classification(s): Violation of Penal Code section 368(b)(1), Elder And Dependent Adult Abuse, one count, a felony that involves moral turpitude as a matter of law.

Felony classification: Section 368(b)(1) provides for punishment including imprisonment in the state prison for two, three or four years. This constitutes a felony pursuant to Penal Code section 17(a). Moreover, respondent was charge with, and found guilty of, a felony.

Moral turpitude classification: The State Bar recognizes that section 368(b)(1) has not previously been classified as a crime involving moral turpitude as a matter of law. The State Bar transmits this conviction as one involving moral turpitude as a matter of law because the victim of the crime, by definition, is a member of a vulnerable class. (*People v. Heitzman* (1994) 9 Cal.4th 189, 245 [legislative history indicates that section 368(a), like felony child abuse statute, was enacted to protect members of a vulnerable class from abusive situation].) And, the defendant knows or reasonably should know that the victim is an elderly or dependent adult.

The State Bar contends that criminally abusing a vulnerable victim constitutes moral turpitude as a matter of law because the conduct is contrary to the accepted and customary rules individuals must follow in dealing with one another, especially with regard to an individual who is vulnerable due to age. The conduct involves (1) a serious breach of a duty owed to another; (2) a flagrant disrespect for the law and for societal norms, and (3) the undermining of public confidence in, and respect for, the legal profession.. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) Therefore, a violation of section 368(b)(1) involves moral turpitude as a matter of law.

In *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, the Review Department found that a violation of Penal Code section 273a, subdivision (b) (child endangerment) did not involve moral turpitude as a matter of law. However, that case is distinguishable. Section 273a, subdivision (b) does not require that the criminal conduct occur under conditions likely to produce great bodily harm or death.

The criminal violation in this case, section 368(b)(1), like section 273a, subdivision (a), requires that the defendant act under conditions that are likely to produce great bodily harm or death. That additional element distinguishes this case from *Jensen* and supports a finding that a violation of section 368(b)(1) involves moral turpitude as a matter of law.

Finally, ruling in an immigration matter, the court in *Singh v. Holder* (2010) 414 Fed.Appx. 909, concluded that section 368(b)(1) is divisible into different crimes, some of which involve moral turpitude and some of which do not. The issue was remanded for a determination as to which part of the statute applied to Singh. (Also see *Carty v. Ashcroft* (9th Cir. 2005) 395 F.3d 1081, 1084 [when a statute is divisible into several crimes, some of which may involve moral turpitude and some not, it is appropriate to examine the record of conviction to determine which part applies to the defendant].)

Here, respondent was charged with and found guilty of: *under circumstances and conditions likely to produce great bodily harm and death, knowingly and willfully cause and permit his wife, Linda Dakan, age 67 years, an elder and dependent adult, to suffer, and inflicted thereon, unjustifiable physical pain and mental suffering and, having the care and custody of Linda Dakan, willfully caused and permitted her to be placed in a situation in which her health was endangered.* (Information filed June 6, 2016.) The State Bar contends that the record of conviction in this matter establishes that respondent committed a crime involving moral turpitude as a matter of law pursuant to *In re Lesansky* (2001) 25 Cal.4th 11.

3. Compliance with Rule 9.20. (Applicable only if checked.)

We bring to the Court's attention that, should the Court enter an order of interim suspension herein, the Court may wish to require the above-named member to comply with the provisions of rule 9.20, California Rules of Court, paragraph (a), within 30 days of the effective date of any such order; and to file the affidavit with the Clerk of the State Bar Court provided for in paragraph (c) of rule 9.20 within 40 days of the effective date of said order, showing the member's compliance with the provisions of rule 9.20.

4. Other information to assist the State Bar Court

DOCUMENTS TRANSMITTED:

Certified criminal court file.

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: April 18, 2019

BY: 

Kevin B. Taylor
Senior Trial Counsel

A copy of this transmittal and its
Attachments have been sent to:

Robin Douglas Dakan
PO Box 33244
Los Gatos, CA 95031-3244

Courtesy copy to:

Robin Douglas Dakan, CDCR # BI6729
San Quentin State Prison
San Quentin, CA 94974

DECLARATION OF SERVICE BY FIRST CLASS MAIL AND CERTIFIED MAIL

CASE NUMBER: 19-C-11053

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

TRANSMITTAL OF RECORDS OF CONVICTION OF ATTORNEY, including:

Certified criminal court file

in a sealed envelope placed for collection and mailing as First Class Mail and as certified mail, return receipt requested, Article No.: 9414 7266 9904 2093 9433 44, at San Francisco, on the date shown below, addressed to:

**Robin Douglas Dakan
PO Box 33244
Los Gatos, CA 95031-3244**


**Robin Douglas Dakan, CDCR #B16729
San Quentin State Prison
San Quentin, CA 94974
*Courtesy Copy Via First Class Mail***

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, on the date shown below.

DATED: April 18, 2019

Signed: 

**Ina M. Strehle
Declarant**