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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
)
)
Richard Wayne Powell, M.D.)
)
Physician's and Surgeon's)
Certificate No. A 46496)
)
Respondent)
_____)

File No. 02-2002-132493


DECISION

The attached **Stipulated Settlement & Disciplinary Order** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 21, 2003.

IT IS SO ORDERED June 20, 2003.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald Wender, M.D.,
Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. BEPPELL, Supervising
Deputy Attorney, State Bar No. 84134
3 DANIEL J. TURNER, State Bar No. 79560
Deputy Attorney General
4 California Department of Justice
1300 J Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7861
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7
8 Attorneys for Complainant

9
10 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:

Case No. 02-2002-152493

14 RICHARD WAYNE POWELL, M.D.
112 Linden Avenue
15 Flagstaff, MD 21742

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Physician and Surgeon Certificate No. A 46496

17 Respondent.

18
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Ron Joseph ("Complainant") is the Executive Director of the Medical
23 Board of California. He brought this action solely in his official capacity and is represented in
24 this matter by Bill Lockyer, Attorney General of the State of California, by Daniel J. Turner,
25 Deputy Attorney General.

26 2. Respondent Richard Wayne Powell, M.D. ("Respondent") is represented
27 in this proceeding by attorney John M. Webster, whose address is 1558 West Street, Suite 3,
28 Redding, CA 96001.

1 3. On or about September 11, 1988, the Medical Board of California issued
2 Physician and Surgeon Certificate No. A 46496 to Richard Wayne Powell, M.D. The Certificate
3 was in full force and effect at all times relevant to the charges brought in Accusation No.
4 02-2002-132493 and will expire on May 31, 2003, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 02-2002-132493 was filed before the Division of Medical
7 Quality ("Division") for the Medical Board of California, Department of Consumer Affairs, and
8 is currently pending against Respondent. The Accusation and all other statutorily required
9 documents were properly served on Respondent on March 18, 2003. Respondent timely filed his
10 Notice of Defense contesting the Accusation. A copy of Accusation No. 02-2002-132493 is
11 attached hereto as Exhibit A and incorporated herein by reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Accusation No. 02-2002-132493. Respondent has
15 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
16 Settlement and Disciplinary Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the
18 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
19 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
20 the right to present evidence and to testify on his own behalf; the right to the issuance of
21 subpoenas to compel the attendance of witnesses and the production of documents; the right to
22 reconsideration and court review of an adverse decision; and all other rights accorded by the
23 California Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
25 each and every right set forth above.

26 **CLEARABILITY**

27 8. In Accusation No. 02-2002-132493 Respondent admits the truth of each
28 and every charge and allegation in the First Cause for Discipline, including that his dishonesty in

1 directing Strand to provide talking sessions to patients who had expected but did not receive
2 psychotherapy services, and Respondent's causing patients' insurers to be billed for
3 psychotherapy services that were not provided, constitute dishonesty and unprofessional conduct
4 within the meaning of section 2234(e) of the Code.

5 9. Respondent agrees that his Physician and Surgeon Certificate is subject to
6 discipline and he agrees to be bound by the Division of Medical Quality's (the "Division's")
7 imposition of discipline as set forth in the Disciplinary Order below.

8 CIRCUMSTANCES IN MITIGATION

9 10. Respondent Richard Wayne Powell, M.D. has never been the subject of
10 any disciplinary action. He is admitting responsibility at an early stage in the proceedings.

11 RESERVATION

12 11. The admissions made by Respondent herein are only for the purposes of
13 this proceeding, or any other proceedings in which the Division of Medical Quality, Medical
14 Board of California, or other professional licensing agency is involved, and shall not be
15 admissible in any other criminal or civil proceeding.

16 CONTINGENCY

17 12. This stipulation shall be subject to approval by the Division of Medical
18 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
19 Medical Board of California may communicate directly with the Division regarding this
20 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
21 signing this stipulation, Respondent understands and agrees that he may not withdraw his
22 agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon
23 it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
24 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
25 be inadmissible in any legal action between the parties, and the Division shall not be disqualified
26 from further action by having considered this matter.

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1 13. The parties understand and agree that facsimile copies of this Stipulated
2 Settlement and Disciplinary Order, including facsimile signatures thereon, shall have the same
3 force and effect as the originals.

4 14. In consideration of the foregoing admissions and stipulations, the parties
5 agree that the Division may, without further notice or formal proceeding, issue and enter the
6 following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician and Surgeon Certificate No. A 46496
9 issued to Respondent Richard Wayne Powell, M.D. is revoked. However, the revocation is
10 stayed and Respondent is placed on probation for five (5) years on the following terms and
11 conditions.

12 Within 15 days after the effective date of this decision, Respondent shall provide
13 the Division, or its designee, proof of service that Respondent has served a true copy of this
14 decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or
15 membership are extended to Respondent, or at any other facility where Respondent engages in
16 the practice of medicine, and on the Chief Executive Officer at every insurance carrier where
17 malpractice insurance coverage is extended to Respondent.

18 1. **ACTUAL SUSPENSION** As part of probation, Respondent is suspended
19 from the practice of medicine for 60 (sixty) days beginning the sixteenth (16th) day after the
20 effective date of this decision.

21 2. **ETHICS COURSE** Within 60 (sixty) days of the effective date of this
22 decision, Respondent shall enroll in a course in Ethics approved in advance by the Division or its
23 designee, and shall successfully complete the course during the first year of probation.

24 3. **SUPERVISION OF PHYSICIAN ASSISTANTS** During probation,
25 Respondent is prohibited from supervising physician assistants.

26 4. **OBEDY ALL LAWS** Respondent shall obey all federal, state and local
27 laws, all rules governing the practice of medicine in California, and remain in full compliance
28 with any court ordered criminal probation, payments and other orders.

- 1 5. QUARTERLY REPORTS Respondent shall submit quarterly
2 declarations under penalty of perjury on forms provided by the Division, stating whether there
3 has been compliance with all the conditions of probation.

- 4 6. PROBATION SURVEILLANCE PROGRAM COMPLIANCE
5 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
6 at all times, keep the Division informed of his business and residence addresses which shall both
7 serve as addresses of record. Changes of such addresses shall be immediately communicated in
8 writing to the Division. Under no circumstances shall a post office box serve as an address of
9 record, except as allowed by Business and Professions Code section 2321(b).
10 Respondent shall, at all times, maintain a current and renewed physician's and
11 surgeon's license.
12 Respondent shall also immediately inform the Division, in writing, of any travel
13 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
14 than 30 (thirty) days.

- 15 7. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS
16 DESIGNATED PHYSICIAN(S) Respondent shall appear in person for interviews with the
17 Division, its designee or its designated physician(s) upon request at various intervals and with
18 reasonable notice.

- 19 8. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR IN-
20 STATE NON-PRACTICE In the event Respondent should leave California to reside or to
21 practice outside the State, or for any reason should Respondent stop practicing medicine in
22 California, Respondent shall notify the Division or its designee in writing within ten (10) days of
23 the date of departure and return or the date of non-practice within California. Non-practice is
24 defined as any period of time exceeding thirty (30) days in which Respondent is not engaging in
25 any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time
26 spent in an intensive training program approved by the Division or its designee shall be
27 considered as time spent in the practice of medicine. A Board-ordered suspension of practice
28 shall not be considered as a period of non-practice. Periods of temporary or permanent residence

1 or practice outside California or of non-practice within California, as defined in this condition,
2 will not apply to the revocation of the probationary order.

3 9. COMPLETION OF PROBATION Upon successful completion of
4 probation, Respondent's certificate shall be fully restored.

5 10. VIOLATION OF PROBATION If Respondent violates probation in any
6 respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke
7 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
8 revoke probation is filed against Respondent during probation, the Division shall have continuing
9 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
10 is final.

11 11. COST RECOVERY Respondent is hereby ordered to reimburse the
12 Division the amount of \$7,457 for its investigative and prosecution costs. Payment is due within
13 90 (ninety) days of the effective date of this decision. Failure to reimburse the Division's cost of
14 investigation and prosecution shall constitute a violation of the probation order, unless the
15 Division agrees in writing to payment by an installment plan because of financial hardship. The
16 filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
17 reimburse the Division for its investigative and prosecution costs.

18 12. PROBATION COSTS Respondent shall pay the costs associated with
19 probation monitoring each and every year of probation, as designated by the Division, which are
20 currently set at \$2,874, but may be adjusted on an annual basis. Such costs shall be payable to
21 the Division of Medical Quality and delivered to the designated probation surveillance monitor
22 no later than January 31 of each calendar year. Failure to pay costs within 30 (thirty) days of the
23 due date shall constitute a violation of probation.

24 13. LICENSE SURRENDER Following the effective date of this decision, if
25 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may voluntarily tender his certificate to the
27 Board. The Division reserves the right to evaluate Respondent's request and to exercise its
28 discretion whether to grant the request, or to take any other action deemed appropriate and

1 reasonable under the circumstances. Upon formal acceptance of the tendered license,
2 Respondent will not longer be subject to the terms and conditions of probation.

3 **ACCEPTANCE**

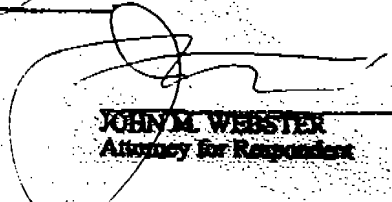
4 I have carefully read the above Stipulated Settlement and Disciplinary Order and
5 have fully discussed it with my attorney, John M. Webster. I understand the stipulation and the
6 effect it will have on my Physician and Surgeon Certificate. I enter into this Stipulated
7 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
8 bound by the Decision and Order of the Division of Medical Quality, Medical Board of
9 California.

10
11 DATED: 5/15/03

12
13 
14 RICHARD WAYNE POWELL, M.D.
15 Respondent

16 I have read and fully discussed with Respondent, Richard Wayne Powell, M.D.,
17 the terms and conditions and other matters contained in the above Stipulated Settlement and
18 Disciplinary Order. I approve its form and content.

19
20 DATED: 5/16/03

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22 
23 JOHN M. WEBSTER
24 Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs.

DATED: May 23, 2003

BILL LOCKYER, Attorney General
of the State of California



DANIEL J. TURNER
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 02-2002-132493

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Mar 18 2003
BY Brenda Allen ANALYST

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, Supervising Deputy
Attorney General, State Bar No. 84134
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7 Attorneys for Complainant

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9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 02-2002-132493

15 RICHARD WAYNE POWELL, M.D.
16 112 Linden Avenue
Redding, CA 96001

ACCUSATION

17 Physician and Surgeon Certificate No. A 46496
Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Ron Joseph ("Complainant") brings this Accusation solely in his official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs.

23 2. On or about September 11, 1988, the Medical Board of California issued
24 Physician and Surgeon Certificate Number A 46496 to Richard Wayne Powell, M.D.
25 ("Respondent"). The Physician and Surgeon Certificate was in full force and effect at all times
26 relevant to the charges brought herein and will expire on May 31, 2003, unless renewed.

27 ///

28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Division of Medical Quality
3 ("Division") for the Medical Board of California, Department of Consumer Affairs, under the
4 authority of the following laws. All section references are to the Business and Professions Code
5 unless otherwise indicated.

6 4. Section 2227 of the Business and Professions Code (hereinafter " the
7 Code") provides that a licensee who is found guilty under the Medical Practice Act may have his
8 or her license revoked, suspended for a period not to exceed one year, placed on probation and
9 required to pay the costs of probation monitoring, or such other action taken in relation to
10 discipline as the Division deems proper.

11 5. Section 2234 of the Code states:

12 "The Division of Medical Quality shall take action against any licensee who is
13 charged with unprofessional conduct. In addition to other provisions of this article,
14 unprofessional conduct includes, but is not limited to, the following:

15 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or
16 abetting the violation of, or conspiring to violate, any provision of this chapter
17 [Chapter 5, the Medical Practice Act].

18 "(b) Gross negligence.

19 "(c) Repeated negligent acts.

20 "(d) Incompetence.

21 "(e) The commission of any act involving dishonesty or corruption which is
22 substantially related to the qualifications, functions, or duties of a physician and surgeon.

23 "(f) Any action or conduct which would have warranted the denial of a
24 certificate."

25 6. Section 125.3 of the Code provides, in pertinent part, that the Division
26 may request the administrative law judge to direct a licentiate found to have committed a
27 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
28 investigation and enforcement of the case.

1 7. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
2 part:

3 "(a) Upon receipt of written notice from the Medical Board of California, the
4 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
5 that a licensee's license has been placed on probation as a result of a disciplinary action,
6 the department may not reimburse any Medi-Cal claim for the type of surgical service or
7 invasive procedure that gave rise to the probation, including any dental surgery or
8 invasive procedure, that was performed by the licensee on or after the effective date of
9 probation and until the termination of all probationary terms and conditions or until the
10 probationary period has ended, whichever occurs first. This section shall apply except in
11 any case in which the relevant licensing board determines that compelling circumstances
12 warrant the continued reimbursement during the probationary period of any Medi-Cal
13 claim, including any claim for dental services, as so described. In such a case, the
14 department shall continue to reimburse the licensee for all procedures, except for those
15 invasive or surgical procedures for which the licensee was placed on probation."

16 8. Section 810 of the Code states:

17 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
18 including suspension or revocation of a license or certificate, for a health care
19 professional to do any of the following in connection with his or her professional
20 activities:

21 "(1) Knowingly present or cause to be presented any false or fraudulent
22 claim for the payment of a loss under a contract of insurance.

23 "(2) Knowingly prepare, make, or subscribe any writing, with intent to
24 present or use the same, or to allow it to be presented or used in support of any false or
25 fraudulent claim.

26 "(b) It shall constitute cause for revocation or suspension of a license or
27 certificate for a health care professional to engage in any conduct prohibited under
28 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

1 11. Between July 1997 and April 1998, Strand saw patient A. P. on at least
2 five occasions for one-on-one sessions in which Respondent did not attend the sessions and for
3 which Respondent had his support staff bill the patient's insurer as if psychotherapy had been
4 provided when, in fact, it had not.

5 12. Between August 1997 and November 1997, Strand saw patient A. K. on at
6 least five occasions for one-on-one sessions in which Respondent did not attend the sessions and
7 for which Respondent had his support staff bill the patient's insurer as if psychotherapy had been
8 provided when, in fact, it had not.

9 13. Between September 1997 and February 1998, Strand saw patient T. N. on
10 at least two occasions for one-on-one sessions in which Respondent did not attend the sessions
11 and for which Respondent had his support staff bill the patient's insurer as if psychotherapy had
12 been provided when, in fact, it had not.

13 14. On or about January 6, 1998, Strand saw patient P. K. for a one-on-one
14 session in which Respondent did not attend the session and for which Respondent had his
15 support staff bill the patient's insurer as if psychotherapy had been provided when, in fact, it had
16 not.

17 15. On those occasions when Strand had sessions with Respondent's patients
18 without Respondent appearing for the session, Strand would fill out the patient's chart with
19 information corresponding to three of the four letters of the acronym SOAP; S for "subjective,"
20 O for "objective observation" of the patient, and P for "treatment plan." The other letter of the
21 acronym, A (for "assessment or diagnosis"), would remain as previously written by Respondent.
22 After Strand had completed the individual session with a patient and had written the SOAP notes
23 on the patient's chart, he would sign his signature at the bottom of the chart. Respondent would
24 later also sign his signature at the bottom of the chart.

25 16. Respondent would also have Strand conduct group sessions with two or
26 more patients in which Respondent was not present during the session and the patients' insurers
27 would later be billed for group psychotherapy.

28 ///

1 17. During the above period that Respondent was having patients' insurers
2 billed for psychotherapy services which were not provided, Respondent's office manager,
3 Rebecca Ramsey, was aware that Strand was not licensed to provide psychotherapy. Ramsey
4 was also aware that Respondent was billing for psychotherapy services based on Strand's face-to-
5 face talking sessions with several of Respondent's patients and Strand's conducting group
6 sessions. In the Fall of 1997, Ramsey related to Respondent that patients who were seen by
7 Strand were complaining that their insurer was paying for them to see Respondent and not
8 Strand. Ramsey also questioned Respondent as to why he was billing the patients' insurers for
9 psychotherapy services based on Strand's one-on-one sessions with the patients when Strand was
10 not licensed to provide psychotherapy. Respondent, in an angry outburst, responded that he was
11 the doctor and that was how it was going to be and that the finances had to be straightened out.

12 18. Respondent's dishonesty in directing Strand to provide talking sessions to
13 patients who had expected but did not receive psychotherapy services, and Respondent's causing
14 patients' insurers to be billed for psychotherapy services that were not provided, constitute
15 dishonesty and unprofessional conduct within the meaning of section 2234(e) of the Code.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 [Bus. & Prof. Code § 810(a)(2) and (b), and Penal Code § 550(a)]

19 19. Complainant incorporates by reference paragraphs 10-17 above, in full, as
20 if fully set forth at this point.

21 20. Respondent's misconduct in knowingly preparing, making or subscribing
22 any writing, including his writing billing codes and writing his signature to patient's medical
23 charts used for false billings, with the intent for them to be used in the support of false claims,
24 constitutes unprofessional conduct within the meaning of section 810(a)(2) of the Code.

25 **THIRD CAUSE FOR DISCIPLINE**

26 (Unprofessional Conduct)

27 [Bus. & Prof. Code § 810(b), and Penal Code § 550(a)]

28 21. Complainant incorporates by reference paragraphs 10-17 above, in full, as
if fully set forth at this point.

///

