

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

In the Matter of the Accusation Against:)

STEWART W. LOVELACE, M.D.)

Case No. 06-2005-169412

Physician's and Surgeon's)
Certificate No. C-30263)

Respondent.)
_____)

DECISION

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

This Decision shall become effective at 5:00 p.m. on October 26, 2009.

IT IS SO ORDERED September 25, 2009.

MEDICAL BOARD OF CALIFORNIA

By: 

Hedy Chang, Chair
Panel B

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 PAUL C. AMENT
Supervising Deputy Attorney General
3 CHRIS LEONG, State Bar No. 141079
Deputy Attorney General
4 300 South Spring Street, Suite 1702
Los Angeles, California 90013
5 Telephone: (213) 897-2575
Facsimile: (213) 897-9395
6
7 Attorneys for Complainant

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 06-2005-169412

12 STEWART W. LOVELACE, M.D.
1112 Ocean Drive
13 Manhattan Beach, California 90266

OAH No. L-2008090100

14 Physician's and Surgeon's Certificate No.
C30263,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 Respondent:

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

19 PARTIES

20 1. Barbara Johnston (Complainant) is the Executive Director of the Medical
21 Board of California (Board). She brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Chris Leong, Deputy Attorney General.

24 2. Respondent Stewart W. Lovelace, M.D. (Respondent) is represented in
25 this proceeding by attorney Robert S. McWhorter, whose address is Robert S. McWhorter
26 Nossaman LLP, 915 L. Street, Suite 1000, Sacramento, California 95814.

27 3. On or about July 19, 1968, the Board issued Physician's and Surgeon's
28 certificate (certificate) No. C30263 to Respondent. The certificate was valid at all times relevant

1 to the charges brought in Accusation No. 06-2005-169412 and will expire on December 31,
2 2008, unless renewed. The Accusation and all other statutorily required documents were
3 properly served on Respondent on June 25, 2008. Respondent timely filed his Notice of Defense
4 contesting the Accusation.

5 JURISDICTION

6 4. Accusation No. 06-2005-169412 was filed before the Board and is
7 currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent on June 25, 2008. Respondent timely filed his
9 Notice of Defense contesting the Accusation. A copy of Accusation No. 06-2005-169412 is
10 attached as Exhibit A and is incorporated herein by reference. Respondent filed a Motion to
11 Dismiss the Accusation. That motion was heard before the Office of Administrative Hearings.
12 The Proposed Decision was adopted, which granted in part and denied in part the motion. The
13 Decision of the Board became effective on January 30, 2009.

14 5. A prior Accusation & Notification of Violation and Imposition of Civil
15 Penalty No. 20-2006-172480 was filed before the Board. A Decision after Non Adoption was
16 issued by the Board. That Decision after non adoption placed his license on probation until
17 September 28, 2010 and imposed a civil penalty. Dr. Lovelace filed a Petition for Writ of
18 Administrative Mandamus before the Superior Court of the State of California for the County of
19 Sacramento, case number 07CS01434, regarding the issue of the civil penalty. The Superior
20 Court remanded the matter back to the Board to reconsider its action in light of the Court's
21 Statement of Decision but otherwise upheld the decision. On December 8, 2008, the Board
22 reconsidered its action in light of the Court's ruling and rendered a Decision After Remand from
23 Superior Court which became effective on February 25, 2009.

24 ADVISEMENT AND WAIVERS

25 6. Respondent has carefully read, fully discussed with counsel, and
26 understands the charges and allegations in Accusation No. 06-2005-169412. Respondent has
27 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
28 Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 06-2005-169412, if proven at a hearing, constitute cause for imposing discipline upon his certificate.

10. Respondent agrees that he failed to document telecommunications with patients, constituting a violation of Business and Professions Code (Code) section 2234, subdivision (c), and that he failed to maintain adequate and accurate medical records in violation of Code section 2266.

11. Respondent agrees that his Physician and Surgeon's certificate is subject to discipline and he agrees to be bound by the Board 's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary

1 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
2 action between the parties, and the Board shall not be disqualified from further action by having
3 considered this matter.

4 13. The parties understand and agree that facsimile copies of this Stipulated
5 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
6 force and effect as the originals.

7 14. In consideration of the foregoing admissions and stipulations, the parties
8 agree that the Board may, without further notice or formal proceeding, issue and enter the
9 following Disciplinary Order:

10 **DISCIPLINARY ORDER**

11 IT IS HEREBY ORDERED that Physician and Surgeon's certificate No. C30263
12 issued to Respondent Stewart W. Lovelace, M.D. is revoked. However, the revocation is stayed
13 and Respondent is placed on an probation for three (3) years, in addition to the current probation
14 which is scheduled to expire on September 28, 2010. Respondent is placed on probation until
15 September 28, 2013, on the following terms and conditions.

16 1. **EDUCATION COURSE** Within 60 calendar days of the effective date of
17 this Decision, and on an annual basis thereafter, Respondent shall submit to the Division or its
18 designee for its prior approval educational program(s) or course(s) which shall not be less than
19 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be
20 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified,
21 limited to classroom, conference, or seminar settings. The educational program(s) or course(s)
22 shall be at Respondent's expense and shall be in addition to the Continuing Medical Education
23 (CME) requirements for renewal of licensure. Following the completion of each course, the
24 Division or its designee may administer an examination to test Respondent's knowledge of the
25 course. Respondent shall provide proof of attendance for 65 hours of continuing medical
26 education of which 40 hours were in satisfaction of this condition.

27 2. **MEDICAL RECORD KEEPING COURSE** Within 60 calendar days of
28 the effective date of this decision, Respondent shall enroll in a course in medical record keeping,

1 at Respondent's expense, approved in advance by the Division or its designee. Failure to
2 successfully complete the course during the first 6 months of probation is a violation of
3 probation.

4 A medical record keeping course taken after the acts that gave rise to the charges
5 in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the
6 Division or its designee, be accepted towards the fulfillment of this condition if the course would
7 have been approved by the Division or its designee had the course been taken after the effective
8 date of this Decision.

9 Respondent shall submit a certification of successful completion to the Division
10 or its designee not later than 15 calendar days after successfully completing the course, or not
11 later than 15 calendar days after the effective date of the Decision, whichever is later.

12 3. CLINICAL TRAINING PROGRAM Within 60 calendar days of the
13 effective date of this Decision, Respondent shall enroll in a clinical training or educational
14 program equivalent to the Physician Assessment and Clinical Education Program (PACE)
15 offered at the University of California - San Diego School of Medicine ("Program").

16 The Program shall consist of a Comprehensive Assessment program comprised of
17 a two-day assessment of Respondent's physical and mental health; basic clinical and
18 communication skills common to all clinicians; and medical knowledge, skill and judgment
19 pertaining to Respondent's specialty or sub-specialty, and at minimum, a 40 hour program of
20 clinical education in the area of practice in which Respondent was alleged to be deficient and
21 which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any
22 other information that the Division or its designee deems relevant. Respondent shall pay all
23 expenses associated with the clinical training program.

24 Based on Respondent's performance and test results in the assessment and clinical
25 education, the Program will advise the Division or its designee of its recommendation(s) for the
26 scope and length of any additional educational or clinical training, treatment for any medical
27 condition, treatment for any psychological condition, or anything else affecting Respondent's
28 practice of medicine. Respondent shall comply with Program recommendations.

1 At the completion of any additional educational or clinical training, Respondent
2 shall submit to and pass an examination. The Program's determination whether or not
3 Respondent passed the examination or successfully completed the Program shall be binding.

4 Respondent shall complete the Program not later than six months after
5 Respondent's initial enrollment unless the Division or its designee agrees in writing to a later
6 time for completion.

7 Failure to participate in and complete successfully all phases of the clinical
8 training program outlined above is a violation of probation.

9 If Respondent fails to complete the clinical training program within the designated
10 time period, Respondent shall cease the practice of medicine within 72 hours after being notified
11 by the Division or its designee that Respondent failed to complete the clinical training program.

12 4. MONITORING - PRACTICE Within 30 calendar days of the effective
13 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
14 practice monitor, the name and qualifications of one or more licensed physician(s) and
15 surgeon(s) whose licenses are valid and in good standing, and who are preferably American
16 Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current
17 business or personal relationship with Respondent, or other relationship that could reasonably be
18 expected to compromise the ability of the monitor to render fair and unbiased reports to the
19 Division, including, but not limited to, any form of bartering, shall be in Respondent's field of
20 practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
21 costs.

22 The Board or its designee shall provide the approved monitor with copies of the
23 Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of
24 receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit
25 a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands
26 the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
27 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
28 with the signed statement.

1 Within 60 calendar days of the effective date of this Decision, and continuing
2 throughout probation, Respondent's practice shall be monitored by the approved monitor.
3 Respondent shall make all records available for immediate inspection and copying on the
4 premises by the monitor at all times during business hours, and shall retain the records for the
5 entire term of probation.

6 The monitor(s) shall submit a quarterly written report to the Division or its
7 designee which includes an evaluation of Respondent's performance, indicating whether
8 Respondent's practices are within the standards of practice of medicine or billing, or both, and
9 whether Respondent is practicing medicine safely, billing appropriately or both.

10 It shall be the sole responsibility of Respondent to ensure that the monitor submits
11 the quarterly written reports to the Division or its designee within 10 calendar days after the end
12 of the preceding quarter.

13 If the monitor resigns or is no longer available, Respondent shall, within 5
14 calendar days of such resignation or unavailability, submit to the Division or its designee, for
15 prior approval, the name and qualifications of a replacement monitor who will be assuming that
16 responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement
17 monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be
18 suspended from the practice of medicine until a replacement monitor is approved and prepared to
19 assume immediate monitoring responsibility. Respondent shall cease the practice of medicine
20 within 3 calendar days after being so notified by the Division or designee.

21 In lieu of a monitor, Respondent may participate in a professional enhancement
22 program equivalent to the one offered by the Physician Assessment and Clinical Education
23 Program at the University of California, San Diego School of Medicine, that includes, at
24 minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of
25 professional growth and education. Respondent shall participate in the professional enhancement
26 program at Respondent's expense during the term of probation.

27 Failure to maintain all records, or to make all appropriate records available for
28 immediate inspection and copying on the premises, or to comply with this condition as outlined

1 above is a violation of probation.

2 When at least three years has elapsed since the effective date of the Board's
3 adopting this Stipulation, the practice monitor may notify the division that he /she believes no
4 further monitoring is necessary. The Board then may, in its sole discretion, discontinue this term
5 of probation.

6 5. NOTIFICATION Prior to engaging in the practice of medicine, the
7 Respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff
8 or the Chief Executive Officer at every hospital where privileges or membership are extended to
9 Respondent, at any other facility where Respondent engages in the practice of medicine,
10 including all physician and locum tenens registries or other similar agencies, and to the Chief
11 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
12 Respondent. Respondent shall submit proof of compliance to the Division or its designee within
13 15 calendar days.

14 This condition shall apply to any change(s) in hospitals, other facilities or
15 insurance carrier.

16 6. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
17 Respondent is prohibited from supervising physician assistants.

18 7. OBEY ALL LAWS Respondent shall obey all federal, state and local
19 laws, all rules governing the practice of medicine in California, and remain in full compliance
20 with any court ordered criminal probation, payments and other orders.

21 8. QUARTERLY DECLARATIONS Respondent shall submit quarterly
22 declarations under penalty of perjury on forms provided by the Division, stating whether there
23 has been compliance with all the conditions of probation. Respondent shall submit quarterly
24 declarations not later than 10 calendar days after the end of the preceding quarter.

25 9. PROBATION UNIT COMPLIANCE Respondent shall comply with the
26 Division's probation unit. Respondent shall, at all times, keep the Division informed of
27 Respondent's business and residence addresses. Changes of such addresses shall be immediately
28 communicated in writing to the Division or its designee. Under no circumstances shall a post

1 office box serve as an address of record, except as allowed by Business and Professions Code
2 section 2021(b).

3 Respondent shall not engage in the practice of medicine in Respondent's place of
4 residence. Respondent shall maintain a current and renewed California physician's and
5 surgeon's license.

6 Respondent shall immediately inform the Division, or its designee, in writing, of
7 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
8 more than 30 calendar days.

9 10. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent
10 shall be available in person for interviews either at Respondent's place of business or at the
11 probation unit office, with the Division or its designee, upon request at various intervals, and
12 either with or without prior notice throughout the term of probation.

13 11. RESIDING OR PRACTICING OUT-OF-STATE In the event
14 Respondent should leave the State of California to reside or to practice, Respondent shall notify
15 the Division or its designee in writing 30 calendar days prior to the dates of departure and return.
16 Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is
17 not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions
18 Code.

19 All time spent in an intensive training program outside the State of California
20 which has been approved by the Division or its designee shall be considered as time spent in the
21 practice of medicine within the State. A Board-ordered suspension of practice shall not be
22 considered as a period of non-practice. Periods of temporary or permanent residence or practice
23 outside California will not apply to the reduction of the probationary term. Periods of temporary
24 or permanent residence or practice outside California will relieve Respondent of the
25 responsibility to comply with the probationary terms and conditions with the exception of this
26 condition and the following terms and conditions of probation: Obey All Laws; and Probation
27 Unit Compliance.

28 Respondent's license shall be automatically canceled if Respondent's periods of

1 temporary or permanent residence or practice outside California total two years. However,
2 Respondent's license shall not be canceled as long as Respondent is residing and practicing
3 medicine in another state of the United States and is on active probation with the medical
4 licensing authority of that state, in which case the two year period shall begin on the date
5 probation is completed or terminated in that state.

6 12. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

7 In the event Respondent resides in the State of California and for any reason
8 Respondent stops practicing medicine in California, Respondent shall notify the Division or its
9 designee in writing within 30 calendar days prior to the dates of non-practice and return to
10 practice. Any period of non-practice within California, as defined in this condition, will not
11 apply to the reduction of the probationary term and does not relieve Respondent of the
12 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
13 any period of time exceeding 30 calendar days in which Respondent is not engaging in any
14 activities defined in sections 2051 and 2052 of the Business and Professions Code.

15 All time spent in an intensive training program which has been approved by the
16 Division or its designee shall be considered time spent in the practice of medicine. For purposes
17 of this condition, non-practice due to a Board-ordered suspension or in compliance with any
18 other condition of probation, shall not be considered a period of non-practice.

19 Respondent's license shall be automatically canceled if Respondent resides in
20 California and for a total of two years, fails to engage in California in any of the activities
21 described in Business and Professions Code sections 2051 and 2052.

22 13. COMPLETION OF PROBATION Respondent shall comply with all
23 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to
24 the completion of probation. Upon successful completion of probation, Respondent's certificate
25 shall be fully restored.

26 14. VIOLATION OF PROBATION Failure to fully comply with any term or
27 condition of probation is a violation of probation. If Respondent violates probation in any
28 respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke

1 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
2 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
3 the Division shall have continuing jurisdiction until the matter is final, and the period of
4 probation shall be extended until the matter is final.

5 15. LICENSE SURRENDER Following the effective date of this Decision, if
6 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
7 the terms and conditions of probation, Respondent may request the voluntary surrender of
8 Respondent's license. The Division reserves the right to evaluate Respondent's request and to
9 exercise its discretion whether or not to grant the request, or to take any other action deemed
10 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
11 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the
12 Division or its designee and Respondent shall no longer practice medicine. Respondent will no
13 longer be subject to the terms and conditions of probation and the surrender of Respondent's
14 license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the
15 application shall be treated as a petition for reinstatement of a revoked certificate.

16 16. PROBATION MONITORING COSTS Respondent shall pay the costs
17 associated with probation monitoring each and every year of probation, as designated by the
18 Division but may be adjusted on an annual basis. Such costs shall be payable to the Medical
19 Board of California and delivered to the Division or its designee no later than January 31 of each
20 calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of
21 probation.

22 ACCEPTANCE

23 I have carefully read the above Stipulated Settlement and Disciplinary Order and
24 have fully discussed it with my attorney, Robert S. McWhorter. I understand the stipulation and
25 the effect it will have on my certificate. I enter into this Stipulated Settlement and Disciplinary
26 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
27 of the Medical Board of California.

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DATED: _____

STEWART W. LOVELACE, M.D.
Respondent

I have read and fully discussed with Respondent Stewart W. Lovelace, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

ROBERT S. MCWHORTER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: _____

EDMUND G. BROWN JR., Attorney General
of the State of California

PAUL C. AMENT
Supervising Deputy Attorney General

CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2008501454
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DATED: 3.27.09

Stewart W. Lovelace M.D.
STEWART W. LOVELACE, M.D.
Respondent

I have read and fully discussed with Respondent Stewart W. Lovelace, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4-1-09

Robert S. McWhorter
ROBERT S. MCWHORTER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 4/6/09

EDMUND G. BROWN JR., Attorney General
of the State of California:

PAUL C. AMENT
Supervising Deputy Attorney General

Chris Leong
CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

002 Mailer ID: CA2009071874
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Exhibit A

Accusation No. 06-2005-169412

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 CHRIS LEONG, State Bar No. 141079
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-2575
5 Facsimile: (213) 897-9395

6 Attorneys for Complainant

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

11

In the Matter of the Accusation Against:

Case No. 06-2005-169412

12

STEWART W. LOVELACE, M.D.
1112 Ocean Drive
13 Manhattan Beach, California 90266

ACCUSATION

14

Physician and Surgeon's Certificate No. C30263,

15

Respondent.

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Complainant alleges:

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PARTIES

19

1. Barbara Johnston (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Director of the Medical Board of California (Board).

21

2. On or about July 19, 1968, the Board issued Physician and Surgeon's
22 Certificate Number C30263 to Stewart W. Lovelace, M.D. (Respondent). This license has been
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 December 31, 2008, unless renewed.

25

3. In a disciplinary action entitled "In the Matter of Accusation and
26 Notification of Violation and Imposition of Civil Penalty Against Stewart W. Lovelace, M.D.,"
27 Case No. 20-2006-172480, the Medical Board of California issued a decision effective
28 September 28, 2007, in which Respondent's Physician and Surgeon's Certificate was revoked,

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 25, 2008
BY Richard W. Adams

1 then stayed, then placed on probation for a period of three years and ordered, among other
2 conditions, to pay a civil penalty in the amount of \$244,000. A copy of that decision is attached
3 as Exhibit A and is incorporated by reference. On October 26, 2007, a Petition for Writ of
4 Mandamus case No. 07CS01434 was filed in The Superior Court of the State of California for
5 the County of Sacramento (Court). On May 9, 2008, the Court ordered the civil penalty in the
6 amount of \$244,000 stayed pending the outcome of the case.

7 JURISDICTION

8 4. This Accusation is brought before the Board under the authority of the
9 following laws. All section references are to the Business and Professions Code (Code) unless
10 otherwise indicated.

11 5. Section 2227 of the Code provides that a licensee who is found guilty
12 under the Medical Practice Act may have his or her license revoked, suspended for a period not
13 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
14 such other action taken in relation to discipline as the Division deems proper.

15 6. Section 2234 of the Code states:

16 "The Division of Medical Quality¹ shall take action against any licensee who is
17 charged with unprofessional conduct. In addition to other provisions of this article,
18 unprofessional conduct includes, but is not limited to, the following:

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

22 "(b) Gross negligence.

23 "(c) Repeated negligent acts. To be repeated, there must be two or more
24

25 1. California Business and Professions Code section 2002, as amended and effective
26 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in
27 the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical
28 Board of California," and references to the "Division of Medical Quality" and "Division of
Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 negligent acts or omissions. An initial negligent act or omission followed by a separate
2 and distinct departure from the applicable standard of care shall constitute repeated
3 negligent acts.

4 "(1) An initial negligent diagnosis followed by an act or omission medically
5 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
6 act.

7 "(2) When the standard of care requires a change in the diagnosis, act, or
8 omission that constitutes the negligent act described in paragraph (1), including, but not
9 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
10 conduct departs from the applicable standard of care, each departure constitutes a separate
11 and distinct breach of the standard of care.

12 "(d) Incompetence.

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

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

17 7. Section 2266 of the Code states: "The failure of a physician and surgeon to
18 maintain adequate and accurate records relating to the provision of services to their patients
19 constitutes unprofessional conduct."

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Gross Negligence - Patient S.S.)

22 8. Respondent is subject to disciplinary action under Code section 2234,
23 subdivision (b), in that he engaged in unprofessional conduct/gross negligence in the care and
24 treatment of patient "S.S."² The circumstances are as follows:

25 A. On or about July 22, 2005, Patient S.S., a fifty-three-year-old female, was
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28 2. The names of patients are kept confidential to protect their privacy rights and, though
known to Respondent, will be revealed to him upon receipt of his written request for discovery.

1 seen initially with complaints of depression and anxiety. Patient S.S. told Respondent
2 that another physician had prescribed the antidepressant Wellbutrin, which had worked
3 relatively well for about three years. Respondent recommended that Patient S.S. take a
4 new drug Strattera, while remaining on Wellbutrin. He advised her to initially take 10 mg
5 per day, and then titrate up to the therapeutic dose of 40 mg twice a day. Respondent
6 informed the patient that Strattera was approved for treatment of Adult Attention Deficit
7 Disorder, but informal studies indicated that it also worked for treatment of depression.
8 Respondent did not inform the patient that Strattera cost more than \$4.00 per pill and was
9 generally not paid for by insurance companies, since it was not FDA approved for
10 depression.

11 B. During this initial visit, Respondent did not document a complete history
12 and mental status examination. He did not describe the problem as understood by the
13 patient. There was no documentation of an objective assessment of the patient's current
14 issues, and a bio psycho social formulation of her problems. There was no
15 documentation of the patient's psychiatric diagnosis in a Diagnostic and Statistical
16 Manual of Mental Disorders (DSM) format. There was no documentation of the risks
17 and benefits of his proposed treatment plan, or any alternate treatments for the patient.

18 C. When Patient S.S. went to a Sav-On Pharmacy to get her prescription
19 filled, she was informed that her HMO insurance company would not authorize payment
20 of Strattera. Since the entire prescription of 240 pills would have cost the patient more
21 than \$900, she partially filled her prescription (eight pills), and waited for Respondent to
22 complete the appropriate forms to request preauthorization from her HMO insurance.

23 D. Over the next three weeks, Patient S.S. called Respondent multiple times,
24 requesting that he call her insurance company, obtain forms, and complete the
25 authorization process. The patient continued to obtain partial refills of Strattera which
26 she paid for with the intention of being reimbursed when the drug was approved for
27 payment by her insurance company. Respondent did not document any follow-up efforts
28 to achieve medication authorization through the patient's HMO insurance or seek an

1 alternate medication for the patient. There was no documentation that he responded to
2 the patient's telephone calls.

3 E. On or about August 12, 2005, Patient S.S. had a second appointment with
4 Respondent. He asked the patient the same questions that he had asked her on her first
5 visit. Respondent told Patient S.S. that he would contact her insurance company and
6 complete the paperwork so her HMO insurance would pay for the drug.

7 F. After her second visit, Patient S.S. attempted to follow-up repeatedly with
8 Respondent to determine if he had completed the paperwork for her insurance.
9 Respondent did not pursue or document any follow-up efforts to achieve medication
10 authorization through the patient's insurance or seek an alternate medication. The patient
11 had progressed to taking about 50 mg of Strattera per day. She called Respondent to tell
12 him that the higher dose of Strattera made her agitated, and to ask his advice on whether
13 to continue to increase the dosage, given its adverse effect. There was no documentation
14 that he responded to the patient's telephone calls.

15 G. Respondent was grossly negligent in the care and treatment of Patient S.S.
16 as follows: Respondent failed to document a complete history and mental status
17 examination. He failed to describe the problem as understood by the patient. He failed to
18 document an objective assessment of the patient's current issues, and a biopsychosocial
19 formulation of her problems. He failed to document the patient's psychiatric diagnosis in
20 a DSM format. He failed to document the risks and benefits of his proposed treatment
21 plan, or consider any alternate treatments for the patient. Respondent failed to document
22 any efforts to achieve authorization of the patient's medication through her HMO
23 insurance or authorization of any alternate medication. He failed to document and
24 respond to the patient's telephone calls.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Gross Negligence - Patient K.S.)

3 9. Respondent is subject to disciplinary action under Code section 2234,
4 subdivision (b), in that he engaged in unprofessional conduct/gross negligence in the care and
5 treatment of patient "K.S." The circumstances are as follows:

6 A. Patient K.S. was forty years old when he initially saw respondent in 1990.
7 The patient had a history of severe psychiatric problems related to time he spent in
8 Vietnam. Respondent did not document in the record a complete history and a thorough
9 mental status examination. He did not describe the problem as understood by the patient.
10 There was no documentation of an objective assessment of the patient's current issues
11 and a bio psycho social formulation of his problems in a treatment plan. Respondent
12 diagnosed the patient with Post Traumatic Syndrome Disorder (PTSD). There was no
13 documentation of the patient's psychiatric diagnosis in a DSM format.

14 B. Patient K.S. saw respondent from 1990 until about February 2007.
15 Respondent prescribed various antidepressant medications including Prozac, Librax and
16 Wellbutrin, and bipolar medications including Geodon and Depakote. Patient K.S.
17 experienced considerable, enduring, and extreme symptoms of PTSD, including severe
18 depression and explosive episodes. He had a propensity for physical violence, and was a
19 danger to himself and to others. Respondent treated this patient single-handedly over the
20 years, and he did not use a multi-disciplinary approach.

21 C. On follow-up appointments, respondent did not document the patient's
22 subjective symptoms, assess the patient's current level of functioning and mental status,
23 and did not formulate and document a reasonable plan of action. There was no
24 documentation of telephonic communications with the patient. On several occasions
25 when Patient K.S. experienced severe symptoms, he attempted to contact respondent,
26 who did not return his telephone calls.

27 D. In about February 2007, respondent advised Patient K.S. to taper off his
28 Depakote medication, and said he would place him on a different medication. Patient

1 K.S. began to experience severe psychiatric symptoms. In March 2007, he was admitted
2 to Redlands Community Hospital with severe chest pains. The patient and his wife left
3 telephone messages for respondent which were not returned. When the patient no longer
4 had any medication left, he attempted to contact respondent, who could not be reached.
5 In June 2007, the patient sent a certified letter to respondent stating he was in desperate
6 need of medication, treatment, and follow-up care. Respondent did not retrieve the
7 certified mail letter.

8 E. Respondent was grossly negligent in the care and treatment of Patient
9 K.S. as follows: Respondent failed to document a complete history and mental status
10 examination. He failed to describe the problem as understood by the patient. He failed to
11 document an objective assessment of the patient's current issues, and a bio-psycho-social
12 formulation of his problems. He failed to document the patient's psychiatric diagnosis in
13 a DSM format. He failed to document telephonic communications with the patient. He
14 failed to treat a seriously ill patient with extreme symptoms in a multi-disciplinary
15 setting.

16 THIRD CAUSE FOR DISCIPLINE

17 (Gross Negligence - Patient R.D.)

18 10. Respondent is subject to disciplinary action under Code section 2234,
19 subdivision (b), in that he engaged in unprofessional conduct/gross negligence in the care and
20 treatment of patient "R.D." The circumstances are as follows:

21 A. On or about April 19, 2000, Patient R.D., a thirty-two-year-old male, was
22 seen initially with complaints of depression, post-traumatic stress disorder, and bipolar
23 issues. Respondent did not document in the record a complete history, including the
24 patient's family history of mood disorders, and a thorough mental status examination.
25 There was no documentation of an objective assessment and consideration of bio-
26 psycho-social factors. There is no documentation of a treatment plan. There was no
27 documentation of the patient's psychiatric diagnosis in a DSM format. Respondent
28 prescribed the antidepressant Zoloft for the patient.

1 B. Over the following months, respondent continued to treat Patient R.D.
2 with Zoloft. The patient experienced violent dreams, rapid thoughts, surges of energy,
3 and aggressive behavior. Respondent adjusted the dosage of Zoloft several times, and
4 also prescribed the anti-anxiety medication BuSpar.

5 C. From about May 2002 through December 2002, the patient experienced
6 erratic highs and lows, depression, numbness and constant buzzing in his head. His
7 concentration and focus deteriorated, and his sensitivity to noise became more
8 problematic. In May 2002, and for the next several months, Respondent prescribed the
9 drug Sonata, which is used for the short-term treatment of insomnia.

10 D. The patient's condition continued to deteriorate over the months, his
11 symptoms became more severe, and in September 2003, he reached a crisis point. He
12 experienced symptoms of despondency, followed by erratic thought processes and bursts
13 of energy, and he would then collapse. The patient could not focus or concentrate, and he
14 told Respondent that he was approaching the point of incapacitation. Respondent did not
15 properly address the patient's symptoms. He did not recognize the patient was
16 experiencing bipolar switching induced by Zoloft. Respondent continued to prescribe
17 sleeping pills, alternate SSRIs (selective serotonin reuptake inhibitors) such as Zoloft and
18 Lexapro, and benzodiazepines to the patient who was exhibiting manic symptoms.
19 Respondent prescribed 10 mg of Lexapro for depression and anxiety, continued the 10 mg
20 of Sonata, and added .5 mg of the anti-anxiety medication Clonazepam.

21 E. The patient's family intervened and brought the patient to a medical
22 center for treatment. His condition was diagnosed as Bipolar II brought on by
23 mismanaged administration of Zoloft and Lexapro. The patient's medication was
24 changed and his symptoms resolved.

25 F. Respondent was grossly negligent in the care and treatment of Patient
26 R.D. as follows: Respondent failed to document a complete history, including the
27 patient's family history of mood disorders, and a complete mental status examination.
28 There was no documentation of an objective assessment and consideration of bio-psycho-

1 social factors. There is no documentation of a treatment plan. There was no
2 documentation of the patient's psychiatric diagnosis in a DSM format. Respondent failed
3 to document telephone communications with the patient. He failed to recognize and
4 properly treat the patient's developing manic symptoms, including bipolar switching,
5 which resulted from his prescribing Zoloft. Respondent failed to properly diagnose the
6 patient's psychiatric issues, and continued to prescribe sleeping pills, alternate SSRIs, and
7 benzodiazepines to a patient who exhibited manic symptoms.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 (Repeated Negligent Acts - Patients S.S, K.S. and R.D.)

10 11. By reasons of the matters set forth in the First, Second and Third Causes
11 for Discipline, Respondent is subject to disciplinary action under Code section 2234, subdivision
12 (c), in that he committed repeated negligent acts in the discharge of his medical obligations.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct/Incompetence)

15 12. By reasons of the matters set forth in the First, Second, Third, and Fourth
16 Causes for Discipline, Respondent is subject to disciplinary action under Code section 2234,
17 subdivision (d), in that he demonstrated incompetence in the discharge of his medical obligations
18 to patients S.S., K.S., and R.D..

19 **SIXTH CAUSE FOR DISCIPLINE**

20 (Failure to Maintain Adequate/Accurate Medical Records)

21 13. By reasons of the matters set forth in First, Second and Third Causes for
22 Discipline, Respondent is subject to disciplinary action under Code section 2266 in that he failed
23 to maintain adequate and accurate medical records for patients S.S., K.S., and R.D..

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Physician and Surgeon's Certificate Number C30263 issued to Stewart W. Lovelace, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physicians' assistants, pursuant to section 3527 of the Code;
3. Ordering him to pay the Board the reasonable costs of probation monitoring, if he is placed on probation; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: June 25, 2008



BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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