

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

In the Matter of the Accusation and First)
Amended Accusation Against:)
)
)
DOUGLAS PETER MURPHY, M.D.)
)
Physician's and Surgeon's)
Certificate No. A-65282)
)
Respondent)
_____)

File No. 08-2004-158376

DECISION

The attached Stipulated Settlement and 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 November 5, 2007.

IT IS SO ORDERED October 5, 2007.

MEDICAL BOARD OF CALIFORNIA

By: 
Barbara Yaroslavy, Chair
Panel B
Division of Medical Quality

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
4 California Department of Justice
2550 Mariposa Mall, Room 5090
5 Fresno, CA 93721
Telephone: (559) 477-1679
6 Facsimile: (559) 488-7387

7 Attorneys for Complainant

8
9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation and First
14 Amended Accusation Against:

15 DOUGLAS PETER MURPHY, M.D.

16 2598 Main Street
Morro Bay CA 93442

17 Physician and Surgeon Certificate No. A 65282

18 Respondent.
19

Case No. 08-2004-158376

OAH No. L-2007-020177

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Medical Board of California (Board) the parties hereby agree
22 to the following Stipulated Settlement and Disciplinary Order which will be submitted to the
23 Board for approval and adoption as the final disposition of the Accusation.

24 PARTIES

25 1. David T. Thornton (Complainant) is the Former Executive Director of the
26 Medical Board of California. He brought this action solely in his official capacity and was
27 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
28 by Isa R. Rodriguez, Deputy Attorney General. The current Executive Director of the Medical

1 Board of California is Barbara Johnston who is also represented in this matter by Edmund G.
2 Brown Jr., Attorney General of the State of California, by Isa R. Rodriguez, Deputy Attorney
3 General.

4 2. Respondent Douglas Peter Murphy, M.D. (Respondent) is represented in this
5 proceeding by attorney Mark B. Connely, whose address is Hall, Hieatt & Connely, LLP
6 1319 Marsh Street, Second Floor, San Luis Obispo, CA 93401.

7 3. On or about May 22, 1998, the Medical Board of California issued Physician and
8 Surgeon Certificate No. A 65282 to Douglas Peter Murphy, M.D. (Respondent). The license will
9 expire on May 31, 2008, unless previously renewed.

10 JURISDICTION

11 4. Accusation No. 08-2004-158376 was filed before the Board, and is currently
12 pending against Respondent. The Accusation and all other statutorily required documents were
13 properly served on Respondent on October 25, 2006. Respondent timely filed his Notice of
14 Defense contesting the Accusation. The First Amended Accusation No. 08-2004-158376 was
15 filed on or about August 23, 2007, and was timely contested by Respondent. A copy of
16 Accusation No. 08-2004-158376¹ is attached as exhibit A and incorporated herein by reference.

17 ADVISEMENT AND WAIVERS

18 5. Respondent has carefully read, discussed with counsel, and fully understands the
19 charges and allegations in Accusation No. 08-2004-158376. Respondent has also carefully read,
20 discussed with counsel, and fully understands the effects of this Stipulated Settlement and
21 Disciplinary Order.

22 6. Respondent is fully aware of his legal rights in this matter, including the right to a
23 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
24 his own expense; the right to confront and cross-examine the witnesses against him; the right to
25 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
26 compel the attendance of witnesses and the production of documents; the right to reconsideration

27 _____
28 ¹References to Accusation shall be deemed to include and refer to the First Amended
Accusation.

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 8. Respondent does not contest that, at an administrative hearing, Complainant could
7 establish a prima facie case with respect to the charge and allegations of boundary violations
8 contained in the First Cause for Discipline in Accusation No. 08-2004-158376 and that he has
9 thereby subjected his license to disciplinary action.

10 9. Respondent does not contest that, at an administrative hearing, Complainant could
11 establish a prima facie case with respect to the charges and allegations of failing to maintain
12 adequate and accurate medical records contained in the Fourth Cause for Discipline in
13 Accusation No. 08-2004-158376 and that he thereby subjected his license to disciplinary action.

14 10. Respondent denies all other charges and allegations contained in Accusation No.
15 08-2004-158376 and specifically denies any allegations of gross negligence.

16 11. This Stipulated Settlement and Decision resolves these matters and all matters
17 presently known to the Board.

18 12. Nonetheless, Respondent understands and agrees that if he ever petitions for early
19 termination or modification of probation, or if the Board ever petitions for revocation of
20 probation, all the charges and allegations contained in Accusation No. 08-2004-158376 shall be
21 deemed true, correct, and fully admitted by Respondent for the purposes of that proceeding or
22 any other licensing proceeding involving Respondent in the State of California.

23 13. Respondent agrees that his Physician and Surgeon Certificate No. A 65282 is
24 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
25 in the Disciplinary Order below.

26 RESERVATION

27 14. The admissions made by Respondent herein are only for the purposes of this
28 proceeding, or any other proceedings in which the Board or other professional licensing agency is

1 involved, and shall not be admissible in any other criminal or civil proceeding.

2 CONTINGENCY

3 15. This stipulation shall be subject to approval by the Division of Medical Quality.
4 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
5 Board of California may communicate directly with the Division regarding this stipulation and
6 surrender, without notice to or participation by Respondent or his counsel. By signing the
7 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
8 to rescind the stipulation prior to the time the Division considers and acts upon it. If the Division
9 fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary
10 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
11 action between the parties, and the Division shall not be disqualified from further action by
12 having considered this matter.

13 OTHER MATTERS

14 16. The parties understand and agree that facsimile copies of this Stipulated
15 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
16 force and effect as the originals.

17 DISCIPLINARY ORDER

18 In consideration of the foregoing admissions and stipulations, the parties agree that the
19 Medical Board of California may, without further notice or formal proceeding, issue and enter
20 the following Disciplinary Order:

21 IT IS HEREBY ORDERED that Physician and Surgeon Certificate No. A 65282 issued
22 to Douglas Peter Murphy, M.D. (Respondent) is revoked. However, the revocation is stayed and
23 Respondent is placed on probation for five (5) years on the following terms and conditions.

24 1. EDUCATION COURSE Within 60 calendar days of the effective date of this
25 Decision, and on an annual basis thereafter, Respondent shall submit to the Division or its
26 designee for its prior approval educational program(s) or course(s) which shall not be less than
27 25 hours per year, for each year of probation. The educational program(s) or course(s) shall be
28 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified,

1 limited to classroom, conference, or seminar settings. At least 16 of the 25 hours per year shall
2 be in the area of boundaries and/or patient relations. The educational program(s) or course(s)
3 shall be at Respondent's expense and shall be in addition to the 25 hours of Continuing Medical
4 Education (CME) requirement for renewal of licensure. Following the completion of each
5 course, the Division or its designee may administer an examination to test Respondent's
6 knowledge of the course. Respondent shall provide proof of attendance for 50 hours of
7 continuing medical education of which 25 hours were in satisfaction of this condition.

8 2. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the
9 effective date of this decision, Respondent shall enroll in a course in medical record keeping, at
10 Respondent's expense, approved in advance by the Division or its designee. Failure to
11 successfully complete the course during the first 6 months of probation is a violation of
12 probation.

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

18 Respondent shall submit a certification of successful completion to the Division or its
19 designee not later than 15 calendar days after successfully completing the course, or not later than
20 15 calendar days after the effective date of the Decision, whichever is later.

21 3. ETHICS COURSE Within 60 calendar days of the effective date of this
22 Decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in
23 advance by the Division or its designee. Failure to successfully complete the course during the
24 first year of probation is a violation of probation.

25 An ethics course taken after the acts that gave rise to the charges in the Accusation, but
26 prior to the effective date of the Decision may, in the sole discretion of the Division or its
27 designee, be accepted towards the fulfillment of this condition if the course would have been

28 / / /

1 approved by the Division or its designee had the course been taken after the effective date of this
2 Decision.

3 Respondent shall submit a certification of successful completion to the Division or its
4 designee not later than 15 calendar days after successfully completing the course, or not later than
5 15 calendar days after the effective date of the Decision, whichever is later.

6 4. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days from
7 the effective date of this Decision, Respondent shall enroll in a professional boundaries program,
8 at Respondent's expense, equivalent to the Professional Boundaries Program, Physician
9 Assessment and Clinical Education Program at the University of California, San Diego School of
10 Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the
11 Program's assessment of Respondent's competency, mental health and/or neuropsychological
12 performance, and at minimum, a 24 hour program of interactive education and training in the
13 area of boundaries, which takes into account data obtained from the assessment and from the
14 Decision(s), Accusation(s) and any other information that the Division or its designee deems
15 relevant. The Program shall evaluate Respondent at the end of the training, and the Program
16 shall provide any data from the assessment and training as well as the results of the evaluation to
17 the Division or its designee.

18 Failure to complete the entire Program not later than six months after Respondent's initial
19 enrollment shall constitute a violation of probation unless the Division or its designee agrees in
20 writing to a later time for completion. Based on Respondent's performance in and evaluations
21 from the assessment, education, and training, the Program shall advise the Division or its
22 designee of its recommendation(s) for additional education, training, psychotherapy and other
23 measures necessary to ensure that Respondent can practice medicine safely. Respondent shall
24 comply with Program recommendations. At the completion of the Program, Respondent shall
25 submit to a final evaluation. The Program shall provide the results of the evaluation to the
26 Division or its designee.

27 The Program's determination whether or not Respondent successfully completed the
28 Program shall be binding.

1 Failure to participate in and complete successfully all phases of the Program, as outlined
2 above, is a violation of probation.

3 If Respondent fails to complete the Program within the designated time period,
4 Respondent shall cease the practice of medicine within 72 hours after being notified by the
5 Division or its designee that Respondent failed to complete the Program.

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

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

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

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

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

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

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

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

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

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

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

21 9. 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 10. 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 travel to
7 any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than
8 30 calendar days.

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

13 12. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent
14 should leave the State of California to reside or to practice, Respondent shall notify the Division
15 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-
16 practice is defined as any period of time exceeding 30 calendar days in which Respondent is not
17 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 which has
20 been approved by the Division or its designee shall be considered as time spent in the practice of
21 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
22 period of non-practice. Periods of temporary or permanent residence or practice outside
23 California will not apply to the reduction of the probationary term. Periods of temporary or
24 permanent residence or practice outside California will relieve Respondent of the responsibility
25 to comply with the probationary terms and conditions with the exception of this condition and
26 the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance;
27 and Cost Recovery.

28 / / /

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

7 13. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

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

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

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

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

27 15. VIOLATION OF PROBATION Failure to fully comply with any term or
28 condition of probation is a violation of probation. If Respondent violates probation in any

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

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

17 17. PROBATION MONITORING COSTS Respondent shall pay the costs
18 associated with probation monitoring each and every year of probation, as designated by the
19 Division, which are currently set at \$3,173.00, but may be adjusted on an annual basis. Such
20 costs shall be payable to the Medical Board of California and delivered to the Division or its
21 designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar
22 days of the due date is a violation of probation.

23 ACCEPTANCE

24 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
25 fully discussed it with my attorney, Mark B. Connely. I understand the stipulation and the effect
26 it will have on my Physician and Surgeon Certificate No. A 65282. I enter into this Stipulated
27 Settlement and

28 / / /

1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Medical Board of California.

3 DATED: _____
4

5 DOUGLAS PETER MURPHY, M.D.
6 Respondent
7

8 I have read and fully discussed with Respondent Douglas Peter Murphy, M.D. the terms
9 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
10 Order. I approve its form and content.

11 DATED: _____
12

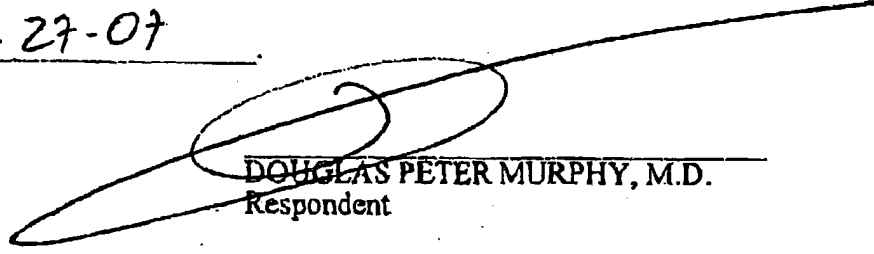
13
14 MARK B. CONNELLY
15 Attorney for Respondent
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1 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Medical Board of California.

3 DATED: 8.27-07

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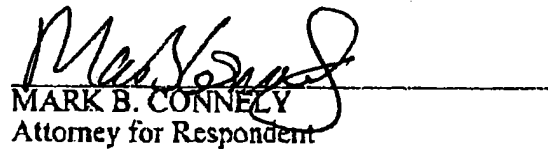


DOUGLAS PETER MURPHY, M.D.
Respondent

8 I have read and fully discussed with Respondent Douglas Peter Murphy, M.D. the terms
9 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
10 Order. I approve its form and content.

11 DATED: 8.27-07

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MARK B. CONNELLY
Attorney for Respondent

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ENDORSEMENT

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

DATED: August 28, 2007

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

GAIL M. HEPPELL
Supervising Deputy Attorney General



ISA R. RODRIGUEZ
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SA2006301105
95014481.wpd

Exhibit A

Accusation No. 08-2004-158376

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 23 20 07
BY R. P. McAnis

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 ISA R. RODRIGUEZ, State Bar No. 104838
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6 Facsimile: (559) 488-7387

7 Attorneys for Complainant

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

11 In the Matter of the Amended Accusation
Against:
12 DOUGLAS PETER MURPHY, M.D.
13 2598 Main Street
14 Morro Bay, CA 93442
15 Physician and Surgeon No. A 65282
16 Respondent.

Case No. 08-2004-158376
OAH No. L-2007-020177
**FIRST AMENDED
ACCUSATION**

18 Complainant alleges:

19 PARTIES

20 1. Barbara Johnston (Complainant) brings this First Amended Accusation solely in
21 her official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.

23 2. On or about May 22, 1998, the Medical Board of California issued Physician and
24 Surgeon Certificate Number A 65282 to Douglas Peter Murphy, M.D. (Respondent). The
25 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on May 31, 2008, unless renewed.

27 JURISDICTION

28 3. This Accusation and First Amended Accusation are brought before the Division

1 of Medical Quality (Division) for the Medical Board of California, Department of Consumer
2 Affairs, under the authority of the following laws. All section references are to the Business and
3 Professions Code unless otherwise indicated.

4 4. Section 2003 of the Code states: "The board shall consist of the following two
5 divisions: a Division of Medical Quality, and a Division of Licensing."

6 5. Section 2004 of the Code states:

7 "The Division of Medical Quality shall have the responsibility for the following:

8 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
9 Act.

10 "(b) The administration and hearing of disciplinary actions.

11 "(c) Carrying out disciplinary actions appropriate to findings made by a medical quality
12 review committee, the division, or an administrative law judge.

13 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
14 disciplinary actions.

15 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
16 certificate holders under the jurisdiction of the board."

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

21 7. Section 2234 of the Code states:

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

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

28 "(b) Gross negligence.

1 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
2 omissions. An initial negligent act or omission followed by a separate and distinct
3 departure from the applicable standard of care shall constitute repeated negligent acts.

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

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

11 “(d) Incompetence.

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

14 “(f) Any action or conduct which would have warranted the denial of a certificate.”

15 8. Section 2263 of the Code states: “The willful, unauthorized violation of
16 professional confidence constitutes unprofessional conduct.”

17 I. - PATIENT B.

18 FIRST CAUSE FOR DISCIPLINE

19 (Gross Negligence/Repeated Negligence - Bus. & Prof. Code sec. 2234(b)/(c))

20 9. Respondent is subject to disciplinary action, under sections 2234(b) and/or
21 2234(c), in that he was grossly negligent and/or repeatedly negligent in the care he provided
22 Patient B. The circumstances are as follows:

23 10. Patient B^{1/} began seeing Respondent on or about January 17, 2001, after her
24 primary care provider retired. At that time, Respondent worked for Coastal Psychiatric Care on
25 Portola Road in Atascadero, California. Patient B informed Respondent she was in ongoing
26 psychotherapy with another psychotherapist and was seeing Respondent merely to obtain
27

28 1. Initials used to protect privacy. Name will be provided through discovery.

1 medications for sleeping and for panic disorder. Patient B refused permission for Respondent to
2 contact the psychotherapist. Patient B also informed Respondent of her diagnosis of Dissociative
3 Identity Disorder (DID) and Borderline Personality Disorder. Respondent diagnosed Patient B as
4 having DID, along with Borderline Personality Disorder, Post-Traumatic Stress Disorder,
5 Somatization Disorder, Somatoform Disorder, Major Depression, Dysthymic Disorder, Panic
6 Disorder with Agoraphobia, Obsessive-Compulsive Disorder, Avoidant Personality Disorder,
7 and Anorexia Nervosa.

8 11. Initially, Patient B wanted to see Respondent every two to three months for the
9 purpose of obtaining needed medication checks. However, Respondent scheduled appointments
10 for therapy starting at approximately monthly intervals then increased it to four to five times a
11 week. This schedule lasted until approximately June 2, 2003, when Patient B informed
12 Respondent that she wished to terminate therapy. Respondent did not respect Patient B's stated
13 desire to terminate and kept communicating with her trying to continue the therapeutic
14 relationship.

15 12. As therapy continued and the frequency of the sessions increased, Respondent
16 became overly involved in Patient B's life and with her illness to the point of infatuation.
17 Respondent would see Patient B outside the office at the "Rock" in Morro Bay, California and on
18 "Chalk Mountain" ostensibly for therapy where they would have lunch together. Respondent
19 took Patient B shopping and took her to his church. Respondent began buying gifts for Patient B
20 including religious tapes, music CD's, and homemade cassette recordings. At times, Respondent
21 would play his guitar and sing for Patient B during therapy sessions. Respondent began calling
22 Patient B by telephone at home in the early morning and in the evening along with sending
23 sometimes lengthy, almost daily emails. On the weekend, Respondent would be in contact with
24 Patient B by pager, telephone, and email.

25 13. Respondent also became involved in Patient B's religious life and took her to his
26 church in or about November 2001. There, he introduced her to Mrs. F.^{2/}, a woman he hoped
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28 2. Initials used to protect privacy. Name will be provided through discovery.

1 would befriend Patient B and become a positive influence. Thereafter, Respondent called Mrs.
2 F. and proceeded to tell her about Patient B's condition, mailed Mrs. F. information about DID,
3 and asked Mrs. F. not to tell Patient B. Respondent also would call Mrs. F. and tell her about
4 alternate personalities ("alters") he had encountered in Patient B's therapy and again, asked that
5 Mrs. F. not tell Patient B. As Mrs. F. began to spend time with Patient B, she discovered that
6 Patient B had never given consent, either written or verbal, for these disclosures and was
7 uncomfortable with the situation. Mrs. F. advised Respondent he was no longer to tell her things
8 she could not tell Patient B. Respondent also approached Mr. A., another friend of Patient B, in
9 the same manner based on the concept of forming a "triangle team" to deal with Patient B's
10 ongoing situation. Additionally, Respondent invited Mrs. F. to a therapy session with Patient B
11 but Patient B was uncomfortable with the session and Mrs. F. never attended again.

12 14. Patient B grew increasingly uncomfortable with the therapy provided by
13 Respondent and felt she was getting worse. However, Respondent kept telling her he was the
14 only one able to treat her and he knew her better than anyone else. Patient B felt torn between
15 believing Respondent, and thus being dependent on him, and her feeling that the more she saw
16 him, the worse she felt.

17 15. After a therapy session in which Respondent yelled at Patient B and scared her to
18 the point she hid behind a couch, she decided to terminate therapy with Respondent. On or about
19 June 2, 2003, Mr. F.^{3/} accompanied Patient B to Respondent's office to be a witness to Patient B
20 telling Respondent of her decision to terminate therapy with Respondent. (Note: Patient B had
21 written a letter to Respondent telling him she was terminating therapy with him but she kept the
22 letter and did not send it or show it to Respondent.) Respondent did not accept this notice of
23 termination and attempted to continue to engage Patient B in treatment despite repeated requests
24 from Patient B not to contact her anymore. Respondent continued sending frequent, long emails
25 to Patient B, written anytime from the early morning to late at night, and trying to contact several
26 "alters." Despite six written (emailed) requests that he stop contacting Patient B, Respondent

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28 3. Initials used to protect privacy. Name will be provided through discovery.

1 persisted saying he would never “go away” and that he would leave Wednesdays open for Patient
2 B to meet him at the “Rock” in Morro Bay. Respondent went so far as to email photos of the
3 “Rock” to try and entice Patient B to go there. Respondent apparently did entice Patient B to go
4 with him to “Chalk Mountain” sometime in September 2003, where he told Patient B he missed
5 her, gave her a frontal hug and kissed her on the cheek. The last time Patient B met with
6 Respondent was on or about November 5, 2003.

7 16. Respondent’s conduct as set forth in paragraphs 10 through 15, above, has
8 exposed his certificate to discipline for gross negligence and/or repeated negligence pursuant to
9 Code sections 2234(b) and/or 2234(c), as follows:

- 10 a.) Respondent failed to maintain appropriate boundaries by having therapy in
11 romantic secluded places such as the “Rock” and “Chalk Mountain” which led to
12 confusion about the structure of therapy;
- 13 b.) Respondent failed to maintain appropriate boundaries, by having lunch with
14 Patient B, playing his guitar for Patient B during therapy, going shopping with
15 Patient B, and buying gifts for Patient B;
- 16 c.) Respondent failed to maintain appropriate boundaries by becoming overly
17 intrusive and controlling in Patient B’s daily and religious life by calling Patient B
18 at her home from the early morning hours to the late evening hours, by repeatedly
19 emailing Patient B over an extended period of time, by being in constant
20 communication with Patient B by telephone, pager, and emails, by taking her to
21 church twice and trying to enlist the services of church members in Patient B’s
22 therapy; and by losing therapeutic neutrality and detachment necessary for therapy
23 and the patient’s welfare;
- 24 d.) Respondent failed to consolidate and integrate the multiple “alters” or
25 personalities by calling out or addressing all of the multiple “alters” or
26 personalities in emails, cassette tape recording, and even in an emailed prayer;
- 27 e.) Respondent failed to maintain patient confidentiality and trust by telling and
28 emailing Patient B’s circle of friends about his therapeutic work with Patient B,

1 describing graphic details of behavior done by and to Patient B, discussing the
2 multiple "alters" or personalities he encountered in therapy with Patient B, having
3 Mrs. F attend a therapy session with Patient B, and providing information about
4 Dissociative Identity Disorder - all without the consent of Patient B; and
5 f.) Respondent failed to respect Patient B's repeated, clear, unambiguous, and
6 assertive statements that Patient B wanted to terminate therapy and wanted
7 Respondent to stop communicating with her.

8 SECOND CAUSE FOR DISCIPLINE
9 (Violation of Confidentiality - Bus. & Prof. Code sec. 2263)

10 17. The facts alleged in paragraphs 10 through 15, above, are realleged and incorporated
11 by reference as if fully set forth here.

12 18. Respondent's conduct as set forth in paragraphs 10 through 15, above, has exposed
13 his certificate to discipline for willful, unauthorized violation of professional confidence pursuant
14 to Code section 2263 in that he told and emailed Patient B's circle of friends about his therapeutic
15 work with Patient B, describing graphic details of behaviors done to or by Patient B, discussing the
16 multiple "alters" or personalities he encountered in therapy with Patient B, having Mrs. F. attend a
17 therapy session with Patient B, and providing information about Dissociative Identity Disorder - all
18 without the consent of Patient B.

19 THIRD CAUSE FOR DISCIPLINE
20 (Gross Negligence/Repeated Negligence - Bus. Prof. Code sec 2234(b)/(c))

21 19. The facts alleged in paragraphs 10 through 15, above, are realleged and incorporated
22 by reference as if fully set forth here.

23 20. Respondent's conduct as set forth in the First and Second Causes for Discipline set
24 forth above, whether taken collectively or individually have exposed his certificate to discipline for
25 gross negligence and/or repeated negligence pursuant to Code sections 2234(b) and/or 2234(c).

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4. Taking such other and further action as deemed necessary and proper.

DATED: August 23, 2007

for *Alfred P. Rodriguez, D.A.C.*
BARBARA JOHNSTON
Executive Director
Medical Board of California
State of California
Complainant

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