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7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 05-2004-161652

14 JAY PAUL CONSOLVER, M.D.
15 15300 Ventura Blvd., Suite 503
16 Sherman Oaks, CA 91713
17 Physician & Surgeon Certificate No. C 35429
18 Respondent.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

19 FINDINGS OF FACT

20 1. On or about October 20, 2005, Complainant David T. Thornton, in his
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs, filed Accusation No. 05-2004-161652 against Jay Paul Consolver, M.D.
(Respondent) before the Division of Medical Quality.

23 2. On or about October 1, 1973, the Medical Board of California (Division)
24 issued Physician's & Surgeon's Certificate No. C 35429 to Respondent. The Physician &
25 Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein
and will expire on June 30, 2006, unless renewed.

26 3. On or about October 20, 2005, Arlene Krysiniski, an employee of the
27 Complainant Agency, served by Certified Mail a copy of the Accusation No. 05-2004-161652,
28 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code

1 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Division,
2 which was 5530 Corbin Avenue, Suite 313, Tarzana, CA 91356. A copy of these same
3 documents were also served by certified mail at a new business address of 15300 Ventura Blvd.,
4 Suite 503, Sherman Oaks, California, 91713. A copy of the Accusation, the related documents,
5 and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the
7 provisions of Government Code section 11505, subdivision (c).

8 5. On or about October 31, 2005, the green certified mail tag was returned to
9 the Medical Board with no signature and no date. The address listed on the card was 15300
10 Ventura Blvd., Suite 503 in Sherman Oaks, California. A copy of the postal card is attached
11 hereto as exhibit B, and are incorporated herein by reference.

12 6. On or about November 7, 2005, Medical Board Investigator Ellen
13 Coleman went to Respondent's new office location in Sherman Oaks. Respondent had not
14 informed the Medical Board of this new location. However, during her investigation,
15 Investigator Coleman learned that Respondent moved his offices there. She personally gave him
16 the Accusation packet, including the Statement to Respondent, Request for Discovery, and the
17 Notice of Defense. She also served him with a Notice of Motion Regarding Contempt for Failing
18 to Obey a Court Order. Ms. Coleman personally handed the Accusation packet and the motion to
19 Respondent. Thus, Respondent was served by mail AND by personal service with the
20 Accusation packet, which included a Notice of Defense. As of December 6, 2005, Respondent
21 has failed to file his Notice of Defense. Investigator Coleman's declaration is attached hereto as
22 Exhibit C, and is incorporated herein by reference.

23 7. Government Code section 11506 states, in pertinent part:

24 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
26 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
27 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

28 8. Respondent failed to file a Notice of Defense within 15 days after service

1 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
2 Accusation No. 05-2004-161652.

3 9. California Government Code section 11520 states, in pertinent part:

4 "(a) If the respondent either fails to file a notice of defense or to appear at the
5 hearing, the agency may take action based upon the respondent's express admissions or
6 upon other evidence and affidavits may be used as evidence without any notice to
7 respondent."

8 10. Pursuant to its authority under Government Code section 11520, the
9 Division finds Respondent is in default. The Division will take action without further hearing
10 and, based on Respondent's express admissions by way of default and the evidence before it,
11 contained in exhibits A, B and C and finds that the allegations in Accusation No. 05-2004-
12 161652 are true.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent Jay Paul Consolver,
15 M.D. has subjected his Physician's & Surgeon's Certificate No. C 35429 to discipline.

16 2. A copy of the Accusation and the related documents and Declaration of
17 Service are attached.

18 3. The agency has jurisdiction to adjudicate this case by default.

19 4. The Division of Medical Quality is authorized to revoke Respondent's
20 Physician & Surgeon Certificate based upon the following violations alleged in the Accusation:

21 a. Business and Professions Code section 2234, subdivision (b), gross
22 negligence, for failing to provide patient records to the Board.

23 b. Business and Professions Code section 2225.5, for failure to
24 comply with a court order.

25 c. Business and Professions Code section 2234, unprofessional
26 conduct.

27 ///

28 ///

Exhibit A

Accusation No. ,
Related Documents and Declaration of Service

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

In the Matter of the Accusation)	
Against:)	
)	File No. 05-2004-161652
Jay Paul Consolver, M.D.)	
)	
Physician's and Surgeon's)	
Certificate No. C 35429)	STATEMENT TO RESPONDENT
)	
Respondent.)	
_____)	

RESPONDENT ABOVE - NAMED:

There is attached hereto a copy of an Accusation which has been filed with the office of the State agency named herein and which is hereby served upon you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the agency named herein within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the agency may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for a hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in Section 11506 of the Government Code to both the Deputy Attorney General and the Medical Board of California. The Deputy Attorney General's name, address and telephone number appears on the front page of the Accusation. The notice to the Medical Board should be directed to the Discipline Coordination Unit, 1426 Howe Avenue, Suite 54, Sacramento, CA 95825-3236

The hearing may be postponed for a good cause. If you have good cause, you are obliged to notify the agency or, if an administrative law judge has been assigned to the hearing, the Office of Administrative Hearings, within 10 working days after you discover the good cause. Failure to notify the agency within 10 days will deprive you of a postponement.

You may, but need not, be represented by counsel at any or all stages of these proceedings. The enclosed Notice of Defense, if signed and filed with the above - designated agency shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in Section 11506 of the Government Code within fifteen (15) Days after service of the Accusation upon you.

If you file any Notice of Defense within the time permitted, a hearing will be held upon the charges made in the Accusation.

Copies of Section 11507.5, 11507.6, 11507.7 and 11455.10 of the Government Code are attached.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.7 of the Government Code in the possession, custody or control of the agency, you may contact the Deputy Attorney General, whose name, address, and telephone number appear on the first page of the Accusation.

STIPULATED SETTLEMENTS

Very often, administrative cases are settled by the parties through discussions and negotiations. Our procedures do not include a formal settlement conference, which is a common procedure in civil court cases. However, all parties in this case should get together at the earliest time to discuss any possible stipulations or settlement that can be mutually agreed upon.

All stipulated settlements of cases are subject to the approval of the Division of Medical Quality. The Division has published the Manual of Model Disciplinary Orders and Disciplinary Guidelines, 9th Edition 2003 (enclosed), setting forth its model disciplinary orders and model disciplinary guidelines. By looking up your relevant code violations on page 28 of the booklet, you can learn the penalty ranges and conditions that may be acceptable to the Division.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Oct. 20, 2005
BY W. K. Kuykendall ANALYST

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of the State of California
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10 In the Matter of the Accusation Against:

Case No. 05-2004-161652

11 JAY PAUL CONSOLVER, M.D.

OAH No.

12 15300 Ventura Blvd., Suite 503
13 Sherman Oaks, California 91413

ACCUSATION

14 Physician's & Surgeon's Certificate No. C 35429

15 Respondent.

16 Complainant alleges:

18 PARTIES

19 1. David T. Thornton (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Director of the Medical Board of California, Department of
21 Consumer Affairs.

22 2. On or about October 1, 1973, the Board issued Physician & Surgeon's
23 Certificate Number C 35429 to Jay Paul Consolver, M.D. (Respondent). The Physician &
24 Surgeon Certificate was in full force and effect at all times relevant to the charges brought herein
25 and will expire on June 30, 2006, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board's Division of Medical Quality
3 (Division) under the authority of the following laws. All section references are to the Business
4 and Professions Code unless otherwise indicated.

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

9 5. Section 2234 of the Code states:

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

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

16 "(b) Gross negligence.

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

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

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

1 "(d) Incompetence.

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

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

6 6. Section 2225.5 of the Code states:

7 “(a) (1) A licensee who fails or refuses to comply with a request for the medical
8 records of a patient, that is accompanied by that patient's written authorization for release
9 of records to the board, within 15 days of receiving the request and authorization, shall
10 pay to the board a civil penalty of one thousand dollars (\$1,000) per day for each day that
11 the documents have not been produced after the 15th day, unless the licensee is unable to
12 provide the documents within this time period for good cause.

13 “(2) A health care facility shall comply with a request for the medical records of a
14 patient that is accompanied by that patient's written authorization for release of records to
15 the board together with a notice citing this section and describing the penalties for failure
16 to comply with this section. Failure to provide the authorizing patient's medical records
17 to the board within 30 days of receiving the request, authorization, and notice shall
18 subject the health care facility to a civil penalty, payable to the board, of up to one
19 thousand dollars (\$1,000) per day for each day that the documents have not been
20 produced after the 30th day, up to ten thousand dollars (\$10,000), unless the health care
21 facility is unable to provide the documents within this time period for good cause. This
22 paragraph shall not require health care facilities to assist the board in obtaining the
23 patient's authorization. The board shall pay the reasonable costs of copying the medical
24 records.

25 “(b) (1) A licensee who fails or refuses to comply with a court order, issued in the
26 enforcement of a subpoena, mandating the release of records to the board shall pay to the
27 board a civil penalty of one thousand dollars (\$1,000) per day for each day that the
28 documents have not been produced after the date by which the court order requires the

1 documents to be produced, unless it is determined that the order is unlawful or invalid.
2 Any statute of limitations applicable to the filing of an accusation by the board shall be
3 tolled during the period the licensee is out of compliance with the court order and during
4 any related appeals.

5 “(2) Any licensee who fails or refuses to comply with a court order, issued in the
6 enforcement of a subpoena, mandating the release of records to the board is guilty of a
7 misdemeanor punishable by a fine payable to the board not to exceed five thousand
8 dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by
9 the next succeeding renewal date. Any statute of limitations applicable to the filing of an
10 accusation by the board shall be tolled during the period the licensee is out of compliance
11 with the court order and during any related appeals.

12 “(3) A health care facility that fails or refuses to comply with a court order, issued
13 in the enforcement of a subpoena, mandating the release of patient records to the board,
14 that is accompanied by a notice citing this section and describing the penalties for failure
15 to comply with this section, shall pay to the board a civil penalty of up to one thousand
16 dollars (\$1,000) per day for each day that the documents have not been produced, up to
17 ten thousand dollars (\$10,000), after the date by which the court order requires the
18 documents to be produced, unless it is determined that the order is unlawful or invalid.
19 Any statute of limitations applicable to the filing of an accusation by the board against a
20 licensee shall be tolled during the period the health care facility is out of compliance with
21 the court order and during any related appeals.

22 “(4) Any health care facility that fails or refuses to comply with a court order,
23 issued in the enforcement of a subpoena, mandating the release of records to the board is
24 guilty of a misdemeanor punishable by a fine payable to the board not to exceed five
25 thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an
26 accusation by the board against a licensee shall be tolled during the period the health care
27 facility is out of compliance with the court order and during any related appeals.

28 “(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable

1 by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail
2 not exceeding six months, or by both that fine and imprisonment. Multiple acts by a
3 health care facility in violation of subdivision (b) shall be punishable by a fine not to
4 exceed five thousand dollars (\$5,000) and shall be reported to the State Department of
5 Health Services and shall be considered as grounds for disciplinary action with respect to
6 licensure, including suspension or revocation of the license or certificate.

7 “(d) A failure or refusal of a licensee to comply with a court order, issued in the
8 enforcement of a subpoena, mandating the release of records to the board constitutes
9 unprofessional conduct and is grounds for suspension or revocation of his or her license.

10 “(e) Imposition of the civil penalties authorized by this section shall be in
11 accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section
12 11500) of Division 3 of Title 2 of the Government Code).

13 “(f) For purposes of this section, a ‘health care facility’ means a clinic or health
14 facility licensed or exempt from licensure pursuant to Division 2 (commencing with
15 Section 1200) of the Health and Safety Code.”

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

20
21 CAUSES FOR DISCIPLINE

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Gross Negligence)

24 8. Respondent is subject to disciplinary action under section 2234,
25 subdivision (b), of the Code in that he was grossly negligent by failing to provide patient records
26 to the Board. The circumstances are as follows:

27 9. On or about December 12, 2002, the Medical Board of California initiated
28

1 an investigation¹ concerning Respondent as a result of an allegation of excessive prescribing. A
2 Controlled Substance Utilization Review and Evaluation System ("CURES") report for
3 Respondent was made, dated January 6, 2003. The CURES report indicated that Respondent
4 prescribed Schedule II controlled substances for three² patients. From July 21, 1998, through
5 May 17, 2002, he prescribed Percodan, Duragesic, Demerol Hydrochloride Endodan, MS Contin,
6 Oxycontin, and Morphine Sulfate, all of which are narcotic analgesics, to patient G.A. The
7 CURES report also indicated that Respondent prescribed a stimulant, Dexetrine, for patient R.B.
8 from June 3, 2000, through November 9, 2002, and Hydrocodone and Endocet for patient M.G.
9 from August 1998 through June 2002.

10 10. On or about December 3, 2002, patient M.G. overdosed on opiates. When
11 asked, Respondent confirmed he had prescribed three Schedule II controlled substances for
12 patient M.G.: Hydrocodone (Vicodin), Endocet (Oxycodone), and Valium, each dated December
13 3, 2002.

14 11. On or about May 4, 2004, Medical Board Senior Investigator, Ellen
15 Coleman, was assigned to this case. On or about May 13, 2004, Coleman faxed patient R.B. an
16 authorization for the release of her medical records. Patient R.B. signed the authorization and
17 returned the form via facsimile the following day. On or about June 7, 2004, Coleman met with
18 patient R.B. and obtained an original signed authorization for the release of her medical records,
19 which granted the Board the right to receive a copy of patient R.B.'s medical records from
20 Respondent.

21 12. On or about June 7, 2004, Coleman mailed an authorization for the
22 release of medical records to patient G.A. On or about June 14, 2004, Coleman received a
23 signed medical release from patient G.A., which granted the Board the right to receive his
24 medical records from Respondent.

25
26 1. Case No. 05-2002-131121.

27 2. Another patient, D.G., died of an alleged overdose on February 1, 2005. Her records
28 were subsequently requested from Respondent in a letter dated April 4, 2005. He did not
comply with that request either.

1 13. On or about July 2, 2004, Coleman mailed a Request for Records to
2 Respondent for the delivery of R.B.'s and G.A.'s patient records to the Board on or before July
3 26, 2004. Enclosed with this Request for Records were copies of the Authorizations for Release
4 of Records from Respondent signed by patients R.B. and G.A.

5 14. On or about July 14, 2004, Coleman received the return receipt with
6 Respondent's signature, indicating he had received the correspondence on the previous day, July
7 13, 2004. On July 26, 2004, Coleman left Respondent a telephone message again requesting the
8 records for patients R.B. and G.A. Respondent returned the call on or about July 29, 2004, and
9 left a message stating he was in the process of compiling the lengthy records and that he would
10 mail the records to Coleman on July 30, 2004. Coleman did not receive any records from
11 Respondent.

12 15. Coleman left telephonic messages for Respondent requesting patient
13 records on or about August 17, 18, 19, and 20, 2004. On or about August 25, 2004, Coleman left
14 another message and paged Respondent regarding the requested patient records. She stated she
15 wanted to pick up the records on Friday, August 27, 2004, and needed to know at what time he
16 would be available for her to do so. Respondent never returned any of Coleman's messages. On
17 or about August 30, 2004, Coleman went to speak to Respondent at his office. Respondent,
18 however, was not there.

19 16. On or about September 8, 2004, Coleman went to Respondent's home
20 residence and identified herself when Respondent answered the door. She stated that she needed
21 the requested records for patients R.B. and G.A. and asked why he had not yet provided them.
22 Respondent replied that he did not have a secretary and had not yet had the opportunity to count
23 and copy the lengthy records himself. Coleman then informed Respondent that the Board could
24 fine him \$1000.00 per day on every day he failed to provide the records. She gave Respondent a
25 copy of Business and Professions Code Section 2225.5 and had him read the highlighted section³
26 in her presence. Respondent then told Coleman that he had every intention of complying with
27

28 3. Specifically, the highlighted portion was Code Section 2225.5 (a)(1).

1 the Request and that she could expect the records of patient R.B. on September 13, 2004, and
2 those of patient G.A. by September 17, 2004. Coleman reiterated that it was well past the due
3 dates for the requested records and then concluded the conversation.

4 17. On or about September 17, 2004, Coleman left a message for Respondent
5 once again requesting the patient records. On or about October 18, 2004, Coleman sent
6 Respondent a certified letter informing him that another case was initiated against him for failure
7 to provide the requested patient records.

8 18. On March 14, 2005, a Notification of Violation and Imposition of Civil
9 Penalty under Business & Professions 2225.5, was filed and served upon respondent. It alleged
10 that the Board was imposing a civil penalty of \$1,000 per day beginning on July 26, 2004 and
11 continuing until such time as respondent provided the records of R.B. and G.A.

12 19. Pursuant to Government Code section 11181 (e), on April 15, 2005, two
13 Subpoenas Duces Tecum, (one for each patient) were served to Dr. Consolver at his medical
14 office. The third was served on April 20, 2005. The subpoenas commanded Dr. Consolver to
15 provide the Medical Board with copies of the complete medical/psychiatric records of patients
16 R.B., G.A., and a new patient, M.G. The records included the "psychiatric records, prescription
17 sheets, patient sign-in sheets, patient log books, journals, calendars, diaries, Rolodex type files,
18 appointment record books, patient medical summaries, correspondence, registration data, history
19 and physical examination, progress notes, entries made by ancillary personnel, medical and
20 laboratory test results, ultrasound studies, all imaging studies and ancillary tests, pathology
21 reports, medication records, informed consents, operative consents, requests for consultations,
22 consultations' reports, requests for prior medical records, actual copies of prior medical records,
23 records of telephone communications with the patient and his/her family, and all other
24 documents related to the medical care received by patients M.G., R.B. and G.A. while under his
25 care. These documents were to be provided to the Medical Board Valencia District Office by
26 May 13, 2005.

27 20. Dr. Consolver failed to provide the documents requested per the
28 subpoenas for patients M.G., R.B. and G.A.

1 21. On July 28, 2005, in the Superior Court of Los Angeles, a hearing was
2 held on a Motion for Enforcement of Investigational Subpoenas relating to the allegations
3 concerning the excessive prescribing of controlled substances regarding patients G.A., M.G., and
4 R.B. This hearing was for the purpose of Respondent appearing before the court and explaining
5 why he had not produced the medical records for patients. M.G., R.B., and G.A. Respondent
6 failed to appear at this hearing.

7 22. In a written order dated August 2, 2005, respondent was directed to
8 provide to the Board, by August 12, 2005, the medical records for these patients. Respondent
9 failed to provide the records. Based on this failure, the Superior Court issued an Order To Show
10 Cause Re: Indirect Contempt, ordering respondent to appear in court on October 7, 2005.

11 23. At a hearing in Superior Court on October 7, 2005, the Board appeared,
12 however, respondent failed to appear. A tentative ruling was issued which ordered respondent to
13 pay a fine of \$1,000 per day until he complies with the court order of July 28, 2005.

14 24. Thus, as of this date, respondent has failed to comply with the following
15 requests for records and orders of the court:

16 A. July 2, 2004, he failed to comply with a Request for Records for RB and GA,
17 which were accompanied by Authorizations for Release of Records. Between July 26,
18 2004 and October 2004, Investigator Coleman left 7 telephone messages, talked with
19 respondent in person once, and sent him a letter.

20 B. April 15 and April 20, 2005, he failed to comply with 2 Subpoenas.

21 C. On July 28, 2005, respondent failed to appear in Superior Court regarding a
22 Motion for Enforcement of Investigational Subpoena.

23 D. On August 2, 2005, respondent ignored the written order of the judge to
24 provide the medical records of the three patients by August 12, 2005.

25 E. On October 7, 2005, respondent failed to appear in Superior Court regarding
26 the contempt hearing.

DATED: October 20, 2005

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Kimberly Kuchner for
MEDICAL BOARD OF CALIFORNIA
DAVID T. THORNTON
Medical Board of California
State of California
Complainant

LA2004602326

1 BILL LOCKYER, Attorney General
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7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 05-2004-161652

11 JAY PAUL CONSOLVER, M.D.

REQUEST FOR DISCOVERY

12
13 Respondent.

[Gov. Code § 11507.6]

14
15 TO RESPONDENT:

16 Under section 11507.6 of the Government Code of the State of California, parties
17 to an administrative hearing, including the Complainant, are entitled to certain information
18 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
19 Government Code concerning such rights is included among the papers served.

20
21 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
22 ARE HEREBY REQUESTED TO:

- 23 1. Provide the names and addresses of witnesses to the extent known to the
24 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
25 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
26 the following in the possession or custody or under control of the Respondent:
27 a. A statement of a person, other than the Respondent, named in the initial
28 administrative pleading, or in any additional pleading, when it is claimed that the act or

1 omission of the Respondent as to this person is the basis for the administrative
2 proceeding;

3 b. A statement pertaining to the subject matter of the proceeding made by any
4 party to another party or persons;

5 c. Statements of witnesses then proposed to be called by the Respondent and
6 of other persons having personal knowledge of the acts, omissions or events which are the
7 basis for the proceeding, not included in (a) or (b) above;

8 d. All writings, including but not limited to reports of mental, physical and
9 blood examinations and things which the Respondent now proposes to offer in evidence;

10 e. Any other writing or thing which is relevant and which would be
11 admissible in evidence, including but not limited to, any patient or hospital records
12 pertaining to the persons named in the pleading;

13 f. Investigative reports made by or on behalf of the Respondent pertaining to
14 the subject matter of the proceeding, to the extent that these reports (1) contain the names
15 and addresses of witnesses or of persons having personal knowledge of the acts,
16 omissions or events which are the basis for the proceeding, or (2) reflect matters
17 perceived by the investigator in the course of his or her investigation, or (3) contain or
18 include by attachment any statement or writing described in (a) to (e), inclusive, or
19 summary thereof.

20
21 For the purpose of this Request for Discovery, "statements" include written
22 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
23 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
24 and written reports or summaries of these oral statements.

25
26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for
27 Discovery should be deemed to authorize the inspection or copying of any writing or thing which
28 is privileged from disclosure by law or otherwise made confidential or protected as attorney's

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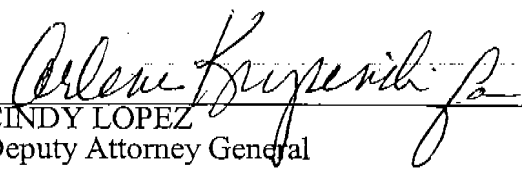
work product.

Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

Failure without substantial justification to comply with this Request for Discovery may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the Government Code.

DATED: Oct. 20, 2005

BILL LOCKYER, Attorney General
of the State of California


CINDY LOPEZ
Deputy Attorney General

Attorneys for Complainant

consolver-disc.wpd

Copy of Government Code Sections 11507.5, 11507.6, 11507.7 and 11455.10

PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Discovery Limitations

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Discovery Rights & Procedures

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make it order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

SECTION 11455.10. Grounds for contempt sanction

A Person is subject to the contempt sanction for any of the following in an adjudicative proceeding before an agency:

- (a) Disobedience of or resistance to a lawful order;
- (b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined;
- (c) Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:
 - (1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding;
 - (2) Breach of the peace, boisterous conduct, or violent disturbance;
 - (3) Other unlawful interference with the process or proceedings of the agency.
- (d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10);
- (e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

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

In the Matter of the Accusation)	
Against:)	File No. 05-2004-161652
)	
Jay Paul Consolver, M.D.)	NOTICE OF DEFENSE
)	
Physician's and Surgeon's)	
Certificate No. C 35429)	
)	
Respondent.)	(Pursuant to sections 11505 and 11506,
_____)	Government Code)

I, the undersigned, the respondent named in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation, Statement to Respondent, Government Code sections 11507.5, 11507.6, 11507.7 and 11455.10, and two copies of a Notice of Defense.

I hereby request a hearing in this proceeding to permit me to present my defense to the charges contained in said Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check off appropriate box

I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address, and telephone number will be filed with you so that counsel will be on record to receive legal notices, pleading, and other papers.

COSTS ASSOCIATED WITH SPECIFIC COURSES OR PROGRAMS

The Medical Board of California Enforcement Program provides this form to ensure that you are aware of the costs associated with potential courses or programs as a result of a Citation and Fine, Public Letter of Reprimand, Stipulated Settlement or Decision. The costs provided are a guide and reflect known current prices. Course providers may increase rates, without notification to the Board. Contact the course providers for the most current rate.

PROBATION UNIT MONITORING

The cost of probation unit monitoring is \$3,173.00 annually (for calendar year 2005) and subject to increase each fiscal year.

COURSES OR PROGRAMS

The cost of certain training courses/programs currently approved by the Board are specified below:

<u>Clinical Training Program</u>	<u>Approximate Cost</u>
----------------------------------	-------------------------

1) University of California, San Diego (UCSD).....	
Physician Assessment and Clinical Education (PACE):	
Phase I (assessment)	\$6,900
Phase II (training) - minimum \$4,000 (varies by specialty and length of training)	\$4,000+
www.paceprogram.ucsd.edu	

2) Rush University (Chicago, Illinois)	
Clinical Competency Assessment and Training Program (CCAT):	
Assessment Phase	\$4,850
Training Phase - Minimum \$3,500 (varies by specialty and length of training)	\$3,500+
www.rush.edu	

Physician Prescribing Course (PACE)	\$1,800
-------------------------------------	---------

Professional Boundaries Program (PACE)	\$4,000
--	---------

Ethics/Professionalism Course

1) California Medical Association	\$1,900
www.cmanet.org	

Medical Record Keeping Course

1) Medical Record Keeping Course (PACE)	\$1,250
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2) Case Western Reserve University (Cleveland, Ohio)	\$700
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Revised 09/05

Section 14124.12 is added to the Welfare and Institutions Code, to read:

14124.12. (a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation, and until the termination of all probationary terms and conditions or until the probationary period has ended, whichever occurs first. This section shall apply except in any case in which the relevant licensing board determines that compelling circumstances warrant the continued reimbursement during the probationary period of any Medi-Cal claim, including any claim for dental services, as so described. In such a case, the department shall continue to reimburse the licensee for all procedures, except for those invasive or surgical procedures for which the licensee was placed on probation.

(b) The Medical Board of California, the Osteopathic Medical Board of California, and the Board of Dental Examiners of California, shall work in conjunction with the State Department of Health Services to provide all information that is necessary to implement this section. These boards and the department shall annually report to the Legislature by no later than March 1 that number of licensees of these boards, placed on probation during the immediately preceding calendar year, who are:

- (1) Not receiving Medi-Cal reimbursement for certain surgical services or invasive procedures, including dental surgeries or invasive procedures, as a result of subdivision (a).
- (2) Continuing to receive Medi-Cal reimbursement for certain surgical or invasive procedures, including dental surgeries or invasive procedures, as a result of a determination of compelling circumstances made in accordance with subdivision (a).

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

DECLARATION OF SERVICE BY UNITED STATES CERTIFIED MAIL

In the Matter of the Accusation Against:

Jay Paul Consolver, M.D.

File No. 05-2004-161652

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 1430 Howe Avenue, Sacramento, California 95825. I served a true copy of the attached:

STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7 and 11455.10; NOTICE OF DEFENSE FORM (2 COPIES); NOTIFICATION REGARDING SECTION 14124.12 OF THE WELFARE & INSTITUTION CODE; A MANUAL OF MODEL DISCIPLINARY ORDERS AND MODEL DISCIPLINARY GUIDELINES; NOTIFICATION REGARDING COST ASSOCIATED WITH SPECIFIC COURSES OR PROGRAMS

by U.S. Certified mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS

CERTIFICATION #

Jay Paul Consolver, M.D.
5530 Corbin Avenue, Suite 313
Tarzana, CA 91356

7003 1680 0004 2729 1268

Jay Paul Consolver, M.D.
15300 Ventura Boulevard, Suite 503
Sherman Oaks, CA 91713

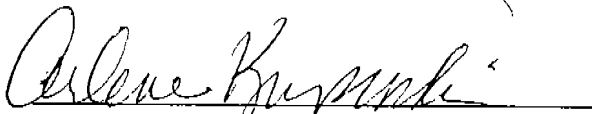
7003 1680 0004 2729 1275

Cindy Lopez
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Each said envelope was then, on October 20, 2005, mail at Sacramento, California, the county in which I am en thereon fully prepaid, and return receipt requested.

Executed on **October 20, 2005** at Sacramento, Cal

I declare under penalty of perjury under the laws of is true and correct.


Arlene Krynski, Declarant

522T 622 2729 1275

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE
SHERMAN OAKS, CA 91713

Postage	\$ 42.21
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 46.26

ARDEN BRANCH SACRAMENTO
0825
07 OCT 20
Post Office
10/20/2005

Sent To
Jay Paul Consolver, M.D.
Street, / or PO B. 15300 Ventura Boulevard, Suite 503
City, Sta Sherman Oaks, CA 91713-91413

PS Form 3800, June 2002 See Reverse for Instructions
Street, / or PO B. 5530 Corbin Avenue,
City, Tarzana, CA 91356

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jay Paul Consolver, M.D.
15300 Ventura Boulevard, Suite 503
Sherman Oaks, CA 91413

COMPLETE THIS SECTION ON DELIVERY

A. Signature Addressee Agent

B. Received by (Printed Name) _____
C. Date of Delivery _____

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number

7003 1680 0004 2729 1275 (Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

1 **BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS**

2 **STATE OF CALIFORNIA**

3 In the Matter of the Investigation of:

4 **J. PAUL CONSOLVER, M.D.**

Case No.: **05-2004-161652**

5 **DECLARATION IN SUPPORT OF SUBPOENA**

6 I, Ellen Coleman, state that:

7 I am a Senior Investigator for the Medical Board of California, Department of
8 Consumer Affairs, State of California. I have been employed with the Medical Board for two
9 years. On or about October 2004, I was assigned to investigate the present case.

10 On October 28, 2005, I attempted to serve Dr. Consolver, with the Accusation
11 packet, which consisted of the Statement to Respondent; Request for Discovery; and the Notice
12 of Defense, as well as the Notice of Motion for Order Holding Respondent in Contempt for
13 Failing to Obey Court Order to Provide Petitioner with Medical Records; Memorandum of
14 Points and Authorities in Support of Motion for Order Holding Respondent in Contempt for
15 Failing to Obey Court Order to Provide Petitioner with Medical Records; Declaration of Mia
16 Perez-Argote in Support of Motion for Order Holding Respondent in Contempt; and a
17 Declaration of Service, at his office, located at 15300 Ventura Blvd., Suite 503, Sherman Oaks,
18 CA 91403-3158. The receptionist informed that he would return on Monday, October 31,
19 2005.

20 On October 31, 2005, I again attempted to serve Dr. Consolver at his office,
21 located at 15300 Ventura Blvd., Suite 503, Sherman Oaks, CA 91403-3158. A second
22 receptionist informed me that the office staff at this location does not work for Dr. Consolver.
23 I was told that Dr. Consolver schedules his own patients and does not rely on the office staff
24 for assistance. The receptionist said he was moving from his personal residence and would
25 not be in the rest of the week (October 31, 2005 through November 4, 2005).

26 On October 31, 2005, I attempted to serve Dr. Consolver at his last known
27 residence, located at 24601 Canyonwood Drive, Canoga Park, CA 91307. He was not there.
28 I spoke to his next-door neighbor, who informed me that Dr. Consolver loaded a moving truck

1 with all of his belongings on Sunday, October 30, 2005, and never returned. He did not know
2 Dr. Consolver's new address.

3 On November 7, 2005, I served Dr. Consolver with the Accusation packet,
4 which consisted of the Statement to Respondent; Request for Discovery; and the Notice of
5 Defense, as well as the Notice of Motion for Order Holding Respondent in Contempt for
6 Failing to Obey Court Order to Provide Petitioner with Medical Records; Memorandum of
7 Points and Authorities in Support of Motion for Order Holding Respondent in Contempt for
8 Failing to Obey Court Order to Provide Petitioner with Medical Records; Declaration of Mia
9 Perez-Argote in Support of Motion for Order Holding Respondent in Contempt; and a
10 Declaration of Service, at his office, located at 15300 Ventura Blvd., Suite 503, Sherman Oaks,
11 CA 91403-3158.

12 I declare under penalty of perjury that the foregoing is true and correct as to the
13 statements made on information and belief, I believe them to be true.

14
15 Executed this 22nd day of November, 2005, at Valencia, California.

16
17 

18 ELLEN COLEMAN
19 SENIOR INVESTIGATOR
20 ENFORCEMENT UNIT
21 MEDICAL BOARD OF CALIFORNIA
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA
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