

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

In the Matter of the Accusation)	
Against:)	
)	
)	
ROBERT D. ROSENBERG, M.D.)	Case No. 17-2010-211784
)	
Physician's and Surgeon's)	
Certificate No. A 43166)	
)	
Respondent)	
_____)	

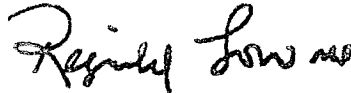
DECISION

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

This Decision shall become effective at 5:00 p.m. on February 22, 2013 .

IT IS SO ORDERED: January 23, 2013 .

MEDICAL BOARD OF CALIFORNIA



Reginald Low, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 KLINT JAMES MCKAY
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7 *Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

11 ROBERT D. ROSENBERG, M.D.
12 1560 E. Chevy Chase Dr., #130
13 Glendale, California 91206

14 Physician's & Surgeon's Certificate
No. A 43166,

15 Respondent

Case No. 17-2010-211784

OAH No. 2012050007

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
24 California. She brought this action solely in her official capacity and is represented in this matter
25 by Kamala D. Harris, Attorney General of the State of California, by Klint James McKay, Deputy
26 Attorney General.

1 **CULPABILITY**

2 8. a) Respondent admits that at any hearing of this matter, Complainant could prove
3 a prima facie case establishing each and every charge and allegation in the Accusation.

4 b) If Respondent ever petitions to modify or terminate any term or condition set
5 forth herein, including but not limited to probation, or should the Board or any other regulatory
6 agency in California or elsewhere hereinafter institute any other action against Respondent,
7 including but not limited to an Accusation and/or Petition to Revoke Probation, the allegations
8 and facts set forth in the Accusation shall be deemed admitted for all purposes.

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

12 **CONTINGENCY**

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

22 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
23 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
24 effect as the originals.

25 12. In consideration of the foregoing admissions and Stipulations, the parties agree that
26 the Board may, without further notice or formal proceeding, issue and enter the following
27 Disciplinary Order:

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. A 43166 issued to
3 Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation
4 for three years from the effective date of the Order by the Board adopting this Stipulation, subject
5 to the following terms and conditions.

6 A. CONTROLLED SUBSTANCES – MAINTAIN RECORDS AND ACCESS TO
7 RECORDS AND INVENTORIES

8 Respondent shall maintain a record of all controlled substances ordered, prescribed,
9 dispensed, administered, or possessed by Respondent, and any recommendation or approval
10 which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the
11 personal medical purposes of the patient within the meaning of Health and Safety Code section
12 11362.5, during probation, showing all of the following:

- 13 1) the name and address of patient;
14 2) the date;
15 3) the character and quantity of controlled substances involved; and
16 4) the indications and diagnosis for which the controlled substances were furnished.

17 Respondent shall keep these records in a separate file or ledger, in chronological order. All
18 records and any inventories of controlled substances shall be available for immediate inspection
19 and copying on the premises by the Board or its designee at all times during business hours and
20 shall be retained for the entire term of probation.

21 B. CONTROLLED SUBSTANCES – ABSTAIN FROM USE

22 Respondent shall abstain completely from the personal use or possession of controlled
23 substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as
24 defined by Business and Professions Code section 4022, and any drugs requiring a prescription.
25 This prohibition does not apply to medications lawfully prescribed to Respondent by another
26 practitioner for a bona fide illness or condition. Within 15 calendar days of receiving any
27 lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing
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1 practitioner's name, address, and telephone number; medication name, strength, and quantity; and
2 issuing pharmacy name, address, and telephone number.

3 If Respondent has a confirmed positive biological fluid test for any substance (whether or
4 not legally prescribed) and has not reported the use to the Board or its designee, Complainant may
5 apply, *ex parte*, for an order suspending Respondent's license to practice medicine. If granted,
6 Respondent shall not resume the practice of medicine until final decision on an accusation and/or
7 a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by
8 the Board within 15 days of the notification to cease practice. If the Respondent requests a
9 hearing on the accusation and/or petition to revoke probation, the Board shall provide the
10 Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a
11 later hearing. A decision shall be received from the Administrative Law Judge or the Board
12 within 15 days unless good cause can be shown for the delay. The cessation of practice shall not
13 apply to the reduction of the probationary time period.

14 If the Board does not file an accusation or petition to revoke probation within 15 days of the
15 issuance of the notification to cease practice or does not provide Respondent with a hearing
16 within 30 days of such a request, the notification of cease practice shall be dissolved.

17 C. BIOLOGICAL FLUID TESTING

18 Respondent shall immediately submit to biological fluid testing, at Respondent's expense,
19 upon request of the Board or its designee. "Biological fluid testing" may include, but is not
20 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by
21 the Board or its designee. Pacific Recovery Center is approved to do testing. Prior to practicing
22 medicine, Respondent shall contract with a laboratory or service approved in advance by the
23 Board or its designee that will conduct random, unannounced, observed, biological fluid testing.
24 The contract shall require results of the tests to be transmitted by the laboratory or service directly
25 to the Board or its designee within four hours of the results becoming available. Respondent shall
26 maintain this laboratory or service contract during the period of probation.

27 A certified copy of any laboratory test result may be received in evidence in any
28 proceedings between the Board and Respondent. If Respondent fails to cooperate in a random

1 biological fluid testing program within the specified time frame, Respondent shall receive a
2 notification from the Board or its designee to immediately cease the practice of medicine. The
3 Respondent shall not resume the practice of medicine until final decision on an accusation and/or
4 a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by
5 the Board within 15 days of the notification to cease practice.

6 If the Respondent requests a hearing on the accusation and/or petition to revoke probation,
7 the Board shall provide the Respondent with a hearing within 30 days of the request, unless the
8 Respondent stipulates to a later hearing. A decision shall be received from the Administrative
9 Law Judge or the Board within 15 days unless good cause can be shown for the delay. The
10 cessation of practice shall not apply to the reduction of the probationary time period. If the Board
11 does not file an accusation or petition to revoke probation within 15 days of the issuance of the
12 notification to cease practice or does not provide Respondent with a hearing within 30 days of a
13 such a request, the notification of cease practice shall be dissolved.

14 D. EDUCATION COURSE

15 Within 60 calendar days of the effective date of this Decision, and on an annual basis
16 thereafter, Respondent shall submit to the Board or its designee for its prior approval educational
17 program(s) or course(s) which shall not be less than 25 hours per year, for each year of probation.
18 The educational program(s) or course(s) shall be aimed at correcting any areas of deficient
19 practice or knowledge and shall be Category I certified. The educational program(s) or course(s)
20 shall be at Respondent's expense and shall be in addition to the Continuing Medical Education
21 (CME) requirements for renewal of licensure. Following the completion of each course, the
22 Board or its designee may administer an examination to test Respondent's knowledge of the
23 course. Respondent shall provide proof of attendance for 50 hours of CME of which 25 hours
24 were in satisfaction of this condition.

25 E. PRESCRIBING PRACTICES COURSE

26 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
27 course in prescribing practices equivalent to the Prescribing Practices Course at the Physician
28 Assessment and Clinical Education Program, University of California, San Diego School of

1 Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide
2 the program with any information and documents that the Program may deem pertinent.
3 Respondent shall participate in and successfully complete the classroom component of the course
4 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
5 complete any other component of the course within one (1) year of enrollment. The prescribing
6 practices course shall be at Respondent's expense and shall be in addition to the Continuing
7 Medical Education (CME) requirements for renewal of licensure. A prescribing practices course
8 taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date
9 of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the
10 fulfillment of this condition if the course would have been approved by the Board or its designee
11 had the course been taken after the effective date of this Decision.

12 Respondent shall submit a certification of successful completion to the Board or its
13 designee not later than 15 calendar days after successfully completing the course, or not later than
14 15 calendar days after the effective date of the Decision, whichever is later.

15 F. PROFESSIONALISM COURSE

16 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
17 professionalism program, that meets the requirements of Title 16, California Code of Regulations
18 (CCR) section 1358. Respondent shall participate in and successfully complete that program.
19 Respondent shall provide any information and documents that the program may deem pertinent.
20 Respondent shall successfully complete the classroom component of the program not later than
21 six (6) months after Respondent's initial enrollment, and the longitudinal component of the
22 program not later than the time specified by the program, but no later than one (1) year after
23 attending the classroom component. The professionalism program shall be at Respondent's
24 expense and shall be in addition to the Continuing Medical Education (CME) requirements for
25 renewal of licensure. A professionalism program taken after the acts that gave rise to the charges
26 in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the
27 Board or its designee, be accepted towards the fulfillment of this condition if the program would
28

1 have been approved by the Board or its designee had the program been taken after the effective
2 date of this Decision.

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

6 G. PSYCHOTHERAPY

7 Within 60 calendar days of the effective date of this Decision, Respondent shall submit to
8 the Board or its designee for prior approval the name and qualifications of a California-licensed
9 board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology
10 and at least five years of postgraduate experience in the diagnosis and treatment of emotional and
11 mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy
12 treatment, including any modifications to the frequency of psychotherapy, until the Board or its
13 designee deems that no further psychotherapy is necessary. Complainant is aware that
14 Respondent is currently seeing psychiatrist Simon Soldinger, M.D., and Michael Gellert, LCSW,
15 License No. LCS16153, a licensed clinical social worker. This arrangement is approved.

16 The psychotherapist shall consider any information provided by the Board or its designee
17 and any other information the psychotherapist deems relevant and shall furnish a written
18 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
19 psychotherapist any information and documents that the psychotherapist may deem pertinent.

20 Respondent shall have the treating psychotherapist submit quarterly status reports to the
21 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
22 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
23 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
24 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
25 period of probation shall be extended until the Board determines that Respondent is mentally fit
26 to resume the practice of medicine without restrictions. Respondent shall pay the cost of all
27 psychotherapy and psychiatric evaluations.

28

1 H. NOTIFICATION Within seven (7) days of the effective date of this Decision, the
2 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
3 Chief Executive Officer at every hospital where privileges or membership are extended to
4 Respondent, at any other facility where Respondent engages in the practice of medicine,
5 including all physician and locum tenens registries or other similar agencies, and to the Chief
6 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
7 Respondent. Respondent shall submit proof of compliance to the Board or its designee within
8 15-calendar days. This condition shall apply to any change(s) in hospitals, other facilities or
9 insurance carrier

10 I. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is
11 prohibited from supervising physician assistants.

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

15 K. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations
16 under penalty of perjury on forms provided by the Board, stating whether there has been
17 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
18 not later than 10 calendar days after the end of the preceding quarter.

19 L. PROBATION UNIT COMPLIANCE

20 i) **Compliance with Probation Unit**

21 Respondent shall comply with the Board's probation unit and all terms and conditions of
22 this Decision.

23 ii) **Address Changes**

24 Respondent shall, at all times, keep the Board informed of Respondent's business and
25 residence addresses, email address (if available), and telephone number. Changes of such
26 addresses shall be immediately communicated in writing to the Board or its designee. Under no
27 circumstances shall a post office box serve as an address of record, except as allowed by Business
28 and Professions Code section 2021 (b).

1 **iii) Place of Practice**

2 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
4 facility.

5 **iv) License Renewal**

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 **v) Travel or Residence Outside California**

9 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
11 (30) calendar days. In the event Respondent should leave the State of California to reside or to
12 practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the
13 dates of departure and return.

14 **M. INTERVIEW WITH THE BOARD OR ITS DESIGNEE** Respondent shall be
15 available in person upon request for interviews either at Respondent's place of business or at the
16 probation unit office, with or without prior notice throughout the term of probation.

17 **N. NON PRACTICE WHILE ON PROBATION**

18 Respondent shall notify the Board or its designee in writing within 15 calendar days of any
19 periods of non-practice lasting more than 30 calendar days and within 15 calendar days of
20 Respondent's return to practice. Non-practice is defined as any period of time Respondent is not
21 practicing medicine in California as defined in Business and Professions Code sections 2051 and
22 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching,
23 or other activity as approved by the Board. All time spent in an intensive training program which
24 has been approved by the Board or its designee shall not be considered nonpractice. Practicing
25 medicine in another state of the United States or Federal jurisdiction while on probation with the
26 medical licensing authority of that state or jurisdiction shall not be considered non-practice. A
27 Board-ordered suspension of practice shall not be considered as a period of non-practice.

28

1 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
2 months, Respondent shall successfully complete a clinical training program that meets the criteria
3 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
4 Disciplinary Guidelines" prior to resuming the practice of medicine. Respondent's period of non-
5 practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply
6 to the reduction of the probationary term. Periods of non-practice will relieve Respondent of the
7 responsibility to comply with the probationary terms and conditions with the exception of this
8 condition and the following terms and conditions of probation: Obey All Laws; and General
9 Probation Requirements.

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

14 P. VIOLATION OF PROBATION Failure to fully comply with any term or condition
15 of probation is a violation of probation. If Respondent violates probation in any respect, the
16 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
17 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
18 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
19 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
20 the matter is final.

21 Q. LICENSE SURRENDER Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender his or her license.
24 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject

1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 R. PROBATION MONITORING COSTS Respondent shall pay the costs associated
4 with probation monitoring each and every year of probation, as designated by the Board, which
5 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
6 California and delivered to the Board or its designee no later than January 31 of each calendar
7 year.

8 **ACCEPTANCE**

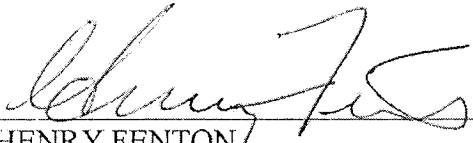
9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Henry Fenton. I understand the Stipulation and the effect it will
11 have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Medical Board of California.

14
15 DATED: 11/7/12

16 
17 ROBERT D. ROSENBERG, M.D.,
18 Respondent

19 I have read and fully discussed the terms and conditions and other matters contained in the
20 above Stipulated Settlement and Disciplinary Order with Respondent Robert D. Rosenberg, M.D.
21 I approve its form and content.

22
23 DATED: 11/7/12

24 
25 HENRY FENTON,
26 Attorney for Respondent
27
28

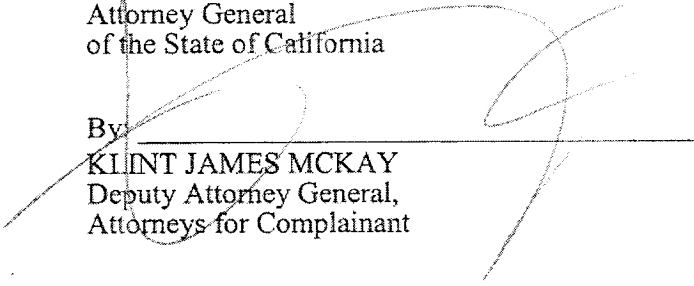
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ENDORSEMENT

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

DATED: 08 November, 2012

KAMALA D. HARRIS,
Attorney General
of the State of California

By: 
KLINT JAMES MCKAY
Deputy Attorney General,
Attorneys for Complainant

ACCUSATION
Medical Board of California
Case No. 17-2010-211784

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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 18, 2012
BY [Signature] ANALYST

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

13 In the Matter of the Accusation Against:
14 ROBERT D. ROSENBERG, M.D.
15 1560 E. Chevy Chase Dr., #130
Glendale, California 91206
16 Physician's & Surgeon's Certificate
17 No. A 43166
18 Respondent.

Case No. 17-2010-211784

ACCUSATION

19 Complainant alleges:

20 **PARTIES**

- 21 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Director of the Medical Board of California ("Board").
23 2. On or about October 1, 1986, the Board issued Physician's and Surgeon's Certificate
24 number A 43166 to Robert D. Rosenberg, M.D. ("Respondent"). Respondent's Certificate was in
25 full force and effect at all times relevant to the charges brought herein. It will expire on April 30,
26 2012, unless renewed.

27 ///
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JURISDICTION

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

STATUTORY PROVISIONS

5
6 4. Section 2227 of the Code states:

7 “(a) A licensee whose matter has been heard by an administrative law judge of the
8 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
9 whose default has been entered, and who is found guilty, or who has entered into a stipulation for
10 disciplinary action with the division,¹ may, in accordance with the provisions of this chapter:

11 “(1) Have his or her license revoked upon order of the division.

12 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
13 order of the division.

14 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
15 order of the division.

16 “(4) Be publicly reprimanded by the division.

17 “(5) Have any other action taken in relation to discipline as part of an order of probation,
18 as the division or an administrative law judge may deem proper.

19 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
20 review or advisory conferences, professional competency examinations, continuing education
21 activities, and cost reimbursement associated therewith that are agreed to with the division and
22 successfully completed by the licensee, or other matters made confidential or privileged by
23 existing law, is deemed public, and shall be made available to the public by the board pursuant to
24 Section 803.1.

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

1 5. Section 2228 of the Code states:

2 “The authority of the board or a division of the board or the California Board of Podiatric
3 Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to
4 the following:

5 “(a) Requiring the licensee to obtain additional professional training and to pass an
6 examination upon the completion of the training. The examination may be written or oral, or
7 both, and may be a practical or clinical examination, or both, at the option of the board or division
8 or the administrative law judge.

9 “(b) Requiring the licensee to submit to a complete diagnostic examination by one or more
10 physicians and surgeons appointed by the division. If an examination is ordered, the board or
11 division shall receive and consider any other report of a complete diagnostic examination given
12 by one or more physicians and surgeons of the licensee’s choice.

13 “(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including
14 requiring notice to applicable patients that the licensee is unable to perform the indicated
15 treatment, where appropriate.

16 “(d) Providing the option of alternative community service in cases other than violations
17 relating to quality of care, as defined by the Division of Medical Quality.

18 6. Section 2234 of the Code states:

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

22 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
23 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical
24 Practice Act].

25 “(b) Gross negligence.

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

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

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

8 “(d) Incompetence.

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

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

12 7. Section 2238 of the Code states:

13 “A violation of any federal statute or federal regulation or any of the statutes or regulations
14 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
15 conduct.”

16 8. Section 2239 of the Code states:

17 “(a) The use or prescribing for or administering to himself or herself, of any controlled
18 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
19 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
20 any other person or to the public, or to the extent that such use impairs the ability of the licensee
21 to practice medicine safely or more than one misdemeanor or any felony involving the use,
22 consumption, or self-administration of any of the substances referred to in this section, or any
23 combination thereof, constitutes unprofessional conduct. The record of the conviction is
24 conclusive evidence of such unprofessional conduct.

25 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
26 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
27 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
28 may order the denial of the license when the time for appeal has elapsed or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made suspending
2 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
3 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
4 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
5 information, or indictment.”

6 9. Section 2242 of the Code states:

7 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
8 without an appropriate prior examination and a medical indication, constitutes unprofessional
9 conduct.

10 “(b) No licensee shall be found to have committed unprofessional conduct within the
11 meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of
12 the following applies:

13 “(1) The licensee was a designated physician and surgeon or podiatrist serving in the
14 absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs
15 were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return
16 of his or her practitioner, but in any case no longer than 72 hours.

17 “(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed
18 vocational nurse in an inpatient facility, and if both of the following conditions exist:

19 “(A) The practitioner had consulted with the registered nurse or licensed vocational nurse
20 who had reviewed the patient's records.

21 “(B) The practitioner was designated as the practitioner to serve in the absence of the
22 patient's physician and surgeon or podiatrist, as the case may be.

23 “(3) The licensee was a designated practitioner serving in the absence of the patient's
24 physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized
25 the patient's records and ordered the renewal of a medically indicated prescription for an amount
26 not exceeding the original prescription in strength or amount or for more than one refill.

27 “(4) The licensee was acting in accordance with Section 120582 of the Health and Safety
28 Code.”

1 10. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
2 adequate and accurate records relating to the provision of services to their patients constitutes
3 unprofessional conduct."

4 11. California Health and Safety Code section 11170 provides: "No person shall
5 prescribe, administer, or furnish a controlled substance for himself."

6 12. California Health and Safety Code section 11171 provides: "No person shall
7 prescribe, administer, or furnish a controlled substance except under the conditions and in the
8 manner provided by this division."

9 13. California Health and Safety Code section 11173 provides:

10 (a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
11 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
12 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13 (b) No person shall make a false statement in any prescription, order, report, or record,
14 required by this division.

15 (c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
16 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
17 veterinarian, registered nurse, physician's assistant, or other authorized person.

18 (d) No person shall affix any false or forged label to a package or receptacle containing
19 controlled substances.

20 14. California Health and Safety Code section 11174 provides: "No person shall, in
21 connection with the prescribing, furnishing, administering, or dispensing of a controlled
22 substance, give a false name or false address."

23 15. California Health and Safety Code section 11175 provides: "No person shall obtain
24 or possess a prescription that does not comply with this division, nor shall any person obtain a
25 controlled substance by means of a prescription which does not comply with this division or
26 possess a controlled substance obtained by such a prescription.

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FIRST CAUSE FOR DISCIPLINE
(Self Prescription)

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16. Respondent is subject to disciplinary action for self prescription in violation of Code section 2239 as follows:

a) Over a period from 2006 until December, 2010, Respondent wrote prescriptions for Vicodin (a combination of acetaminophen and hydrocodone) and Xanax (generically called alprazolam) to his wife but in fact, filled them and consumed the medications himself. This occurred numerous times. By November, 2010, he was consuming four to six milligrams of Xanax daily; by December, 2010, he was also consuming six to eight Vicodin ES, 7.5/750 per week, but sometimes as many as five Vicodin per day.

b) After being confronted by a pharmacist at Cedars Sinai, he entered a detoxification program at Tarzana Treatment Center on or about December 10, 2010.

17. Prescribing drugs to his wife and filling those prescriptions for his own consumption violates Code section 2239.

SECOND CAUSE FOR DISCIPLINE
(Dishonesty)

18. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 2234(e) due to his issuing prescriptions in the name of his wife which he knew were fraudulent, in that the drugs were not intended to treat any illness of his wife, but were intended to be consumed by him, and he in fact did so. Issuing and filling these prescriptions fraudulently constitutes dishonest conduct under Code section 2234(e).

THIRD CAUSE FOR DISCIPLINE
(Violation of Drug Laws)

19. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Code section 2238, Health and Safety Code sections 11170, 11171, 11173, 11174, and 11175 in that he fraudulently prescribed drugs in the name of his wife with the intent of using those drugs himself, and did in fact fill the prescriptions and use the drugs as set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)


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2 19. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
3 Code section 2266 due to his failure to maintain records of his treatment of and prescriptions he
4 wrote for his wife.
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7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 43166,
11 issued to Robert D. Rosenberg, M.D.;
- 12 2. Revoking, suspending or denying approval of his authority to supervise physician
13 assistants, pursuant to Section 3527 of the Code;
- 14 3. If placed on probation, ordering him to pay the costs of probation monitoring; and
15 4. Taking such other and further action as deemed necessary and proper.

16 Dated: January 18, 2012

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18 LINDA K. WHITNEY
19 Executive Director
20 Medical Board of California,
21 Complainant
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