

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

| | | |
|--|---|--------------------|
| In the Matter of the Accusation Against: |) | No. 17-96-62136 |
| WILLIAM TICE VICARY, M.D. |) | OAH No. L-97100203 |
| |) | |
| Physician's and Surgeon's Certificate No. G-30952, |) | |
| Respondent. |) | |
| <hr/> | | |

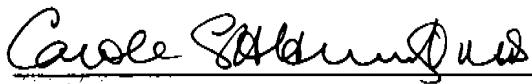
DECISION AND ORDER

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

This Decision shall become effective on April 10, 1998.

Order Dated March 11, 1998.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



CAROLE HURVITZ, M.D.
Chairperson, Panel B

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ROBERT McKIM BELL,
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 5212
4 Los Angeles, California 90013-1233
Telephone: (213) 897-2556

5 Attorneys for Complainant
6

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

| | | |
|---|---|-----------------------|
| 11 In the Matter of the Accusation Against: |) | Case No. 17-96-62136 |
| 12 WILLIAM TICE VICARY, M.D. |) | OAH No. |
| 13 3575 Cahuenga Boulevard West, #3 |) | STIPULATED SETTLEMENT |
| 14 Los Angeles, California 90068 |) | AND |
| 15 Physician's and Surgeon's Certificate |) | DISCIPLINARY ORDER |
| 16 Number G-30952, |) | |
| Respondent. |) | |

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

20 1. An Accusation in case number 17-96-62136 was filed with the
21 Division of Medical Quality, of the Medical Board of California (the "Division") on
22 October 9, 1997, and is currently pending against William Tice Vicary, M.D. (the
23 "respondent").

24 2. The Accusation, together with all statutorily required
25 documents, was duly served on the respondent on or about October 9, 1997, and
26 respondent filed a Notice of Defense contesting the Accusation on or about
27 October 15, 1997. A copy of Accusation No. 17-96-62136 is attached as Exhibit

1 "A" and hereby incorporated by reference as if fully set forth.

2 3. The Complainant, Ron Joseph, is the Executive Director of the
3 Medical Board of California and brought this action solely in his official capacity.
4 The Complainant is represented by the Attorney General of California, Daniel E.
5 Lungren, by and through Deputy Attorney General Robert McKim Bell.

6 4. At all times relevant herein, respondent has been licensed by
7 the Medical Board of California under Physician's and Surgeon's Certificate No.
8 G-30952.

9 5. The respondent is represented in this matter by Paul J.
10 Fitzgerald, Esq., whose address is 424 South Beverly Drive, Beverly Hills, California
11 90212.

12 6. The respondent and his attorney have fully discussed the
13 charges contained in Accusation Number 17-96-62136, and the respondent has
14 been fully advised regarding his legal rights and the effects of this stipulation.

15 7. Respondent understands the nature of the charges alleged in
16 the Accusation and that, if proven at hearing, the charges and allegations would
17 constitute cause for imposing discipline upon his Physician's and Surgeon's
18 Certificate. Respondent is fully aware of his right to a hearing on the charges
19 contained in the Accusation, his right to confront and cross-examine witnesses
20 against him, his right to the use of subpoenas to compel the attendance of
21 witnesses and the production of documents in both defense and mitigation of the
22 charges, his right to reconsideration, appeal and any and all other rights accorded
23 by the California Administrative Procedure Act and other applicable laws.

24 8. Respondent knowingly, voluntarily and irrevocably waives and
25 give up each of these rights.

26 9. Respondent admits that he has subjected his license to
27 disciplinary action under Business and Professions Code section 2261 for

1 knowingly making a document related to the practice of medicine which falsely
2 represented the existence or nonexistence of a state of facts. The manner of the
3 commission of this offense was as stated in Paragraphs 4 through 10 of the
4 Accusation in case number 17-96-62136, to wit:

5 A. The respondent is a psychiatrist specializing in forensic
6 psychiatry. In addition, he holds a graduate law degree from Harvard
7 University. The focus of his professional life is performing forensic
8 evaluations for the Los Angeles Superior Court. He has performed
9 psychiatric evaluations in about 1,000 homicide cases and has testified in
10 around 100 homicide cases.

11 B. Eric and Lyle Menendez are two brothers who were
12 accused of killing their parents. They were tried twice. The first trial ended
13 in a hung jury. At the second trial, both defendants were convicted and
14 sentenced to life imprisonment without the possibility of parole.

15 C. In May 1990, three years before the first trial, Dr. Vicary
16 was engaged by Erik Menendez's attorney, Leslie Abramson, and thereafter
17 served as both a treating and forensic psychiatrist for Eric Menendez for a
18 period of approximately five years. Dr. Vicary prepared written notes of his
19 interviews with Erik Menendez which, as of the time of the first trial, had
20 grown to 101 pages reflecting approximately 88 visits with Erik Menendez.

21 D. In November 1993, shortly before his testimony in the
22 first trial, Vicary and Abramson met and went through his notes page-by-
23 page. The defense attorney became ^{ANGRY AND} upset and ~~asked him to~~ make changes
24 in the notes. ^{DR HE WOULD BE REMOVED FROM THE CASE.} ^{DEMANDED THAT HE}

25 E. Dr. Vicary then rewrote approximately 10 pages of his
26 clinical notes deleting ~~many~~ passages containing potentially damaging
27 material.

PJ.F
P.J.F

P.J.F.

RB
W.V
RB
W.V
RB
W.V

1 F. He rewrote his notes in such a way that they closely
2 resembled the original notes and would not appear suspicious. His purpose
3 in rewriting the notes was twofold: first, to conceal or destroy statements
4 made by Erik Menendez that were contained in the original notes and,
5 second, to conceal the fact that the original notes had been rewritten. After
6 pages were rewritten, the originals were destroyed. He was aware when he
7 rewrote his notes that his revised notes would be provided to prosecutors
8 and others and would be used in court as though they were the originals.

9 G. The changes might never have come to light if not for
10 happenstance. In April 1996, during the penalty phase of the second trial,
11 Ms. Abramson inadvertently provided Dr. Park Dietz, a prosecution
12 psychiatric expert, a copy of the original notes and when he was through
13 with them, he gave them to the prosecuting attorney. When these notes
14 were compared with the edited notes originally given to the prosecution, it
15 became clear that alterations had been made.

16 10. Respondent agrees to be bound by the Division's Disciplinary
17 Order as set forth below.

18 11. Based on the foregoing admissions and stipulated matters, the
19 parties agree that the Division shall, without further notice or formal proceeding,
20 issue and enter the following order:

21
22 DISCIPLINARY ORDER

23 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate
24 number G-30952 issued to William Tice Vicary, M.D. is revoked. However, the
25 revocation is stayed and respondent is placed on probation for three (3) years on
26 the following terms and conditions.

27 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1. ETHICS COURSE

Within 60 days of the effective date of this decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

2. COOPERATE WITH INVESTIGATORS

The respondent shall fully cooperate and make himself available upon request in any investigation or enforcement activity conducted by the State Bar of California in connection with conduct of members of the State Bar in *People v. Mendendez*, including but not limited to providing of any documents or other information requested, and he shall truthfully and accurately testify at any subsequent administrative, civil, or criminal proceeding if asked to do so.

3. NOTIFICATIONS

Within 15 days after the effective date of this decision the respondent shall provide the Division, or its designee, proof of service that respondent has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent or where respondent is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to respondent.

4. OBEY ALL LAWS

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

5. QUARTERLY REPORTS

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

1 **6. PROBATION SURVEILLANCE PROGRAM COMPLIANCE**

2 Respondent shall comply with the Division's probation surveillance program.

3 Respondent shall, at all times, keep the Division informed of his or her addresses of
4 business and residence which shall both serve as addresses of record. Changes of
5 such addresses shall be immediately communicated in writing to the Division.

6 Under no circumstances shall a post office box serve as an address of record.

7 Respondent shall also immediately inform the Division, in writing, of
8 any travel to any areas outside the jurisdiction of California which lasts, or is
9 contemplated to last, more than thirty (30) days.

10 **7. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
11 **DESIGNATED PHYSICIAN(S)**

12 Respondent shall appear in person for interviews with the Division, its
13 designee or its designated physician(s) upon request at various intervals and with
14 reasonable notice.

15 **8. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
16 **IN-STATE NON-PRACTICE**

17 In the event respondent should leave California to reside or to practice
18 outside the State or for any reason should respondent stop practicing medicine in
19 California, respondent shall notify the Division or its designee in writing within ten
20 days of the dates of departure and return or the dates of non-practice within
21 California. Non-practice is defined as any period of time exceeding thirty days in
22 which respondent is not engaging in any activities defined in Sections 2051 and
23 2052 of the Business and Professions Code. All time spent in an intensive training
24 program approved by the Division or its designee shall be considered as time spent
25 in the practice of medicine. Periods of temporary or permanent residence or
26 practice outside California or of non-practice within California, as defined in this
27 condition, will not apply to the reduction of the probationary period.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

9. COMPLETION OF PROBATION

Upon successful completion of probation, respondent's certificate shall be fully restored.

10. VIOLATION OF PROBATION

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

11. COST RECOVERY

The respondent is hereby ordered to reimburse the Division the amount of five thousand four hundred seventy-four dollars and 62 cents (\$5,474.62) within 90 days from the effective date of this decision for its investigative costs. Failure to reimburse the Division's costs in the amount specified and on the schedule specified shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his/her responsibility to reimburse the Division for its investigative and prosecution costs.

12. PROBATION COSTS

Respondent shall pay the costs associated with probation monitoring each and every year of probation. These costs may vary from year to year, but are currently \$2,304 per year. Such costs shall be payable to the Division of Medical Quality at the beginning of each calendar year. Failure to pay costs shall constitute a violation of probation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

13. LICENSE SURRENDER

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to terms and conditions of probation.

CONTINGENCY

This stipulation shall be subject to the approval of the Division. Respondent understands and agrees that Board staff and counsel for complainant may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by respondent or counsel. If the Division fails to adopt this stipulation as its Order, the stipulation shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action in this matter by virtue of its consideration of this stipulation.

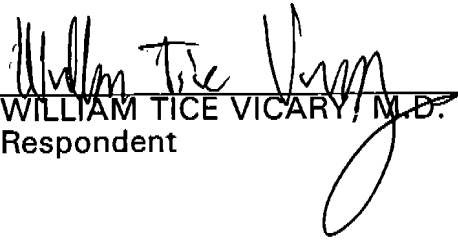
//
//
//
//
//
//
//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ACCEPTANCE

I have read the above Stipulated Settlement and Disciplinary Order. I have fully discussed the terms and conditions and other matters contained therein with my attorney, Paul J. Fitzgerald. I understand the effect this Stipulated Settlement and Disciplinary Order will have on my Physician's and Surgeon's Certificate, and agree to be bound thereby. I enter this stipulation freely, knowingly, intelligently and voluntarily.

DATED: 2/9/98


WILLIAM TICE VICARY, M.D.
Respondent

I have read the above Stipulated Settlement and Disciplinary Order and approve of it as to form and content. I have fully discussed the terms and conditions and other matters therein with respondent William Tice Vicary, M.D..

DATED: ~~January 30, 1998~~ February 9, 1998


PAUL J. FITZGERALD
Attorney for Respondent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ENDORSEMENT

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

DATED: 27 January 1998.

DANIEL E. LUNGREN, Attorney General
of the State of California

Robert McKim Bell

ROBERT McKIM BELL
Deputy Attorney General

Attorneys for Complainant

This constitutes the agreement of the parties after full discussion and negotiation.

*U-lynd 2-9-98
Administrative Law Judge
Office of Administrative Hearings*

EXHIBIT A
Accusation No. 17-96-62136

1 five hundred dollars (\$500) for a violation,

2 D. Section 2261 of the Code provides that knowingly
3 making or signing any certificate or other document directly or indirectly
4 related to the practice of medicine which falsely represents the existence or
5 nonexistence of a state of facts, constitutes unprofessional conduct.

6 E. Section 16.01 of the 1997/1998 Budget Act of the State
7 of California provides, in pertinent part, that: "(a) No funds appropriated by
8 this act may be expended to pay any Medi-Cal claim for any service
9 performed by a physician while that physician's license is under suspension
10 or revocation due to disciplinary action of the Medical Board of California.

11 (b) No funds appropriated by this act may be expended to pay any Medi-Cal
12 claim for any surgical services or other invasive procedure performed on any
13 Medi-Cal beneficiary by a physician if that physician has been placed on
14 probation due to a disciplinary action of the Medical Board of California
15 related to the performance of that specific service or procedure on any
16 patient, except in any case where the board makes a determination during its
17 disciplinary process that there exist compelling circumstances that warrant
18 continued Medi-Cal reimbursement during the probationary period."
19

20 FACTS GIVING RISE TO DISCIPLINE

21 4. The respondent is a psychiatrist specializing in forensic
22 psychiatry. In addition, he holds a graduate law degree from Harvard University.
23 The focus of his professional life is performing forensic evaluations for the Los
24 Angeles Superior Court. He has performed psychiatric evaluations in about 1,000
25 homicide cases and has testified in around 100 homicide cases.

26 5. Eric and Lyle Menendez are two brothers who were accused of
27 killing their parents. They were tried twice. The first trial ended in a hung jury.

1 At the second trial, both defendants were convicted and sentenced to life
2 imprisonment without the possibility of parole.

3 6. In May 1990, three years before the first trial, Dr. Vicary was
4 engaged by Erik Menendez's attorney, Leslie Abramson, and thereafter served as
5 both a treating and forensic psychiatrist for Eric Menendez for a period of
6 approximately five years. Dr. Vicary prepared written notes of his interviews with
7 Erik Menendez which, as of the time of the first trial, had grown to 101 pages
8 reflecting approximately 88 visits with Erik Menendez.

9 7. In November 1993, shortly before his testimony in the first trial,
10 Vicary and Abramson met and went through his notes page-by-page. The defense
11 attorney became upset and asked him to make changes in the notes.

12 8. Dr. Vicary then rewrote approximately 10 pages of his clinical
13 notes deleting many passages containing potentially damaging material.

14 9. He rewrote his notes in such a way that they closely resembled
15 the original notes and would not appear suspicious. His purpose in rewriting the
16 notes was twofold: first, to conceal or destroy statements made by Erik Menendez
17 that were contained in the original notes and, second, to conceal the fact that the
18 original notes had been rewritten. After pages were rewritten, the originals were
19 destroyed. He was aware when he rewrote his notes that his revised notes would
20 be provided to prosecutors and others and would be used in court as though they
21 were the originals.

22 10. The changes might never have come to light if not for
23 happenstance. In April 1996, during the penalty phase of the second trial, Ms.
24 Abramson inadvertently provided Dr. Park Dietz, a prosecution psychiatric expert, a
25 copy of the original notes and when he was through with them, he gave them to
26 the prosecuting attorney. When these notes were compared with the edited notes
27 originally given to the prosecution, it became clear that alterations had been made.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence)

3 11. Respondent William T. Vicary, M.D. is subject to disciplinary
4 action under section 2234, subdivision (b) of the Code for gross negligence. The
5 circumstances are as follows:

6 A. The Complainant incorporates by reference the material
7 set forth above at Paragraphs 4 through 10 as though fully set forth at this
8 point.

9 B. In general, if a doctor feels that his original records are
10 unclear or misleading, he can edit them if he does so openly, and dates and
11 signs the editing. It is not within the standard of practice to alter clinical
12 notes, to try to show they were original, and attempt to hide the alteration.

13 C. It was grossly negligent for Dr. Vicary to have altered his
14 notes and to have attempted to hide his alterations.

15 D. It was grossly negligent for Dr. Vicary to have remained
16 on the case instead of withdrawing when he became convinced that the
17 defense attorney was asking him perform acts incompatible with his
18 professional obligations as a forensic psychiatrist. The standard of the
19 profession of forensic psychiatry is to strive for objectivity and honesty in
20 presentations of professional opinions, no matter what an attorney may
21 request or even demand. If the attorney insists that the psychiatrist act
22 outside the standards of forensic psychiatry, the psychiatrist must be
23 prepared to refuse the request or to withdraw from the case.

24
25 **SECOND CAUSE FOR DISCIPLINE**

26 (Falsifying Medical Documentation)

27 12. By reason of the matters set forth above in Paragraphs 4

1 through 10, respondent William T. Vicary is subject to disciplinary action under
2 section 2262 of the Code for altering or modifying the medical record of any
3 person, with fraudulent intent, or creating any false medical record, with fraudulent
4 intent.

5
6 **THIRD CAUSE FOR DISCIPLINE**

7 (Falsifying Medical Documentation)

8 13. By reason of the matters set forth above in Paragraphs 4
9 through 10, respondent William T. Vicary is subject to disciplinary action under
10 section 2261 of the Code for knowingly making a document related to the practice
11 of medicine which falsely represented the existence or nonexistence of a state of
12 facts.

13
14 **FOURTH CAUSE FOR DISCIPLINE**

15 (Acts Involving Dishonesty)

16 14. By reason of the matters set forth above in Paragraphs 4
17 through 10, respondent William T. Vicary is subject to disciplinary action under
18 section 2234, subdivision (e) of the Code for the commission of acts involving
19 dishonesty which were substantially related to the qualifications, functions, or
20 duties of his license as a physician.

21
22 **PRAYER**

23 **WHEREFORE**, the complainant requests that a hearing be held on the
24 matters herein alleged, and that following the hearing, the Division issue a decision:

- 25 1. Revoking or suspending Physician's and Surgeon's Certificate
26 Number G-30952, heretofore issued to respondent William T. Vicary, M.D.;
- 27 2. Revoking, suspending or denying approval of respondent's

1 authority to supervise physician's assistants, pursuant to section 3527 of the
2 Code;

3 3. Ordering respondent to pay the Division the reasonable costs of
4 the investigation and enforcement of this case and, if placed on probation, the
5 costs of probation monitoring;

6 4. Taking such other and further action as the Division deems
7 necessary and proper.

8 DATED: October 9, 1997.

9
10
11 
12 _____
13 RON JOSEPH
14 Executive Director
15 Medical Board of California
16 Department of Consumer Affairs
17 State of California

18
19
20
21
22
23
24
25
26
27
Complainant

03573160-LA97AD0510
shell.acc [597rev]