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2 ABRAHAM M. LEVY
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3 State Bar No. 189671
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4 Los Angeles, CA 90013
Telephone: (213) 897-0977
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Attorneys for Complainant
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8

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

12 In the Matter of the Accusation Against,

Case No. 06-2009-200515

13 JAMES ALLEN HIRTLE, M.D.

14 P.O. Box 349
Burbank, CA 91503

**DEFAULT DECISION
AND ORDER**

15 Physician's and Surgeon's Certificate A 24439,
16 Respondent.
17

[Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about March 1, 2010, Complainant Linda K. Whitney, in her official capacity
20 as the Interim Executive Director of the Medical Board of California, Department of Consumer
21 Affairs, filed Accusation No. 06-2009-200515 against JAMES ALLEN HIRTLE, M.D.
22 (Respondent) before the Medical Board of California.

23 2. On or about September 7, 1971, the Medical Board of California (Board) issued
24 Physician's and Surgeon's Certificate No. A24439 to Respondent. The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on January 31, 2011, unless renewed.

27 3. On or about March 1, 2010, Arlene Krysinski, an employee of the Complainant
28 Agency, served by Certified Mail a copy of the Accusation No. 06-2009-200515, Statement to

1 Respondent, Notice of Defense, Government Code Sections 11507.5, 11507.6, 11507.7 and
2 11455.10, A Manual of Model Disciplinary Orders and Model Disciplinary Guidelines;
3 Notification Regarding Cost Associated With Specific Courses or Programs, and Request for
4 Discovery to Respondent's address of record with the Board, which was and is P.O. Box 349
5 Burbank, CA 91503. A copy of the Accusation, the related documents, and Declaration of
6 Service are attached as exhibit A, and are incorporated herein by reference.

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

9 5. Government Code section 11506 states, in pertinent part:

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

14 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
15 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 06-
16 2009-200515.

17 6. California Government Code section 11520 states, in pertinent part:

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

21 7. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it, contained in
24 exhibits A, B, C and D, finds that the allegations in Accusation No. 06-2009-200515 are true.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent JAMES ALLEN HIRTLE, M.D.
27 has subjected his Physician's and Surgeon's Certificate No. A 24439 to discipline.

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Attachments:

Exhibit A: Accusation No.06-2009-200515, Related Documents, and Declaration of Service;

Exhibit B: Interim Suspension Order Pending Administrative Determination Dated February 26, 2010;

Exhibit C: Declaration of Nehal Patel, M.D.;

Exhibit D: Declaration of Timothy Botello, M.D.

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Exhibit A
Accusation No. 06-2009-200515,
Related Documents and Declaration of Service

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

12 In the Matter of the Accusation Against:
13 JAMES HIRTLE, M.D.
14 P. O. Box 349
15 Burbank, CA 91503
16 Physician's and Surgeon's Certificate A24439,
17 Respondent.

Case No. 06-2009-200515

18 **ACCUSATION**

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Interim Executive Director of the Medical Board of California ("Board"), Department of
22 Consumer Affairs. ¹ This Accusation is brought before the Board under the authority of the
23 following laws. All section references are to the Business and Professions Code unless otherwise
24 indicated.

25
26 ¹ As used herein the term "Board" means the Medical Board of California. As also used
27 herein the Division of Medical Quality shall also be deemed to refer to the Board. See B&P Code
28 Section 2002.

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

2 5. Section 2004 of the Code states:

3 "The Board shall have the responsibility for the following:

4 (a) The enforcement of the disciplinary and criminal provisions of the Medical
5 Practice Act.

6 (b) The administration and hearing of disciplinary actions.

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

9 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
10 disciplinary actions.

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

13 6. Section 2227 of the Code states, in pertinent part:

14 (a) A licensee whose matter has been heard by an administrative law judge of
15 the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
16 whose default has been entered, and who is found guilty may, in accordance with the provisions
17 of this chapter:

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

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

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

23 (4) Be publicly reprimanded by the division.

24 (5) Have any other action taken in relation to discipline as the division
25 or an administrative law judge may deem proper."

26 7. Section 2239, subdivision (a), of the Code provides the following:

27 "The use or prescribing for or administering to himself or herself, of any controlled
28 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic

1 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
2 any other person or to the public, or to the extent that such use impairs the ability of the licensee
3 to practice medicine safely or more than one misdemeanor or any felony involving the use,
4 consumption, or self-administration of any of the substances referred to in this section, or any
5 combination thereof, constitutes unprofessional conduct. The record of the conviction is
6 conclusive evidence of such unprofessional conduct.”

7 8. Section 820 of the Code states:

8 “Whenever it appears that any person holding a license, certificate or permit under
9 this division [Division 2, Healing Arts, commencing with section 500 of the Business and
10 Professions Code] or under any initiative act referred to in this division may be unable to practice
11 his or her profession safely because the licentiate's ability to practice is impaired due to mental
12 illness, or physical illness affecting competency, the licensing agency may order the licentiate to
13 be examined by one or more physicians and surgeons or psychologists designated by the agency.
14 The report of the examiners shall be made available to the licentiate and may be received as direct
15 evidence in proceedings conducted pursuant to Section 822.”

16 9. Section 821 of the Code states: “The licentiate's failure to comply with an order
17 issued under Section 820 shall constitute grounds for the suspension or revocation of the
18 licentiate's certificate or license.”

19 10. Section 822 of the Code states:

20 “If a licensing agency determines that its licentiate's ability to practice his or her
21 profession safely is impaired because the licentiate is mentally ill, or physically ill affecting
22 competency, the licensing agency may take action by any one of the following methods:

23 “(a) Revoking the licentiate's certificate or license.

24 “(b) Suspending the licentiate's right to practice.

25 “(c) Placing the licentiate on probation.

26 “(d) Taking such other action in relation to the licentiate as the licensing agency in
27 its discretion deems proper.

28

1 “The licensing agency shall not reinstate a revoked or suspended certificate or
2 license until it has received competent evidence of the absence or control of the condition which
3 caused its action and until it is satisfied that with due regard for the public health and safety the
4 person's right to practice his or her profession may be safely reinstated.”

5 11. Section 824 of the Code states: “The licensing agency may proceed against
6 a licentiate under either Section 820, or 822, or under both sections.”

7 12. Section 826 of the Code states: “The proceedings under Section 821 and 822 shall
8 be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
9 Division 3 of Title 2 of the Government Code, and the licensing agency and the licentiate shall
10 have all the rights and powers granted therein.”

11 **CAUSE FOR DISCIPLINE**

12 **(Impairment Because of Physical and Mental Illness Affecting Competency)**

13 13. Respondent is subject to discipline under section 822 due to a severe disabling
14 mental illness, and based on his use of Xanax (Alprazolam, a benzodiazepine), Adderall (an
15 amphetamine), and Subutex (an opiate) without the direction of a treating psychiatrist. His
16 condition and the medications he is taking impair his ability to practice medicine safely and make
17 him a danger to himself and to the public.

18 14. On or about July 7, 2009 the Board received an anonymous complaint which
19 alleged that Respondent sounded like he “was on drugs” when he called in a prescription at a
20 pharmacy. The individual said that this was not an isolated incident.

21 15. Respondent was also brought to the attention of the Board based on felony
22 criminal charges against him for grand theft auto. Respondent was arrested for allegedly stealing
23 a rental car he obtained from Enterprise Rental Car. Pursuant to the arrest police found
24 amphetamines in the car.

25 16. Senior Medical Board Investigator Aracely Villalobos talked with Respondent on
26 September 15, 2009 in order to arrange a time for him to meet with the Medical Board in order to
27 assess his mental and physical state. Respondent’s speech was slurred and slow and he asked
28 Investigator Villalobos four times “where is that?” when Investigator Villalobos tried to give him

1 directions to the office. Respondent subsequently cancelled the interview, saying that he was sick.

2 17. The Board then ordered Respondent to attend both physical and mental health
3 examinations with Doctors Nehal Patel, M.D. and Tom Botello, M.D.

4 18. Dr. Patel examined Respondent at Respondent's home on November 7, 2009. He
5 noticed when he arrived for the interview that Respondent was calling in a prescription
6 medication for Subutex. Subutex is an opiate which is similar to heroin and codeine and used for
7 opiate withdrawal and treatment. Less commonly, off label, it is used for pain management.

8 19. Dr. Patel confirmed that Respondent was taking the following medications: Xanax,
9 a benzodiazepine, for anxiety, at 2 mg three times a day; Subutex, an opiate, for pain
10 management, and Adderall, an amphetamine, for Attention Deficit Hyperactivity Disorder.
11 Respondent is not taking these medications under the direction of a single doctor or psychiatrist
12 and has self-prescribed Adderall for himself.

13 20. Dr. Patel found respondent to be impaired based on the side-effects of these
14 medications and their combinations. Dr. Patel commented that these medications, by themselves,
15 have powerful side-effects that effect judgment and insight; their use in combination, moreover
16 he opined, would further affect judgment and the ability to make sound judgments because in
17 combination these medications result in powerful and mind-altering symptoms which would
18 effect good judgment and impair clinical skills. Dr. Patel opined that Respondent is unable to
19 display the good judgment and clinical skills required of a doctor as a result of these medications
20 and their affects.

21 21. Dr. Botello also found Respondent to be impaired and unable to practice medicine
22 safely as a result. After the examination he conducted of Respondent on November 5, 2009; Dr.
23 Botello diagnosed Respondent as follows: Axis I: History of Bipolar II Disorder; History of
24 Adjustment Deficit Disorder with anxious mood, and history of alcohol use disorder; Axis II (no
25 diagnosis); Axis III: Chronic Pain Syndrome from back pain/myofascitis, on Subutex.

26 22. In addition, Dr. Botello found from the C.U.R.E.S. reports he reviewed that
27 Respondent has engaged in excessive use of Xanax (Alprazolom), especially given his history of
28 inpatient alcohol rehabilitation. The usual dose of Xanax is .5 mg to 6 mg per day. On April 20,

1 2009, April 24, 2009 and April 28, 2009, Respondent was prescribed Xanax at 2 mg tabs in
2 amounts of 20 pills. This means that during this period he was taking about five tablets of Xanax
3 2 mg per day (10 mg/day). Dr. Botello opined that this dosage is much higher than the
4 recommended dose of this medication.

5 23. Fundamentally, Dr. Botello believes that Respondent has major mental disorders for
6 which he is not in treatment with a psychiatrist. This places him at risk of being a danger to
7 himself, impaired and unable to practice medicine safely due to the effects of the medications
8 Respondent is taking in combination with each other. Like Dr. Patel, Dr. Botello observed that
9 Subutex, Xanax and Adderall, together and separately, affect the ability to make sound medical
10 and clinical judgments contrary to the duties of a doctor, particularly in the prescribing of
11 medications.

12 **PRAYER**

13 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Medical Board of California issue a decision:

- 15 1. Revoking or suspending Physician's and Surgeon's Certificate Number A24439,
16 issued to James Hirtle, M.D.;
- 17 2. Revoking, suspending or denying approval of his authority to supervise physician
18 assistants, pursuant to section 3527 of the Code;
- 19 3. Ordering him to pay the Medical Board of California, if placed on probation, the costs
20 of probation monitoring;
- 21 4. Taking such other and further action as deemed necessary and proper.

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23
24 DATED: March 1, 2010

A. Renee Threan 4/9

LKW
LINDA K. WHITNEY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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9 **BEFORE THE**
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 05-2009-200515

12 JAMES ALLEN HIRTLE, M.D.

REQUEST FOR DISCOVERY

13
14 Respondent.

15 TO RESPONDENT:

16 Under section 11507.6 of the Government Code of the State of California, parties to an
17 administrative hearing, including the Complainant, are entitled to certain information concerning
18 the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code
19 concerning such rights is included among the papers served.
20

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

- 23 1. Provide the names and addresses of witnesses to the extent known to the Respondent,
24 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 the
26 following in the possession or custody or under control of the Respondent:
27
28

1 a. A statement of a person, other than the Respondent, named in the initial
2 administrative pleading, or in any additional pleading, when it is claimed that the act or
3 omission of the Respondent as to this person is the basis for the administrative proceeding;

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

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

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

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

14 f. Investigative reports made by or on behalf of the Respondent pertaining
15 to the subject matter of the proceeding, to the extent that these reports (1) contain the names
16 and addresses of witnesses or of persons having personal knowledge of the acts, omissions
17 or events which are the basis for the proceeding, or (2) reflect matters perceived by the
18 investigator in the course of his or her investigation, or (3) contain or include by attachment
19 any statement or writing described in (a) to (e), inclusive, or summary thereof.
20

21 For the purpose of this Request for Discovery, "statements" include written statements by
22 the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical
23 or other recordings, or transcripts thereof, of oral statements by the person, and written reports or
24 summaries of these oral statements.
25

26 YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery
27 should be deemed to authorize the inspection or copying of any writing or thing which is
28

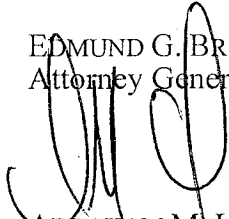
1 privileged from disclosure by law or otherwise made confidential or protected as attorney's work
2 product.

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

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

9 Dated: February 22, 2010

EDMUND G. BROWN JR.
Attorney General of California



ABRAHAM M. LEVY
Deputy Attorney General
Attorneys for Complainant

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20 req for discovery.rtf

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STATE OF CALIFORNIA

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10 In the Matter of the Accusation Against:

Case No. 05-2009-200515

11 **JAMES ALLEN HIRTLE, M.D.**

STATEMENT TO RESPONDENT

12 Respondent.

[Gov. Code §§ 11504, 11505(b)]

13
14 TO RESPONDENT:

15 Enclosed is a copy of the Accusation that has been filed with the Medical Board of
16 California of the Department of Consumer Affairs (Board), and which is hereby served on you.

17 Unless a written request for a hearing signed by you or on your behalf is delivered or
18 mailed to the Board, represented by Deputy Attorney General Abraham M. Levy, within fifteen
19 (15) days after a copy of the Accusation was personally served on you or mailed to you, you will
20 be deemed to have waived your right to a hearing in this matter and the Board may proceed upon
21 the Accusation without a hearing and may take action thereon as provided by law.

22 The request for hearing may be made by delivering or mailing one of the enclosed forms
23 entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in
24 section 11506 of the Government Code, to

25
26 **Abraham M. Levy**
Deputy Attorney General
Ronald Reagan Building
27 **300 South Spring Street, Suite 1702**
Los Angeles, CA 90013
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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 Board, 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 on you.

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

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in section 11507.6 of the Government Code in the possession, custody or control of the Board you may send a Request for Discovery to the above designated Deputy Attorney General.

NOTICE REGARDING STIPULATED SETTLEMENTS

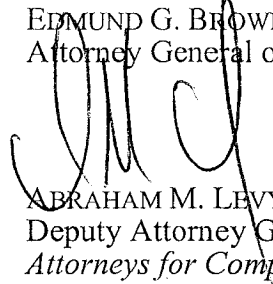
It may be possible to avoid the time, expense and uncertainties involved in an administrative hearing by disposing of this matter through a stipulated settlement. A stipulated settlement is a binding written agreement between you and the government regarding the matters charged and the discipline to be imposed. Such a stipulation would have to be approved by the Medical Board of California but, once approved, it would be incorporated into a final order.

Any stipulation must be consistent with the Board's established disciplinary guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the Board's Disciplinary Guidelines will be provided to you on your written request to the state agency bringing this action.

1 If you are interested in pursuing this alternative to a formal administrative hearing, or if you
2 have any questions, you or your attorney should contact Deputy Attorney General Abraham M.
3 Levy at the earliest opportunity.

4 Dated: February 22, 2010

EDMUND G. BROWN JR.
Attorney General of California


ABRAHAM M. LEVY
Deputy Attorney General
Attorneys for Complainant

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statement to respondent.rtf

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

In the Matter of the Accusation Against:

JAMES ALLEN HIRTLE, M.D.

Respondent.

Case No. 05-2009-200515

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation ; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

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

Dated: _____

Respondent's Name: _____

Respondent's Signature: _____

Respondent's Mailing

Address: _____

City, State and Zip Code: _____

Respondent's Telephone: _____

Check 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 the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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
<u>Ethics/Professionalism Course</u>	
1) California Medical Association www.cmanet.org	\$1,900
<u>Medical Record Keeping Course</u>	
1) Medical Record Keeping Course (PACE)	\$1,250
2) Case Western Reserve University (Cleveland, Ohio)	\$700

Revised 09/05

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

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: Request for discovery

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.

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 its 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 in 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.

DECLARATION OF SERVICE BY CERTIFIED AND FIRST CLASS MAIL

In the Matter of the Accusation Against:

James Hirtle, M.D.

File No. 06-2009-200515

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 2005 Evergreen St., Suite 1200, Sacramento, California 95815. 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); 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 #

James Hirtle, M.D.
P. O. Box 349
Burbank, CA 91503

7009 2250 0004 4591 8837

James Hirtle, M.D.
175 East Olive Aveue
Burbank, CA 91502

7009 2250 0004 4591 8844


Abraham M. Levy
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

U.S. MAIL SERVICE

Each said envelope was then, on March 1, 2010, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, either as certified mail or first class U.S. mail with the postage thereon fully prepaid and return receipt requested for the certified mail.

Executed on March 1, 2010, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Arlene Krysinski, Declarant

7009 2250 0004 459J 8844

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

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

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 Street, Apt. or PO Box
 City, State

James Hirtle, M.D.
 175 East Olive Avenue
 Burbank, CA 91502

7009 2250 0004 459J 8837

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

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

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To

Street, Apt. No. or PO Box No.
 City, State, ZIP

James Hirtle, M.D.
 P. O. Box 349
 Burbank, CA 91503

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Exhibit B

Interim Suspension Order Pending Administrative Determination Dated February 26, 2010

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

**In the Matter of the Petition for Interim
Suspension Order Against:**

JAMES HIRTLE, M.D.

Physician's and Surgeon's Certificate No. A24439

Respondent.

Case No. 06-2009-200515

OAH No. 2010011291

ORDER GRANTING PETITION FOR INTERIM SUSPENSION

On January 29, 2010, Barbara Johnston (Petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, filed a Petition for Interim Order of Suspension (Petition), to be heard on an ex parte basis pursuant to Government Code section 11529, seeking to summarily suspend Physician's and Surgeon's Certificate Number A24439, issued to James Hirtle, M.D.

On February 2, 2010, at Los Angeles, California, the Petition came on regularly for hearing on an ex parte basis before Janis S. Rovner, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, in Los Angeles, California. Abraham Levy, Deputy Attorney General, represented Petitioner. James Hirtle, M.D. (Respondent) did not appear at the hearing nor did anyone appear on his behalf, although he received proper notice of the Petition and ex parte hearing pursuant to Government Code section 11529 and California Code of Regulations, title 1, section 1012.¹

A person who described himself as a friend of Respondent called the Office of Administrative Hearings in Los Angeles at approximately 12:30 p.m. on February 2, 2010, about an hour before the Petition hearing was scheduled to commence. The friend told Presiding Administrative Law Judge (PALJ) Michael Scarlett that Respondent's spouse had fallen as he and his spouse were coming to the hearing, and that Respondent would not appear because he was taking his spouse to the hospital. PALJ Scarlett told the caller the hearing would not be postponed, and would proceed as scheduled.

On February 5, 2010, ALJ Rovner granted the ex parte Petition suspending Respondent Hirtle's Physician's and Surgeon's Certificate Number A24439 (ex parte ISO), and ordered a noticed hearing on the Petition to be held on February 18, 2010, pursuant to Government Code section 11529, subdivision (c).

The noticed hearing on the Petition came on regularly for hearing before Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings, on February 18, 2010. Abraham Levy, Deputy Attorney General, represented Petitioner. Respondent James Hirtle, M.D. did not appear at the hearing nor did anyone appear on his behalf, although he was properly notified of the February 18, 2010 hearing date.

The Administrative Law Judge (ALJ) read and considered the Petition and the declarations, and the points and authorities filed in support thereof, and heard and considered Petitioner's oral argument made at the hearing. The matter was submitted on February 18, 2010.

FACTUAL FINDINGS

1. Petitioner filed the Petition for Interim Suspension Order (Petition) while acting in her official capacity as the Executive Director of the Board.
2. On September 7, 1971, the Board issued Physician's and Surgeon's Certificate No. A24439, to Respondent. Respondent's certificate will expire on January 31, 2011, unless renewed.
3. The Petition and supporting documents, notice of the February 18, 2010 hearing, and the ex parte ISO were properly served on Respondent Hirtle on February 5, 2010 and again on February 8, 2010. Respondent received timely and proper notice of the ex parte ISO and the February 18, 2010 hearing date.
4. On September 15, 2009, Board Investigator Aracely Villalobos (Villalobos) called Respondent to schedule him for an interview at the Board's Glendale District Office the next day. The investigator provided Respondent with the address and directions. According to the investigator, Respondent seemed confused by the directions she gave him to the district office. The investigator had to give him the address of the district office four times and Respondent did not seem to understand the directions. She described Respondent's speech as much slower and slurred that day than in other previous conversations she had with him.
5. On October 6, 2009, a Petition for an Order Compelling Mental and Physical Examination was filed, seeking to compel Respondent to undergo mental and physical examinations pursuant to Business and Professions Code section 820. Thereafter, an Order Compelling Mental and Physical Examination was issued.

6. On November 7, 2009, Nehal Patel, M.D. performed a physical examination of Respondent at his residence. Respondent was practicing medicine out of his residence, an apartment. Following that examination, Dr. Patel concluded that Respondent was unsafe to practice medicine. During the examination, Respondent explained that he was being treated by two physicians. Pursuant to one of his physician's orders, Respondent takes 8 milligrams of Subutex twice per day. Subutex is primarily a medicine for people suffering from opioid withdrawal and is used less commonly for pain management. Respondent also takes Adderal, an amphetamine, at 30 milligrams per dose three times per day, which he self-prescribes.² The Adderal is for his attention deficit hyperactivity disorder (ADHD). Respondent takes Xanax, a benzodiazepene, at two milligrams three times per day, which is a particularly strong dose. Respondent's other doctor prescribes the Xanax for anxiety. According to Dr. Patel, these three drugs are powerful medications and should be administered by one doctor to ensure that Respondent is being properly monitored. The use of the drugs in combination would affect Respondent's judgment and impair his clinical skills. Dr. Patel opined that Respondent is not able to practice medicine and represents a danger to himself and his patients because of the medications he is taking and their combination.

7. On November 5, 2009, Timothy Botello, M.D., performed a psychiatric examination of Respondent. Following that examination, Dr. Botello opined that Respondent is impaired and a danger to himself due to major mental health disorders, based on his use of Xanax, Adderal, and Subutex, without the direction of a treating psychiatrist. Dr. Botello believes that Respondent suffers from the following: Axis I: History of Bipolar II Disorder; History of Adjustment Deficit Disorder with anxious mood, and history of Alcohol Use Disorder; Axis II (no disorder); Axis III: chronic Pain Syndrome from back pain/myofascitis, on Subutex. Given the combination and interaction of medications that Respondent is taking, along with Respondent's major mental disorders, Dr. Botello believes that Respondent is impaired and unable to practice medicine safely. The medications can affect his ability to make sound medical and clinical judgments.

8. Respondent continues in the practice of medicine from his residence. Respondent has recently been through very difficult financial times. He lost his office lease and his home was foreclosed.

9. The evidence established that Respondent suffers from physical and mental impairment that interfere with his ability to practice medicine safely.

² In the past, Adderal has also been prescribed by one of his other doctors.

LEGAL CONCLUSIONS

1. Respondent suffers from physical and mental impairment that interfere with his ability to practice medicine safely.
2. Petitioner established that permitting Respondent to continue to engage in the practice of medicine will endanger the public health, safety, or welfare, and poses a risk of serious injury to the public justifying the issuance of an Interim Suspension Order pursuant to Government Code section 11529.
3. Petitioner established that the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.
4. There is a reasonable probability that Petitioner will prevail on the merits based on the evidence.
5. Based on the evidence and the argument presented, the issuance of an Interim Suspension Order is warranted at this time.

ORDER

1. The Petition is granted.
2. Physician's and Surgeon's Certificate number A24439 issued to Respondent James Hirtle, M.D., and all licensing rights appurtenant thereto, are hereby suspended pending a full administrative determination of Respondent's ability to practice medicine safely.
3. Respondent shall not:
 - a. Practice or attempt to practice any aspect of medicine in the State of California;
 - b. Be present in any location which is maintained for the purpose of practicing medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends;
 - c. Advertise, by any means, or hold himself out, as practicing or available to practice medicine;

d. Possess, order, purchase, receive, prescribe for himself or others, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law, except as prescribed for Respondent by Respondent's treating physician, who shall be licensed in the State of California;


e. Respondent shall immediately deliver to the Medical Board of California, or its agent, for safekeeping pending the effective date of the Board's final administrative order in this matter, all indicia of his licensure as a physician and surgeon, as contemplated by Business and Professions code section 119, including but not limited to his wall certificate and wallet card issued by the Medical Board of California.

4. Pursuant to Government Code section 11529, an Accusation in this matter shall be filed and served not later than 15 days from the date of this Order.

5. The Office of the Attorney General shall serve written notice of this Order on Respondent Hirtle by 24-hour delivery service and certified mail.

IT IS SO ORDERED.

DATED: February 26, 2010


IANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE**Case Name: James A. Hirtle M.D.****OAH No.: 2010011291**

I, Maryjosephine Norrington, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 W. Fourth Street, Suite 630, Los Angeles, CA 90013. On February 26, 2010, I served a copy of the following document(s) in the action entitled above:

ORDER GRANTING PETITION FOR INTERIM SUSPENSION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

James A. Hirtle M.D.
P. O. Box 349
Burbank, CA 91503

Abraham M. Levy, Deputy Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Via US Mail

Via Fax: 213-897-9395

James A. Hirtle M.D.
831 Mariposa St., Apt. E
Glendale, CA 91205


Via GSO Tracking No.: **513648808**
Via US Mail

United States Mail. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package for collection and mailing, in accordance with the Office of Administrative Hearings' ordinary business practices, in Los Angeles, California. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing documents for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope or package with postage fully prepaid [by certified mail].

Fax Transmission. I personally transmitted the above-described document(s) to the person(s) at the fax number(s) listed above, from fax machine number (213) 576-7244, pursuant to Government Code section 11440.20 and California Code of Regulations, title 1, section 1008, subdivision (d). The fax transmission was reported as complete and without error. A copy of the transmission report showing the date and time of transmission, properly issued by the transmitting machine, is attached to this declaration of service.

Overnight Delivery. I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

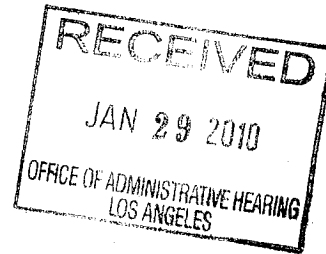
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on February 26, 2010.


Maryjosephine Norrington, Declarant

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Exhibit C
Declaration of Nehal Patel, M.D.

1 EDMUND G. BROWN JR.
Attorney General of California
2 ABRAHAM M. LEVY
Deputy Attorney General
3 State Bar No. 189671
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-0977
5 Facsimile: (213) 897-9395
Attorneys for Petitioner



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

11 In the Matter of the *Ex Parte* Petition for
12 Interim Suspension Order Against:

13 **JAMES HIRTLE, M.D.**

14 Respondent.

Case No. 06-2009-200515

OAH No.

EX PARTE PETITION FOR INTERIM
SUSPENSION ORDER (06-2009-200515)

**DECLARATION OF NEHAL PATEL,
M.D.**

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17 I, Nehal Patel, M.D. declare as follows:

18 I am a physician licensed in California and make the following statements based on my
19 personal knowledge. If called as a witness, I could and would testify competently thereto.

20 1. I submit this delcaration in support of Medical Board Executive Director Barbara
21 Johnston (Petitioner) Ex Parte Petition for an Interim Suspension Order against James Hirtle,
22 M.D.

23 2. I was asked by the Medical Board to perform a physical evaluation of James
24 Hirtle, M.D. I performed the evaluation on November 7, 2009 at Dr. Hirtle's residence and
25 issued a report on or about November 14, 2009. A true and correct copy of my report is attached
26 here as Attachment A.

27 3. My conclusion following my examination of Dr. Hirtle is that he is unsafe to
28 practice medicine. My conclusion is based on my review of the investigation report of James

1 Hirtle by Aracely Villalobos, Medical Board Senior Investigator, Cerritos District Office, a
2 comprehensive physical examination, which I conducted on November 7, 2009 and a review of
3 CURES reports where Dr. Hirtle acts as both the prescriber and patient.

4 4. On November 7, 2009, when I examined Dr. Hirtle, I first observed that he was
5 working out of his apartment and did not have an office and he was calling in a prescription for
6 "Subutex." Subutex is a medication used primarily for persons suffering from opioid withdrawal
7 and addiction. It is also used, less commonly, for pain management. Dr. Hirtle confirmed to me
8 that he works out of his apartment and is currently following "old stable patients" and calling in
9 medications.

10 5. As part of my evaluation of Dr. Hirtle I note the following: His past medical history
11 includes severe and chronic myofascitis and ADHD (Attention Deficit Hyperactivity Disorder).
12 Dr. Hirtle sees two doctors, Richard Keech, M.D., a primary care physician, whom he sees
13 monthly and Matthew Torrington, M.D. who practices family medicine and addiction and pain
14 medicine.

15 6. Dr. Hirtle takes Subutex at 8 mg twice daily and has been taking this medication
16 for five years. He takes it for pain management. He takes Adderal at 30mg three times daily. Dr.
17 Hirtle also takes Xanax at 2 mg three times a daily. I note that taking Xanax at 2 mg is a
18 particularly strong dose. I note that an October 13, 2009 toxicology screen shows that Dr. Hirtle
19 tested positive for amphetamines and benzodiazepenes. This would represent the Adderal and
20 Xanax medications Dr. Hirtle takes.

21 7. Dr. Hirtle is self-prescribing Adderal for himself. I see no reason for his doing this
22 since he is seeing Dr. Keech, a specialist in pain and addiction medicine. Dr. Keech, on the other
23 hand, prescribes Xanax to Dr. Hirtle at 2 mg three times a day. In turn, Dr. Torrington is
24 prescribing Subudex to Dr. Hirtle.

25 8. Of particular concern to me, accordingly, is that no one doctor is managing the
26 prescription of these powerful medications to Dr. Hirtle to ensure that Dr. Hirtle takes these
27 medications appropriately and safely. He is also not seeing a psychiatrist to evaluate his ADHD
28 and anxiety.

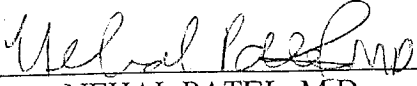
1 9. These medications, by themselves, have powerful side-effects that effect judgment
2 and insight; their use in combination, moreover, would further affect judgment and the ability to
3 make sound judgments because in combination these medications result in powerful and mind-
4 altering symptoms which would effect good judgment and impair clinical skills. A medical doctor
5 needs to be in sound physical and mental condition in order to make sound decisions in assessing
6 and prescribing medications, especially when dealing with a persons suffering from narcotic
7 addictions and their effects. Without the ability to make sound judgments in prescribing Subutex I
8 fear that his patients may be harmed. Given my observation that Dr. Hirtle is calling in
9 prescriptions for Subutex out of his apartment and lacks an office to appropriately examine and
10 assess patients makes me concerned that he prescribing Subutex and other medications
11 inappropriately.

12 10. I have an additional comment concerning Dr. Hirtle's ability to make sound
13 judgments. The fact that Dr. Hirtle is self-prescribing Adderal and not under the management of
14 one doctor for Xanax and Subutex suggests to me that he is engaging in drug-seeking behavior.
15 Based on my experience patients who seek benzodiazapenes such as Xanax and amphetamines
16 such as Adderal mind from numerous physicians commonly are engaging in drug seeking
17 behavior since no one doctor may know all of the medications the patient is taking for appropriate
18 control and management. The fact that he is getting these medications from three sources
19 including himself also suggests to me that he lacks insight into the nature and extent of any
20 underlying mental or physical condition he may have. My concern is heightened because he is not
21 seeing a psychiatrist for his anxiety, for which he is taking Xanax, and ADHD, for which is
22 taking Adderal.

23 11. Dr. Hirtle is not able to practice medicine and represents a danger to himself and
24 his patients because of the medications he is taking and their combination. With proper medical
25 treatments and medications, he could improve enough to resume his medical practice. Before
26 resuming her medical practice, Dr. Hirtle should be be evaluated a second time.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at La Mirada, CA on January 11, 2010.



NEHAL PATEL, M.D.
Declarant

LA2009506600
60444873.doc

ATTACHMENT A

COMPREHENSIVE HISTORY & PHYSICAL
AND MODIFIED MENTAL EXAMS

Case Number: 06-2009-200515
Date of Exam: November 7, 2009 from 1pm-2:30pm
Location of Exam: Dr. Hirtle's Residence
831 Mariposa St
Apt E
Glendale CA 91205

Subject: Hirtle MD, James (DOB 1/12/45)

Attendees:

1. Nehal Patel, MD (Board Certified in Family Medicine & Geriatrics)
2. James Hirtle, MD
3. Joan (Dr. Hirtle's significant other)

Records Reviewed:

1. Investigation Report
2. Original Complaint
3. CURES report for Dr. Hirtle as the prescriber
4. CURES report for Dr. Hirtle as the patient
5. District Medical Consultant's declaration
6. Police report regarding an arrest prior
7. Biological test results

Source of History: Dr. Hirtle and his significant other, Joan, along with the Medical Board of California's (MBC) records listed above are the source of this comprehensive exam. Dr. Hirtle appeared to be a reliable historian. He did not appear to be under the influence of any drugs, controlled substances or alcohol. He was aware of my visit and knew the reason why I was there. Dr. Hirtle was first licensed to practice medicine in 1971. He stated his license is current and renewed. He denied any malpractice judgments or disciplinary action.

History of Present Problem: Dr. Hirtle is currently being investigated by the MBC to determine if he is physically and mentally competent to safely practice medicine. Dr. Hirtle is currently being investigated by the MBC to assess his physical and mental conditions secondary to a strong suspicion he is practicing medicine under the influence of prescription medication and/or drugs. He has been calling in medications (Adderall) and is being prescribed Subutex, indicated for opioid withdrawal.

When I arrived to Dr. Hirtle's residence, his significant other, Joan, answered the door and invited me in. My observations noted that Dr. Hirtle was on the phone calling in a prescription for a patient. I noted him calling in Subutex. He also presented me with an article titled "Prevention & Treatment of Addiction." He also talked excessively about Subutex and how it is a "wonderful" and "miracle" drug.

Dr. Hirtle conveyed to me that he is currently practicing medicine but does not have an office. He is

currently "following old stable patients" and is still prescribing & calling-in medications. He stated he makes notes on Progress Notes.

Chief Complaint: "No complaints."

Past Medical History: Severe & chronic myofascitis. ADHD.
Richard Keech, MD - primary care; sees him monthly
Matthew Torrington, MD - FP/Addiction/Pain; sees him every other month

Past Surgical History: Not applicable

Social History: +Smoker 2-3 cigs/day. +Alcohol use socially. Denied illicit drug use.

Family History: Mother passed age 76 due to lung cancer. Father passed age 76 due to a brain tumor. He has 1 older sister.

Current Medications: Subutex 8mg BID (taking 5 yrs). Adderall 30mg TID, Xanax 2mg TID. Osteobioflex, B50 complex, Colace and Aleve.

Allergies: NKDA

Review of Systems:

GENERAL: Denied fatigue or lack of energy. Denied fever, chills or night sweats.
APPETITE: Good appetite, no problems. Follows low fat/low cholesterol diet.
DRIVING: Has a valid DL but does no car. He was recently arrested driving a stolen rental vehicle 2/09.
HEAD: No dizziness or loss of consciousness.
EYES: No blurring, photophobia, pain or eye trauma. He wears reading glasses.
EARS: Hearing is normal. No tinnitus or vertigo.
NOSE: No loss of sense of smell, obstruction, epistaxis or postnasal drip.
ORAL: No hoarseness or sore throat.
RESP/CARDIAC: Denied chest pain, shortness of breath or wheezing.
GASTRO: Denied abdominal pain. Elimination pattern normal.
RENAL/URINARY: No hematuria, nocturia or flank pain.
MUSKULOSKELETAL: No ambulatory device needed. No swelling, redness or pain.
NEURO: Denied any issues with memory, balance, loss of consciousness or weakness.
PSYCHIATRIC: Denied depression or feelings of worthlessness. Feels happy. Admitted to +anxiety.

Physical Exam:

Vital signs-
Blood pressure-Unable to obtain an automatic reading after 3 attempts
Pulse=68 Respiratory rate=20 Pain=0/10 Wt=192lbs Ht=5'7"
General appearance/observations: Well developed and groomed male. He is cooperative and dressed appropriately. He exhibited a sarcastic sense of humor. He was noted to be calm and pleasant.
HEENT: Normocephalic/atraumatic. Pupils equal, round and reactive to light. External auditory canals normal bilaterally. Nares patent, no polyps seen. Throat clear. Teeth in good condition. No erythema.
LUNGS: Clear to auscultation bilaterally. No wheezing, rhonchi or rales.

HEART: Regular rate and rhythm

ABDOMEN: Soft, non-tender and non-distended. Moderately overweight.

GENITOURINARY/RECTAL: Not indicated

EXTREMITIES: No cyanosis, clubbing or edema. No signs of needle marks visible.

MUSKULOSKELETAL: Full range of motion. Muscle strength 5/5 bilateral upper and lower extremities. No kyphosis or lordosis.

NEUROLOGICAL: Cranial nerves II-XII grossly intact. Sensation intact to pinprick, vibration and proprioception bilaterally upper and lower extremities. Normal deep tendon reflexes. Romberg negative. Straight-line walking test normal. Balance is normal. He is able to raise his left leg to touch his right shin and vice versa. No evidence of resting or active tremors.

ADL'S: Completely independent

IADL'S: Completely independent

10/13/09 urine tox screen: +amphetamines and +benzodiazepenes

Mental Exams (see attached):

Mini-Mental State Exam=30/30

Montreal Cognitive Assessment (MOCA)=28/30 (missed 2 points on delayed recall)

Yesavage Depression Scale=0/15 (negative for depression)

Impressions/Recommendations:

1. Normal physical exam with no evidence of drug (prescription, non-prescription or illicit) or alcohol influence – of course, Dr. Hirtle was aware of this physical exam and potentially avoided taking any medications prior to my arrival.

2. Current use of multiple prescriptions – Subutex, Adderall and Xanax 2mg (this is a strong dose). -I am highly concerned that these 3 medications when used together, would preclude Dr. Hirtle from practicing medicine safely.


-Dr. Hirtle is calling in Adderall himself without displaying proper insight or judgment. There should be no reason for himself to call in this medication when he is seeing Dr. Torrington, a physician specializing in Pain/Addiction Medicine.

-The combination use of these 3 medications can result in powerful mind-altering symptoms which can definitely interfere with good judgment and impair clinical skills.

-Dr. Hirtle's practice of medicine from his home appears not to be a professional practice or professional activity.

3. ADHD – Dr. Hirtle is taking Adderall. I would recommend that he see a Psychiatrist to follow-up and evaluate the extent of his ADHD.

4. Anxiety – Dr. Hirtle is taking Xanax. I would recommend that he see a Psychiatrist to follow-up and evaluate the extent of his anxiety.

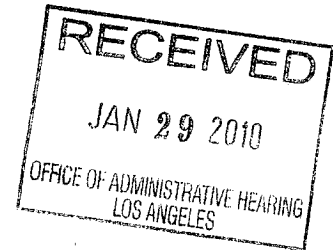

Nehal Patel, MD

11-14-09
Date

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Exhibit D
Declaration of Tim Botello, M.D.

1 EDMUND G. BROWN JR.
Attorney General of California
2 ABRAHAM M. LEVY
Deputy Attorney General
3 State Bar No. 189671
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-0977
5 Facsimile: (213) 897-9395
Attorneys for Petitioner



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

12 In the Matter of the *Ex Parte* Petition for
13 Interim Suspension Order Against:

14 **JAMES HIRTLE, M.D.**

15 Respondent.

Case No. 06-2009-200515

OAH No.

EX PARTE PETITION FOR INTERIM
SUSPENSION ORDER (06-2009-200515)

DECLARATION OF TIM BOTELLO,
M.D.

16
17
18 I, Timothy Botello, M.D. declare as follows:

19 I am a physician licensed in California and am board certified in psychiatry. I make the
20 following statements based on my personal knowledge. If called as a witness, I could and would
21 testify competently thereto.

22 1. I submit this declaration in support of Medical Board Executive Director Barbara
23 Johnston's (Petitioner's) Ex Parte Petition for an Interim Suspension Order against James Hirtle,
24 M.D.

25 2. I was asked by the Medical Board to perform a psychiatric evaluation of James
26 Hirtle, M.D. I performed the evaluation on November 5, 2009 at my office and issued a report on
27 or about November 25, 2009. A true and correct copy of my report is attached here as
28 Attachment A.

1 3. My conclusion following my examination and testing of Dr. Hirtle is that he is
2 impaired and a danger to himself due to major mental health disorders, based on his use of Xanax
3 (alprazolam, a benzodiazepine), Adderall (an amphetamine), and Subutex (an opiate) without the
4 direction of a treating psychiatrist, and for additional reasons I outline below.

5 4. My conclusion is based on my review of the investigation report of Aracely
6 Villalobos, Medical Board Senior Investigator, Cerritos District Office; a comprehensive mental
7 status examination; C.U.R.E.S reports where Dr. Hirtle was the prescriber and where he was the
8 patient; the declaration of Medical Board Consultant Paul Zeltzer, M.D.; police report regarding
9 an arrest for grand theft auto; my phone conversation with Dr. Richard Keech, M.D., Dr. Hirtle's
10 current primary care doctor on November 13, 2009, and my telephone interview with Dr.
11 Matthew Torrington, M.D., Dr. Hirtle's current pain physician on November 20, 2009.

12 5. From this review of information I note the following: Investigator Villalobos had
13 to repeat the Medical Board's address to Dr. Hirtle four times for his scheduled interview with
14 Medical Board consultant, Dr. Zeltzer. Each time Dr. Hirtle asked Investigator Villalobos, "where
15 is this address to?" Investigator Villalobos further observed that Dr. Hirtle's speech was "slower
16 and (he) slurred (more) than in any other conversations I have had with him in the past." Dr.
17 Hirtle did not appear for the interview with Dr. Zeltzer because he was not feeling well.

18 6. As part of the mental status examination of Dr. Hirtle, which I conducted, Dr.
19 Hirtle told me that he has been undergoing serious financial difficulties. He lost his office lease
20 and in February 2009 his home was foreclosed. In February 2009 he was arrested for stealing a
21 car he had rented from Enterprise Rental Car company. Pursuant to the police inventory of the
22 stolen car the police found Amphetamine tablets, which Dr. Hirtle indicated was for treatment of
23 Attention Deficit Hyperactivity Disorder (ADHD).

24 7. Dr. Hirtle, in addition, told me that he has chronic pain from myofascitis and
25 paraspinal muscles. He told me, "I made the diagnosis and it was confirmed by Dr. Jorge Minor.
26 Dr. Minor had prescribed Oxycontin and opiates for three to five months, along with Botox
27 injections in trigger points." However, the pain persisted and for the last three to four years, Dr.
28

1 Torrington has prescribed Subutex, an opiate, at 4 mg dosages to him for chronic pain. Subutex is
2 a buprenorphine sublingual tablet, a Schedule III narcotic. It is a partial agonist at the mu opioid
3 receptor and is used for the treatment of opiate dependence. The prescribing physician must be
4 certified by the Drug Enforcement Agency in the prescribing of buprenorphine. Subutex has also
5 been used off-label for treatment of chronic pain, which Dr. Hirtle stated is the reason he takes
6 Subutex.

7 8. I note that he denied any other mental problems.

8 9. I made the following mental status examination findings: His mood was dysthymic
9 when talking about his financial problems, legal problems, his lack of full-time employment, and
10 lack of an office. He told me that he was “upended by the economy; foreclosed on by Well Fargo
11 illegally, being reviewed now. . .” He expressed anger over the Medical Board’s investigation
12 and felt that the investigator was on a “witch hunt” against him. Dr. Hirtle’s speech had a normal
13 rate and volume. He denied racing thoughts or delusions. He denied suicidal ideation or
14 homicidal ideation. He could recount his history from memory. He could perform serial sevens
15 from 100 without error. His intelligence is above average. His insight was fair. He stated that he
16 had “ADD and situational anxiety for the past 3 months.” He commented, “I had lost \$1.5 million
17 and how I survived is a miracle.” His judgment was impaired as shown by his comments that he
18 lost \$1.5 million dollars in real estate holdings, he lost his retirement funds; and his psychiatric
19 practice was a “financial disaster.” He stated that during that time, “I was in a state of denial, not
20 believing it was happening. My focus was on my patients. . .”

21 10. Accordingly, I believe that Dr. Hirtle suffers from the following: Axis I: History
22 of Bipolar II Disorder; History of Adjustment Deficit Disorder with anxious mood, and history of
23 Alcohol Use Disorder; Axis II (no diagnosis); Axis III: Chronic Pain Syndrome from back
24 pain/myofascitis, on Subutex.

25 11. As an additional part of my assessment of Dr. Hirtle’s mental condition, I talked
26 with Dr. Keech, Dr. Hirtle’s primary care physician for the last fifteen years. He told me, in
27 pertinent part, the following: Dr. Hirtle has had a history of Bipolar Disorder and “tends to be
28 depressed and not able to practice psychiatry in a normal manner-psychotherapy: doing disability

1 evaluations and alcohol and drug dependency and (he is) not engaged in ongoing psychotherapy.”
2 Dr. Keech recalled filling out disability forms for Dr. Hirtle to collect disability payments for his
3 Bipolar Disorder. Dr. Keech had talked to Dr. Hirtle when he was “very depressed” and “when he
4 becomes depressed, almost suicidal,” but “never seen him irrational” or display manic symptoms.
5 Dr. Hirtle had been at the Betty Ford Rehabilitation Center for one month “for alcohol.” In
6 December 2004 Dr. Keech stated that Dr. Hirtle made the case of ADHD to him and that is when
7 Dr. Keech prescribed Adderall 30 mg tablets to him. He last prescribed Adderall to Dr. Hirtle on
8 August 25, 2009 but did not renew Adderall on October 9, 2009 when he last saw Dr. Hirtle. Dr.
9 Keech also has been prescribing a benzodiazapine, Xanax 2mg tablets, for anxiety and situational
10 stress.

11 12. I also talked with Dr Torrington, Dr. Hirtle’s pain doctor, who has been
12 prescribing Subutex to Dr. Hirtle. Dr. Torrington told me that he is not a psychiatrist but is a
13 regional expert on Subutex. He confirmed that Dr. Hirtle takes Subutex for its off label use for
14 chronic pain. Dr. Torrington has known Dr. Hirtle through professional associations. He has been
15 treating him since 2005 after Dr. Hirtle asked Dr. Torrington to treat him with Subutex for
16 chronic pain. Dr. Torrington has been treating him for free as a professional courtesy, but
17 especially for the “severe psychosocial stressors in the past year, including homelessness.” He has
18 not observed him to be abusing Subutex. But, contrary to what Dr. Hirtle told me, Dr. Torrington
19 stated that Dr. Hirtle is not on an opiate contract. With respect to prescribing Adderall to a patient
20 already on a buprenorphine, Dr. Torrington stated that “one has to be pretty cautious but it
21 (Adderall) is not contraindicated with buprenorphine treatment. It (ADHD) was not my
22 diagnosis.” My concern based on this comment is that Dr. Hirtle is not under the management of
23 a treating psychiatrist who can coordinate the different prescription for his major mental
24 disorders.

25 13. I also note that from the C.U.R.E.S. reports I reviewed, Dr. Hirtle has been
26 engaging in excessive use of Xanax (alprazolam), especially given his history of inpatient alcohol
27 rehabilitation. The usual dose of Xanax is .5 mg to 6 mg per day. On April 20, 2009, April 24,
28 2009, and April 28, 2009, Dr. Hirtle was prescribed Xanax at 2 mg tabs in amounts of 20 pills.

1 This means that during this period of three days, he was taking about five tablets of Xanax 2mg
2 per day (totaling 10 mg/day), which is much higher than the recommended daily dose of Xanax
3 (.5 mg to 6 mg per day).

4 14. Moreover, based on my review of the C.U.R.E.S. report, I note instances of
5 possible overprescribing of Oxycontin to two patients: A.D. and R.G. With regards to patient
6 R.G., Dr. Hirtle prescribed, on the same day, Oxycontin at 80 mg and 40 mg tabs in quantities of
7 90 and 75 pills respectively. He prescribed to patient A.D., Oxycontin in large and escalating
8 quantities on December 4, 2007, December 19, 2007, January 3, 2008, and January 21, 2008.
9 These prescriptions involved quantities of Oxycontin at 135, 180, 300 and 300 pills on each of
10 these four dates. Later in February 2009, Dr. Hirtle prescribed Subutex to patient A.D.

11 15. Fundamentally, Dr. Hirtle has major mental disorders for which he is not in
12 treatment with a psychiatrist. This places him at risk of being a danger to himself. Given the
13 combination of medications he is taking: namely, Subutex, an opiate; Adderall, an amphetamine,
14 and Xanax (alprazolam), a benzodiazepine, I believe he is impaired and unable to practice
15 medicine safely due to combination of major mental disorders and the the effects of these
16 medications in combination with each other. These medications, together and separately, can
17 affect the ability to make sound medical and clinical judgments. It is fundamental that a doctor
18 be in sound physical and mental condition in order to make sound judgments, particularly in the
19 prescribing of medications. Moreover, I come to the conclusion that he is impaired considering
20 all the facts I discuss above including: his history of Alcohol Use Disorder requiring inpatient
21 hospitalization; an indication of Xanax abuse in April 2009; reports where Dr. Hirtle sounded
22 confused, where his speech was slurred and slower in conversations; self-prescribing Adderall on
23 October 10, 2007, and his possible overprescribing of Oxycontin to two patients in 2007 and
24 2008.

25 16. Of particular concern to me is that no one doctor is managing and coordinating
26 his care to ensure that Dr. Hirtle takes all these medications (e.g., amphetamine, opiate, and
27 benzodiazepine) appropriately and safely. He is also not seeing a psychiatrist to evaluate and treat
28

1 his Bipolar Disorder, ADHD, anxiety, or prior history of Alcohol Use Disorder. This suggests to
2 me that he lacks some insight into the nature and degree of his major mental illness.

3 17. Accordingly, it is my opinion that Dr. Hirtle is not able to practice medicine
4 competently at this time because he represents a danger to himself and his patients as a result of
5 the medications he is taking and their combinations, and as a result of lack of treatment by a
6 psychiatrist to coordinate care and treatment of his major mental illnesses. With proper
7 psychiatric treatments and medications, including being under the care of a psychiatrist, Dr. Hirtle
8 could improve enough to resume his medical practice. Before resuming his medical practice, Dr.
9 Hirtle should be evaluated a second time.

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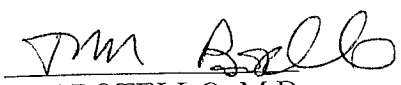
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at LA on 1-17-2010.


TIM BOTELLO, M.D.
Declarant

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ATTACHMENT A

Timothy Botello, M.D.
PO Box 86125
Los Angeles, CA 90086

November 25, 2009

Aracely Villalobos
Investigator
Medical Board of California
27202 Tunberry Lane, Suite 280
Valencia, CA 91355

Re: James Allen Hirtle, M.D.
Medical Board Case No. 06-2009-200515

MATERIALS REVIEWED:

1. Letter addressed to me dated October 30, 2009 from Aracely Villalobos
2. Investigation Report (06-2009-200515) prepared by Aracely Villalobos
3. Original Complaint
4. C.U.R.E.S. report for Dr. Hirtle as prescriber
5. C.U.R.E.S. report for Dr. Hirtle as patient
6. District Medical Consultant's declaration
7. Police report regarding an arrest
8. Biological test results
9. Telephone interview with Dr. Richard Keech, current primary care physician of Dr. Hirtle on November 13, 2009.
10. Telephone interview with Dr. Matthew Torrington, current pain physician of Dr. Hirtle on November 20, 2009.

SUMMARY OF PRESENTING PROBLEM:

This case was initiated by the Medical Board of California by an anonymous telephonic complaint from a pharmacist alleging that Dr. Hirtle "sounded like he was on drugs when he called in a prescription. He did not make sense. She said that this was not an isolated incident." A Controlled Substance Utilization Review (C.U.R.E.S. report) was obtained from July 2007 through July 14, 2009 for Dr. Hirtle as the prescribing physician and as a patient from July 2008 through July 30, 2009. On September 15, 2009, in a telephone conversation with Dr. Hirtle, Investigator Villalobos noticed that Dr. Hirtle seemed more confused by the information about Medical Board office and directions from his office to the Medical Board Office for the interview with Dr. Zeltzer on September 16, 2009. Investigator Villalobos had to repeat the address four times and each time Dr. Hirtle asked her "where is this address to?" Investigator Villalobos wrote that "his speech was

slower and slurred than in any other conversations I have had with him in the past.” Dr. Hirtle did not come in for the interview with Dr. Zeltzer, the Medical Board consultant, due to not feeling well. The case was reviewed by Dr. Paul Zeltzer, a District Medical Consultant, who found that Dr. Hirtle may be “practicing while impaired and may pose a direct threat to his patients and/or public safety.” There were unsuccessful attempts by the Medical Board investigator to interview Dr. Hirtle. A request was made to the Office of the Attorney General to pursue a request to compel Dr. Hirtle to undergo a mental and physical examination.

PERTINENT BACKGROUND HISTORY:

Dr. Hirtle stated that he was born in Hollywood and raised in Glendale, California. He described his father as “a military dad.” He described both his parents as “heavy drinkers.” He was involved in boxing at about age 7 and was “in golden gloves” during his first year at Brigham Young University in Utah, which he attended on a tennis scholarship. He stated that he converted to Mormon religion after his first year at Brigham Young University. He graduated from University of California at Irvine Medical School with honors in 1970. During his last year, he married first wife and the marriage lasted 10 years. He stated that they were only together about 5 of the 10 years since she would often live with her ailing mother. He filed for divorce after she kept moving back with her mother. He completed a one year internship at LAC+USC Medical Center. He then completed one year of orthopedic surgery residency at University of California at Irvine, but “got bored with it” and switched to psychiatry residency. He was in psychiatric residency at University of California at Irvine from 1972 to 1975; and he was Chief Resident in his last year. He never took his board examinations in psychiatry as a protest about the contents of the board examination. He then entered private practice doing some inpatient psychiatry work and also forensic psychiatry. He said that he set up the first family court in Newport Beach and was doing court evaluations at that time. In the 1980s he took a job as a psychiatrist with the Santa Barbara Department of Mental Health, working in forensic psychiatry, inpatient psychiatry and outpatient psychiatry. He stated that he also worked with the “CIA for Presidential detail during Reagan years.” After about 2 ½ years he resigned due to conflict with his supervisor, who was a social worker. Around this time, he met his current “domestic partner”, Joan. They started dating and then they moved in together after a couple of weeks. Since she had 4 children, he became an “instant dad.” Then they moved to Palos Verdes.

During the interview with me, Dr. Hirtle described himself as a psychiatrist involved in addiction medicine since 1998. He stated he studied with Dr. Volpicelli, an expert in addiction medicine, and spent a week with him in 1998 after reading a paper by Dr. Volpicelli, who was head of a treatment research unit. He spent several weeks a year with him and made multiple phone calls to Dr. Volpicelli. Dr. Hirtle described him as “my mentor and my best friend.” He stated that, “Now we supervise each other patients. We are on equal footing now. It took me several years to be on the same footing.” Dr. Hirtle stated that he developed a clientele from entertainment business. In early 2003, he moved to Burbank to become closer to the entertainment business, where he hoped to grow his addiction practice. He stated that 30-40% of his patients were writers, 20%

were talent persons, 10-20% of his patients were crew personnel and 5% were executives in the entertainment industry. He stated that most of his patients were referrals that came through as previous failures with an addiction problem. He started in 1998 with alcoholism treatment using Naltrexone, an opiate antagonist medication. He stated that everyone who complied with his program (i.e. regular follow-up, psychosocial treatment and Naltrexone) became abstinent from alcohol; he stated that he had only one failure in 10 years with 2 or 4 year follow-up. Dr Hirtle stated that he was certified in using Suboxone, a partial mu-opioid receptor agonist, as an opiate treatment and participated in teaching other physicians on how to use Suboxone at a course at U.C.L.A. Per Dr. Hirtle, other psychiatrists at UCLA who were involved in teaching on how to use Suboxone were Dr. Walter Lin and Dr. Matt Torrington. It should be noted that Dr. Matt Torrington has been the prescriber for Dr. Hirtle's own Subutex treatment.

Prior to 2007, Dr. Hirtle described buying real estate in the state of Washington—3 homes and 7 lots in Washington. One of the 3 homes was his second home, which was furnished and one he planned on living in after retiring. In 2007 the writers' strike occurred and about 40% of his private psychiatric practice was negatively affected. He said,

“I had a hard time saying no to my patients. I would discount them, \$5 better than nothing. These guys just lost their jobs. They were in mid treatment. I treated them for free. But industry changed. I was suffering.”

He stated that in 2007 he had “no cash flow.” He described the general economy decreasing and his assets declined in value. He had a house in Burbank which went through loan modifications and then ultimately lost this home to foreclosure. He described having a “financial disaster,” where he lost his homes and lots, and lost his retirement funds. He stated that he was subleasing office space from a jewelry designer in Glendale. In March 2008, the jewelry designer had received 3 days to vacate while Dr. Hirtle stated that he had only 12 hours notice to vacate. For the next month he had no office. He stated,

“I was in a state of denial, not believe it was happening to me. My focus was on my patients. I had no income from patients. I had phone follow-up but did not bill them.”

From May 2008 to November 2008 he had a temporary office in Glendale and said his practice was going well. “I decided it was too expensive. We decided we had pioneered long enough; wind down the practice, looking for a job as an employee.” He still sees several long-term patients for medication follow-up and sees them in their homes. He stated,

“Majority are pseudo-addiction they were self-medicating pain. Subutex is a great pain reliever and do well on 8 mg. They never ask for more pain meds. Their pain is gone. Sees them for psychiatric support. Majority are young (24-29 year old) 4-5 guys seen them since their late teens or early 20's. A father-son mentoring, trust relationship. He has records. Discounted fees.”

Dr. Hirtle stated that in February 2009 he had his home foreclosed upon. Also during February he stated that he fell asleep at the wheel of his car and had an accident. Enterprise Insurance was renting a car for him while the matter was being discussed on how to settle the insurance claim—repairing it or total loss on his car. He showed the letter from Enterprise which stated that he had the rental car until December 2009. He

stated that the date of December 2009 turned out to be a clerical error. Dr. Hirtle stated that the Enterprise representative left a note, Civil Demand Letter, at his home, but it was already foreclosed and he was not there. He stated he encountered an Enterprise representative at the local Post Office and he challenged the Enterprise representative about his identification. Police were called and he was initially arrested but the charge was dismissed and the arrest was changed to a detainment only. Amphetamine tablets were found in his car, which he stated was his prescription for his ADHD.

For several months, Dr. Hirtle and his domestic partner, Joan, were staying at different homes of friends. For the past 4 months, the Mormon Church has been helping Dr. Hirtle and his domestic partner, Joan, by paying their rent, paying for some of their food, and providing transportation since he has no car. In a telephone interview with Bishop Riggs on November 7, 2009, he has not noticed any unusual behavior displayed by Dr. Hirtle. Bishop Riggs has not noticed any depression. Bishop Riggs stated that Dr. Hirtle has a strong relationship with Joan, his domestic partner. He has had Dr. Hirtle talk to a few of his congregation members about their own substance abuse problems.

Dr. Hirtle has been looking for a new employment and stated that the credentialing process is long. He has been offered job opportunities to head up the U.S. Navy PTSD Treatment Center in Portsmouth, Virginia and also a U.S. Army working position in a PTSD treatment facility in Beaumont, Texas.

NEUROPSYCHIATRIC HISTORY

Dr. Hirtle denied any psychiatric hospitalizations or history of major mental illnesses during my interview. He denied any current alcohol or marijuana use. He did state that he was taking Valium 10 years ago and recently Xanax 2 mg prn for anxiety; both prescribed by Dr. Keech, his primary care physician. In a telephone interview with Dr. Keech on November 13, 2009, Dr. Keech, after review of his medical record, stated that Dr. Hirtle told him, on his initial intake in December 1994, that he has been at Betty Ford Center for one month "for alcohol." Also during the initial intake in December 1994, Dr. Hirtle stated that he has a history of bipolar disorder and was disabled from practicing psychiatry at one point. Dr. Keech recalled filling out disability forms for Dr. Hirtle in order for him to collect disability payments. Dr. Keech stated that "he has a history of Bipolar Disorder and tends to get depressed and not able to practice psychiatry in a normal manner-psychotherapy; doing disability evaluations and alcohol and drug dependency and not engaged in ongoing psychotherapy." Dr. Keech believed that the disability claim was settled with a single payout of money. Dr. Keech had talked to Dr. Hirtle when he was "very depressed" and "when he becomes depressed, almost suicidal," but "never seen him irrational" or display any manic symptoms. Ten years later, in December 2004, Dr. Keech stated that Dr. Hirtle "made the case of Attention Deficit Disorder with Hyperactivity (ADHD)" to him and that is when Dr. Keech started prescribing Adderall 30 mg tablets to Dr. Hirtle. Dr. Keech stated that he "depended on others to tell me that he had ADHD." Dr. Keech stated that he has "never seen any interference with his judgment" from the Adderall prescription. Dr. Keech noted that sometimes Dr. Hirtle would run out of the Adderall. His last prescription for Adderall 30

mg #100 was on August 25, 2009. Dr. Keech last saw Dr. Hirtle on October 9, 2009 but did not renew the Adderall at that time for Dr. Hirtle. Dr. Keech stated that "He seems to be doing ok without it." Dr. Keech also mentioned that he has been prescribing benzodiazepine, Alprazolam 2mg tablets, for anxiety and situational stress but none since September 22, 2009. Dr. Keech was aware of Dr. Hirtle's financial stressors and business practice stressors. Per C.U.R.E.S. report, in April 2009, there is a probable instance of abuse of Alprazolam, given his history of inpatient alcohol rehabilitation at Betty Ford Center. The usual dose of Alprazolam is 0.5 mg to 6 mg per day. There are prescriptions for:

Alprazolam 2mg #20 tabs that was filled on April 20, 2009,

Alprazolam 2mg #20 tabs that was filled on April 24, 2009

Alprazolam 2mg #20 tabs that was filled on April 28, 2009.

This is about 5 tablets of Xanax 2mg per day (10 mg per day) during this time, which is much higher than the recommended dose of Alprazolam.

Also, Dr. Paul Zeltzer, District Medical Consultant, noted a "problematic prescribing history to several patients, including self-prescribing..." Per C.U.R.E.S. report there is an instance of self-prescribing of Adderall XR 30 mg #120 by Dr. Hirtle on 10/10/2007. Dr. Zeltzer also noted what may be some overprescribing for Oxycodone for two patients, including a patient, Ryan Giles, starting on 7/18/2007 and monthly through 2008, when he prescribed: Oxycodone 80 mg #90 and Oxycodone 40 mg #75 on the same day. Another patient, Aron Davidson was prescribed Oxycontin in large and escalating quantities of Oxycontin on the following dates:

12/4/2007 Oxycontin 10 mg #45
 Oxycontin 20 mg #45
 Oxycontin 40 mg #45

12/19/2007 Oxycontin 10 mg #60
 Oxycontin 20 mg #60
 Oxycontin 40 mg #60

1/3/2008 Oxycontin 10 mg #100
 Oxycontin 20 mg #100
 Oxycontin 40 mg #100

1/21/2008 Oxycontin 10 mg #100
 Oxycontin 20 mg #100
 Oxycontin 40 mg #100

It should be noted that later in February 2008, Dr. Hirtle prescribed Subutex to Aron Davidson, instead of Oxycontin.

Concerning his own health history, Dr. Hirtle stated that he has chronic pain from myofascitis from his back and paraspinal muscles. He told me, "I made the diagnosis and it was confirmed by Dr. Jorge Minor." Dr. Minor had prescribed Oxycontin and opiates for about 3 to 5 months, along with botox injections in trigger points. However, the pain persisted. For the past 3 to 4 years, Dr. Torrington has prescribed Subutex, an opiate, 4 mg, to Dr. Hirtle for his chronic pain. Dr. Hirtle stated to me that, "It is great, no euphoria." He stated that he "signed a contract and goes to the same pharmacy." Per

C.U.R.E.S. report of James Hirtle as patient from July 1, 2008 to July 30, 2009, it is noted that Dr. Torrington had prescribed Subutex 8 mg at low quantities (from 2 tablets to 10 tablets at a time) to Dr. Hirtle; the last prescription was on May 2009. Subutex is a buprenorphine sublingual tablet, a Section III narcotic. It is a partial agonist at the mu opioid receptor and is used for the treatment of opiate dependence. The prescribing physician must be certified in the prescribing of buprenorphine. It has also been used off label for treatment of chronic pain, which Dr. Hirtle stated is the reason for Subutex for him. This off label indication was confirmed by Dr. Torrington, who stated that he only prescribes a few Subutex pills at a time since it is all Dr. Hirtle can afford. Dr. Torrington stated that he is not a psychiatrist but has become a regional expert on Subutex from working with Dr. Linn at UCLA. Dr. Torrington stated that Dr. Hirtle, himself, was also involved in the early use of Subutex, and had known Dr. Hirtle as a psychiatrist in the addiction field through professional meetings. Dr. Hirtle had asked Dr. Torrington to treat him with Subutex for his chronic pain. Dr. Torrington stated that he has been treating him since approximately 2005. He has always been treating him for free as a professional courtesy, but especially due to his "severe psychosocial stressors past year" (e.g. homeless). Dr. Torrington described him as "pretty smart, reading a lot, challenging to work with." Later, Dr. Torrington said that Dr. Hirtle has "a reputation for having a big heart, doing a lot for a little or for free...not a lot of business sense." Dr. Torrington calls Dr. Hirtle at least monthly to check on him but has not seen him face to face for the past 3 months. Dr. Torrington is on the west side of Los Angeles, far from Dr. Hirtle who is on the east side of town. Dr. Torrington stated that there was no positive test for illicit drugs and no pattern of Subutex use that was suspicious. Contrary to what Dr. Hirtle stated to me, Dr. Torrington stated that Dr. Hirtle is not on an opiate contract. Dr. Torrington has not seen Dr. Hirtle with "severe manic or depressed" state. He stated that he knew that Dr. Hirtle was being prescribed Adderall for ADHD. Dr. Torrington stated that "one has to be pretty cautious but it (Adderall) is not contraindicated with buprenorphine treatment. It was not my diagnosis."

MENTAL STATUS EXAMINATION:

Dr. Hirtle is 64 year-old white male, who is 5'7" and weighs approximately 190 pounds, who appeared his stated age. He was wearing glasses. He was casually groomed and dressed. He had normal psychomotor activity. He was alert and oriented. His eye contact was good. He was cooperative. His mood was somewhat dysthymic, especially when discussing his financial problems, legal problems, and his psychiatric practice problems (e.g. lack of full-time employment, lack of an office). He stated that he "was very upended by the economy; foreclosed on by Wells Fargo illegally, being reviewed now, wrong ruling..." He talked about renting a car from Enterprise Company after he had "fell asleep at the wheel four blocks from home." He stated that the police arrest for not returning the rental car from Enterprise was a misunderstanding from a letter he received from Enterprise, stating that he could use the car until December 2009. He did think that was odd at the time that his insurance company would do that. He stated that the arrest was subsequently dropped to "detain only" after his attorney helped him with

the case. Since then, he has no car but the Mormon Church provides transportation for him for his appointments. He talked about his other legal problems. Concerning his second home in state of Washington, he stated that he had to file a criminal report since all his belongings were lost after his "house is broken into and rekeyed." He also mentioned that there was an auction of his belongings in one of his homes but it was not auctioned off, but instead Wells Fargo paid for the storage bills for his belongings, including his medical records. He thought that Wells Fargo Bank had called the Medical Board about his abandonment of medical records, which he denied he abandoned. He did become angry when asked about an allegation of self-prescribing, which he adamantly denied. He did show some negative anger emotions when discussing the Medical Board investigation and the interference with his new job prospects with the armed forces. He claimed that the investigator was on a "witch hunt." His speech had a normal rate and volume. He denied any racing thoughts or delusions. He denied suicidal ideation or homicidal ideation. His short term memory and long term memory appeared within normal limits. He could recount his history from his memory. He could perform serial 7's from 100 without error. His intelligence is above average. His insight was fair. He stated that he had "ADD and situational anxiety for the past 3 months." "I had lost \$1.5 million and how I survived it was a miracle." It should be noted that he denied any other mental problems. His judgment was somewhat impaired as shown by his statements of describing his \$1.5 million dollar loss of his real estate holdings, his retirement funds, and psychiatric practice as a "financial disaster" and later stating, "I was in a state of denial, not believing it was happening. My focus was on my patients..."

From his history, the following are his psychiatric diagnoses:

- I. History of Bipolar II Disorder
- History of Attention Deficit Disorder, on Adderall
- Adjustment Disorder with anxious mood, on Alprazolam
- History of Alcohol Use Disorder, inpatient treatment in Betty Ford in 1992, in remission
- II. None
- III. Chronic Pain Syndrome from back pain/myofascitis, on Subutex

SUMMARY AND CONCLUSIONS:

Concerning Dr. Hirtle's risk assessment for being a danger to himself, one does an assessment of protective and aggravating factors for being a danger to himself. The protective factors against being a danger to himself are that he is in a long-term stable relationship, and he has the financial support and emotional support from the Mormon Church. On the other side, there are several risk factors for being a danger to himself, which Dr. Hirtle has. Men are more likely to commit suicide than women. Two of every three suicides are white males. A fall in socioeconomic status increases the risk. Poor physical health, including chronic pain, increases the risk. Having a mental disorder, such as a depressive disorder, increases the risk. Dr. Hirtle does have several mental disorders which place him at risk for being a danger to self, if not properly treated. Per Dr. Keech, his primary care physician for the past 15 years, Dr. Hirtle has a history of

bipolar disorder, whose symptoms were severe enough to cause significant impairment in occupational functioning as a psychiatrist in order for him to collect disability payments. Dr. Keech had filled out disability paperwork for Dr. Hirtle. Also, Dr. Keech stated that he "has seen him depressed, almost suicidal" but no manic. Since there is no history of manic episodes, Dr. Hirtle probably has bipolar II disorder and not Bipolar I. Bipolar II disorder is defined in DSM-IV-TR as:

- A. Presence of one or more major depressive episodes.
- B. Presence (or history) of at least one hypomanic episode.
- C. There has never been a manic episode or a mixed episode.
- D. The mood symptoms in Criteria A or B are not better accounted for by schizoaffective disorder and are not superimposed on schizophrenia, schizophreniform disorder, delusional disorder, or psychotic disorder not otherwise specified.
- E. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Patients with bipolar II disorder are at a greater risk for attempting and completing suicide than patients with bipolar I disorder and major depressive disorder. He has a history of receiving inpatient treatment at Betty Ford Center in 1992 for alcohol use disorder. Also, the risk for suicide is increased if the patient with mental disorder is not under psychiatric treatment and is under severe psychosocial stressors. Despite having some protective factors, the sum and weight of the aggravating risk factors for suicide outweighs the protective factors. Since Dr. Hirtle has a history of being depressed and suicidal, history of inpatient alcohol rehabilitation, is not currently under psychiatric treatment for his bipolar II disorder, and he is under severe psychosocial stressors (e.g. large financial losses, loss of his homes and real estate totaling about \$1.5 million, loss of his business office, lack of full-time psychiatric employment, lack of having a car), Dr. Hirtle has an elevated risk/danger to himself.

He has a history of receiving inpatient treatment at Betty Ford in 1992 for an alcohol use disorder (either alcohol abuse or dependence). Given his history of inpatient rehabilitation treatment for alcohol use disorder, recent severe psychosocial stressors, and not currently being under psychiatric treatment, there is a risk of relapse to alcohol use disorder if he is continued on prolonged benzodiazepine treatment. Also, there is a concern about the use of Adderall, an amphetamine, which is a Schedule II drug. The Adderall has been prescribed at a relatively high dose of 30 mg three tablets (90 mg) a day, which is a concern since: (1) he was on Subutex (Buprenorphine), an opiate, and (2) on Alprazolam, a benzodiazepine, and (3) his past history of alcohol use disorder requiring inpatient treatment at Betty Ford Center.

There is a report to the Medical Board from a pharmacist that Dr. Hirtle "sounded like he was on drugs" when he phoned in a prescription for himself and it was not an isolated incident. On September 15, 2009, Investigator Villalobos described him as "confused" and his speech was slower and slurred than in other conversations she had. Given the following:

(1) his past history of bipolar II disorder rendering him disabled (and presently not being treated);

- (2) his history of alcohol use disorder requiring inpatient rehabilitation at Betty Ford Center, and being on three prescribed medications, each of which is potentially addicting (i.e. Adderall for ADHD, Suboxone for chronic pain, and Alprazolam for anxiety symptoms);
- (3) an indication of Alprazolam abuse in April 2009; per the C.U.R.E.S. report, there were prescriptions of Alprazolam 2 mg, resulting in about 10 mg per day (usual adult dose is 0.5 to 6 mg per day) for eight days in April 2009;
- (4) not currently being treated by a psychiatrist for his mental disorders of Bipolar Disorder, anxiety, and history of alcohol use disorder;
- (5) the two recent reports of Dr. Hirtle sounding confused (i.e. sounded like he was on drugs while phoning in a prescription for himself, and his speech being slower and slurred than in other conversations),
- (6) an episode of self-prescribing Adderall XR #120 on 10/10/2007 and
- (7) possible overprescribing of Oxycodone to two patients in 2007-2008 (per CURES report),

then his present ability to practice psychiatry with safety to the public is impaired.

Given his history of alcohol inpatient rehabilitation at the Betty Ford Center, Dr. Hirtle needs to be treated by a psychiatrist (preferably one who is familiar with addiction psychiatry) to treat his mental disorders with nonaddicting psychiatric medications. The psychiatrist should treat his bipolar II disorder to reduce the risk of depression and suicidal risk. The psychiatrist should clarify the diagnosis of Attention Deficit Disorder with Hyperactivity and, if present, to attempt to first treat the ADHD symptoms with nonaddicting medications, instead of Adderall. The psychiatrist should also attempt to treat his anxiety symptoms with nonaddicting medication, other than a benzodiazepine, which increases the risk of relapse to alcohol abuse. The treating psychiatrist should be in communication with his two other treating physicians (Dr. Keech for general health issues and Dr. Torrington for his chronic pain problem) to coordinate Dr. Hirtle's care and treatment so he can resume the practice of psychiatry with safety to the public.

Thank you for this referral.



Tim Botello, M.D.