

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

In the Matter of the Accusation)	
Against:)	OAH No: N2006060579
)	
BRIAN D. HALEVIE-GOLDMAN, M.D.)	MBC File # 12-2003-152226
)	
)	
Physician's and Surgeon's)	
Certificate No. A 38684)	
)	
_____ Respondent.)	

**ORDER CORRECTING NUNC PRO TUNC CLERICAL ERROR
IN THE ORDER PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the Order portion of the Decision in the above-entitled matter and that such clerical error should be corrected to conform to the Board's intention.

IT IS HEREBY ORDERED that Condition 8, second sentence in the Decision in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as follows:

"... After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, orally notify the patient that respondent does not practice, perform or treat any condition except psychiatric conditions."

DATED April 27, 2007

MEDICAL BOARD OF CALIFORNIA



Dave T. Thornton
Executive Director

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

In the Matter of the Accusation)
against:)
BRIAN D. HALEVIE-GOLDMAN, M.D.)
Physician's and Surgeon's)
Certificate No. A 38684)
Respondent.)

OAH No: N2006060579

Case No: 12-2003-152226

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective at 5:00 p.m. on May 16, 2007.

DATED April 16, 2007

MEDICAL BOARD OF CALIFORNIA



Cesar Aristeiguieta, M.D.
Panel A Chair
Division of Medical Quality

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

In the Matter of the Accusation Against:

BRIAN D. HALEVIE-GOLDMAN, M.D.

Physician's and Surgeon's certificate No.
A38684

Case No. 12-03-152226

OAH No. N2006060579

Respondent.

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 26, 27, and 28, 2007.

Lawrence Mercer and Jane Zack Simon, Deputy Attorneys General, represented complainant.

Laura Mackie, Lay Representative, represented respondent Brian D. Halevie-Goldman, M.D., who was present.

Submission of the matter was deferred to March 16, 2007, for receipt of further evidence and argument. Twelve character letters¹ were received, marked as Exhibit "A" and considered as administrative hearsay. A declaration of Benjamin Kaufman, M.D., was also received, marked as Exhibit "B" and considered as administrative hearsay over the objection of the complainant as discussed below as a preliminary matter. The matter was submitted on March 16, 2007.

PRELIMINARY MATTERS

Respondent offered the declaration of Benjamin Kaufman, M.D., as character evidence. Dr. Kaufman is a psychiatrist who personally interviewed respondent and reviewed records provided by respondent. He also interviewed Kimberly Goldman,

¹ The last name on each letter is listed here for identification purposes: Dellenbach, Amen, Harmon, Nemeth, Saenz, Howton, Brown, Brown-Ramirez, Halverstadt, Smith, Bice, and Spurrier.

respondent's wife. Both respondent and his wife testified at the hearing. Dr. Kaufman's declaration is admissible as administrative hearsay under Government Code section 11513, subdivision (d): "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding . . ." Complainant's objection was timely, therefore this declaration is not sufficient in itself to support a finding.

FACTUAL FINDINGS

1. David T. Thornton made the accusation in his official capacity as the Executive Director of the Medical Board of California (Board).

2. On July 2, 1982, the Board issued Physician's and Surgeon's certificate Number A38684 to Brian D. Halevie-Goldman, M.D. (respondent). The Physician's and Surgeon's certificate was in full force and effect at all time relevant to this matter and will expire on February 29, 2008, unless renewed.

3. Respondent was and is practicing as a physician, specializing in child psychiatry. He is not board-certified by any board within the ambit of the American Board of Medical Specialties.

Respondent attended medical school at the University of Witsea Watersrand², Johannesburg, South Africa and graduated with an M.D. in 1977. He did a rotating internship in South Africa. In September 1978, respondent received his U.S. license. He began practicing in New York. He did one year (January 1980 to January 1981) at Bellevue and NYU Medical Center that was equivalent to an American internship. Then he did a residency in clinical services psychiatry from July 1981 to December 1982³ at Stanford where he researched neuropsychology. From July 1984 to June 1985, respondent did a fellowship in child and adolescent psychiatry at UC Davis. Respondent then worked in private practice in Southern California. Respondent was at UC Irvine in a research residency. He also attended a part-time fellowship in child and adolescent psychopharmacology at UCLA from July 1988 to June 1989. He was in private practice in Southern California (Long Beach and Santa Ana) from 1989 to 1994. Respondent moved to Jonesboro, Arkansas in 1994. In 1995, respondent moved to Yuba City, California and engaged in private practice there. In 1998, respondent became associated with Amen Clinics in Fairfield and Danville, California.

Respondent does not have any hospital privileges.

² The spelling of these names was taken from a transcript of an interview with respondent on October 17, 2005.

³ The dates of respondent's training at Stanford are unclear. The evidence is contradictory. It may have covered July 1981 to December 1983.

4. In 1984, respondent was designated as the Medical Director for Bay Area Laboratories Cooperative (BALCO), where he became acquainted with its principal, Victor Conte (Conte), and assisted in research and development of trace mineral dietary supplements. He specifically agreed to interpret blood tests concerning mineral excess or deficiencies. Conte has never been a licensed physician. A few years later respondent ceased his formal business relationship with BALCO and Conte. Respondent moved to Southern California and then out of state (Arkansas 1994-1995) for a year. Respondent returned to California and began to practice psychiatry in the east bay region.

5. On January 17, 2003, respondent's records indicate that he was contacted by Conte regarding an athlete: K.W.⁴ K.W. was a world-class sprinter. At that time Conte also contacted respondent about himself (Conte).⁵ According to respondent's notes, Conte provided the following information regarding K.W.: "C/o fatigue, poor sleep, cannot keep her eyes open > muscle fatigue of tiredness. Good initiative and motivation, no clinical depression at all." Conte also claimed that he had similar symptoms. Based on Conte's account, respondent recommended that Conte and K.W. needed to be evaluated with a sleep study (polysomnography). Respondent wrote: "Diff Dx [differential diagnosis] to include: Narcolepsy, CFS [chronic fatigue syndrome], Post-viral (139.0)." Respondent did not talk to or examine K.W. at that time. Conte asked about Modafinil (a mild stimulant). Respondent told Conte that if he called his office the next Monday morning, he would arrange for some samples of Modafinil to be sent to Conte. Modafinil, also known as Provigil, is a prescription medication approved for use in promoting wakefulness in persons suffering from narcolepsy, obstructive sleep apnea and shift work sleep disorder. It is unclear if respondent's office actually provided samples of Modafinil to Conte. Respondent later reported to the Board's investigator that he believed the Modafinil was sent to Conte, but not for K.W. However, this statement contradicts statements made by respondent in a letter he wrote on behalf of K.W. Respondent's contention that he meant Conte to be provided samples of modafinil after an exam is not credible and is contrary to respondent's testimony at the hearing.

6. Respondent's notes for June 2, 2003, indicate that K.W, or someone on her behalf, communicated with the clinic where respondent was practicing, reporting complaints of a chafing rash from her bra strap. K.W. testified that she complained to Conte that she had a rash and needed a prescription for cream. In her presence, Conte made a telephone call and the next day she received a prescription cream and a gel from Conte. Although K.W. was not examined (in fact she still had never been examined by anyone at the clinic,

⁴ The authenticity of the January 17, 2003 note is in question. First, K.W. was not working with Conte and had not decided to take performance enhancing substances until March 2003, and second, the note referred to "XXXX" who turned out to be Conte himself and does not sound like a note that would have been made contemporaneously to the conversation.

⁵ Dr. Goldman disguised Conte's identity when he communicated with the Board about this incident and designated Conte as "XXXX" on the records respondent turned over to the Board.

including respondent), prescriptions for Lotrisone and benzoyl peroxide were called into Long's Pharmacy for K.W.'s use. Respondent approved the prescriptions after the fact. The prescriptions were issued to K.W., and respondent was named as the prescribing physician on the label.

7. Respondent's notes for June 8, 2003, reflect a prescription for Motrin 800 mg. that was called into Walgreen's Pharmacy for K.W.'s use for "plantar fasciitis." Respondent never saw K.W. for this complaint. Respondent approved the prescription after the fact.

8. Respondent's notes for June 12, 2003, state that K.W. was having difficulty sleeping and felt as if she could run a marathon each night. A prescription for Ambien, a Schedule IV controlled substance indicated for short term treatment of insomnia, was given. The prescription provided a month's supply and three refills of 30 ten milligram tablets. Respondent advised the Board's investigator that he was contacted personally on this occasion and issued the prescription for K.W.'s sleep problems. Although respondent later acknowledge to the Board's medical consultant that K.W.'s other medical conditions should have been of concern in prescribing Ambien, respondent's notes do not reflect any consideration or discussion of the impact of Ambien on K.W.'s other medical conditions.

9. K.W. was interviewed by the Board's investigator. She stated that she neither met with nor spoke with respondent on any of the occasions in June when respondent approved prescriptions to be issued for her. K.W. testified that she had never even met respondent before August 2003. However, respondent testified that he was briefly introduced to K.W. on June 22, 2003, at Stanford University during a track meet. Respondent did not interview or examine her. Respondent's note for June 22, 2003 (the actual note is incorrectly dated 2005) states that "Plantar fasciitis (sic) is no longer a concern at all."

10. In August 2003, K.W.'s career was interrupted when she tested positive for modafinil while competing in an international track and field event in France. K.W.'s agent and Conte contacted respondent at home and requested he provide a letter to explain K.W.'s use of modafinil. Respondent complied with the request and, in a letter dated August 30, 2003, stated that K.W. had been consulting with his clinic since the beginning of 2003. He further represented that K.W. was provided with modafinil sample bottles per his instructions. Although he had never examined, or even met with, K.W. as a patient, respondent set forth a personal and family history of narcolepsy and stated that the modafinil provided to K.W. was for the purpose of treating her narcolepsy. Respondent wrote a second letter, dated September 2, 2003, in which he reported to the International Association of Athletics Foundations (IAAF) that modafinil was not a strong stimulant and was not an athletic performance enhancing substance. Respondent was paid \$5,000 to provide these letters. Respondent's claim that he truly believed that K.W. suffered from narcolepsy is irrelevant. Respondent needed a medical reason to make the statement that K.W. had a diagnosis of narcolepsy. It is of great concern that respondent still does not see the difference between his personal opinion and a medical opinion.

11. Respondent did not meet with or examine K.W. in September 2003. Respondent's notes contain five entries for September.

12. On October 1, 2003, respondent met with K.W. for the first time. Respondent's record of that meeting states that the patient's prescribed medications were Ambien and Motrin 800. The patient gave a history of depression. A number of possible problems for the physician to evaluate were suggested using the Amen Adult General Symptom checklist. There was no indication in the notes that respondent evaluated these symptoms or conducted any follow up of the patient's reported history of depression. A section in the report for evaluation using the Beck Depression Inventory was not completed. Respondent testified that he delegates some of the patient history taking to non-medical staff.

The focus of the October 1, 2003 examination of K.W. was to establish a rationale for her use of modafinil.

13. Respondent did not meet with or examine K.W. again. A note dated November 11, 2003, indicates that K.W. came to respondent's clinic and requested a copy of her records.

14. After initially denying the use of performance enhancing substances and trying to create a medical defense, in 2004, K.W. admitted using modafinil to enhance her performance and accepted a two year suspension from the IAAF. She could not compete in track and field for two years. K.W. confirms that she never met with respondent before or after the October 1, 2003 appointment. She does not recall meeting respondent at the track meet at Stanford in June 2003, but she was competing there and does not deny that it could have happened. K.W. testified that she does have an aunt that has narcolepsy, but she does not have narcolepsy and has never been diagnosed with narcolepsy as respondent represented in his records, notes and correspondence.

15. On June 7, 2005, respondent recreated his records and notes for K.W. He also added a two-paged memorandum in which he places responsibility for allegations related to modafinil dispensing on Conte, K.W., and K.W.'s mother, all of whom he contends deceived him regarding the true facts of K.W.'s condition.

16. Respondent admitted that he had never spoken with K.W.'s mother. Respondent told the Board's investigator that he had numerous phone calls with K.W. He later admitted that he did not have any such telephone conversations directly with K.W.

17. It was established by clear and convincing evidence that respondent prescribed, furnished and/or dispensed dangerous drugs, including Ambien and Motrin 800, without examining the patient and without establishing a medical necessity for the drugs. Even though these medications are considered relatively benign, a prescription and medical expertise is still required to have a patient take these medications. It is a departure from the

standard of practice to allow non-medical personnel to make decisions about these medications without the direct supervision of a physician.

Complainant's expert witness, Lynn D. Bertram, M.D., Board Certified Psychiatrist, testified persuasively that respondent's conduct, over all, constituted gross negligence. His behavior was an extreme departure from the standard of care.⁶ She reviewed all the relevant material in this matter. The standard of practice is for a physician to perform a good faith prior examination before prescribing for a patient. This is also required by the Business and Professions Code. Dr. Bertram found that respondent showed a "grave disregard" for this standard and that his conduct reflects an extreme departure from the standard of care.

The prescribing of a four-month supply of sleeping medication is conduct that falls below the expected standard for a reasonable psychiatrist and is, therefore, a simple departure from the standard of care.

Respondent displayed poor clinical judgment when he was "conned" into providing performance enhancing medications (modafinil). Respondent should have considered the possibility of secondary gain when assessing a professional athlete's symptoms.

Dr. Bertram also stated that the standard of practice for physicians is to assure that other medical professionals practicing under their supervision do not prescribe medications without proper authorization.

It is a departure from the standard of care for respondent to approve the prescribing of medications after the fact.

Further, the standard of practice for psychiatrists is to take an adequate history and perform a mental status evaluation on each patient so that adequate clinical information can be obtained to make a diagnosis. It is a departure from the standard of practice to delegate this to another person.

The standard of practice in psychiatry is to evaluate every patient for depression. Respondent prescribed medications for K.W. without evaluating her. Once he finally had the opportunity to see her, he still did not evaluate her properly. Respondent again departed from the standard of care for psychiatrists.

Dr. Bertram stated that the standard of practice in medicine is for a doctor to be honest. Respondent was not honest in his August and September letters concerning K.W. Respondent's conduct was a violation of medical ethics and unprofessional conduct.

18. Respondent delegated prescribing (by approving prescriptions after the fact) and patient history responsibilities to non-medical staff. Respondent allowed non-medical

⁶ Dr. Bertram characterized respondent's conduct as a whole as "outrageous."

personnel to take the patient's history based on forms and allowed them to assess certain conditions, such as the patient's speech, mood, affect, and thought process. Delegating this function to a non-medically trained individual is a departure from the standard of care.

19. Respondent failed to appropriately evaluate the patient's condition. It was established by clear and convincing evidence that it is an extreme departure from the standard of care to diagnose and treat a patient without ever talking to them. Respondent's claim that he was "consulting" is without merit. Discussing a patient (K.W.) with a non-medical person, such as Conte, does not qualify as a consultation.

20. Respondent failed to assess and follow up on patient's K.W.'s potentially serious conditions, including narcolepsy and depression. It was established by clear and convincing evidence that it is an extreme departure from the standard of care not to follow up with a patient on potentially serious conditions.

21. Respondent approved a prescription for a four month supply of Ambien to K.W. without assessing her history of a thyroid condition or other factors that might have resulted in her insomnia. Respondent never spoke to K.W. prior to initialing this prescription. There can be no justification for respondent's actions. It was established by clear and convincing evidence that it is a departure from the standard of care to prescribe a medication such as Ambien without assessing the patient's conditions.

22. Respondent created documents which represented or implied that K.W. was a patient, that respondent had ascertained that K.W. had a family history of narcolepsy, that K.W. also suffered from excessive daytime somnolence, and K.W. had been taking modafinil for that condition pursuant to his instructions. All of these statements were untrue. It was established by clear and convincing evidence that it was an extreme departure from the standard of care to make these misrepresentations.

23. It was established by clear and convincing evidence that respondent prescribed, furnished and dispensed dangerous drugs, as defined by law, to K.W. without a prior good faith examination and medical indication therefore. These medications include Modafinil, Motrin, Ambien, Lotrisone and benzoyl peroxide.

24. Respondent failed to keep adequate and accurate records with regard to K.W. He failed to document a full evaluation of K.W., including history, mental status examination and assessment of depression and insomnia. His records include statements that are contrary to fact and that were not verified or confirmed. At the hearing, respondent testified that the medical records were recreated because K.W.'s chart had mysteriously been lost sometime in 2004. Respondent reconstructed the records by printing documents from the Amen Clinic computer and his own laptop computer. Respondent did not tell the medical board investigator or physician consultant that these records were not the original chart. Respondent also testified that a "temporary chart" was created before he met with a patient when an appointment was made. However, one of his office staff testified that the temporary

chart was not kept if the patient was not seen. The notes and material in the file that respondent produced to the Board pursuant to subpoena did not constitute an adequate or accurate record with regard to K.W.

25. Respondent knowingly made or signed documents related to the practice of medicine that falsely represented the existence or non-existence of a state of facts. Respondent's notes and records contain statements that are not true. Respondent wrote a letter, dated August 30, 2003, in which he stated that K.W. "has been consulting with our clinic since the beginning of the year" and that respondent was authorized "to reveal aspects of her medical file." In truth, respondent has not examined K.W.; she was not a patient; and she did not have an actual medical file at the clinic.

The letter further states that K.W. had multiple symptoms, conditions and diagnoses, including excessive daytime somnolence, mild depression, attention deficit disorder and narcolepsy. In truth, other than depression⁷, respondent did not have a medical basis supporting the existence of the symptoms, conditions or diagnoses, and the statements were false.

26. Respondent's claim that he was set up by Conte does not serve as a defense to his conduct in this case. K.W. testified that prior to January 2003, Conte had a signature stamp with respondent's name on it and that Conte used it to get blood tests. She also testified that Conte forged respondent's signature on medical documents. Respondent is not charged with any wrongdoing in relation to these matters. When Conte called respondent in January 2003 to tell respondent about his problems with staying awake and then adding that one of the athletes was having the same problem, he might have been checking to see (as respondent contends) if respondent would give him modafinil without an examination or an appointment. Respondent had a responsibility then to tell Conte that he had to seek proper medical advice. Instead, respondent told Conte to seek a sleep study and that he would send him some samples of modafinil. Agreeing to send samples to someone that respondent had not examined and was not a patient is not within the standard of care. Then, in early June 2003, respondent gave Conte more reason to believe respondent could be counted on for improper prescribing when respondent approved prescriptions for rash cream, a sleep aid, and a mild analgesic without an examination. None of these medications should have been prescribed without a medical examination. Respondent did not have a physician-patient relationship with Conte or with K.W. Then, when K.W. tested positive for modafinil at an international track meet, Conte contacted respondent to write an "advocacy letter" for K.W. The letter was an attempt to justify the modafinil as medically necessary for K.W. Respondent's claim that he wrote the letter in "good faith" is not persuasive. He must have known at the time he wrote the letter that he did not have any medical basis for writing the letter. He had an obligation to independently verify, as a physician, the matters that were told to him by Conte and K.W.'s manager. Likewise, respondent's claim that he was naive

⁷ As of August 2003, respondent had not evaluated, documented or treated K.W. for depression.

does not serve as a defense to his inappropriate conduct. When respondent finally met with K.W. in October 2003, he did not appropriately assess or evaluate her.

27. Respondent raised for the first time in closing argument that the accusation against respondent was not timely. The accusation was filed May 19, 2006. The Government Code cited (Government Code section 11506) refers to the Notice of Defense. Business and Professions Code section 2230.5 requires the Board to take action within three years after the Board discovers the act or omission alleged. A complaint was filed by a physician in 2005. Further, the letter on behalf of K.W. was written by respondent in August 2003. There are no grounds to claim that the accusation was not filed in a timely manner. Respondent also raised for the first time the "doctrines of collateral estoppels (sic) and *res judicata*." No evidence⁸ that either of those doctrines apply to this matter was presented.

28. Respondent presented character letters that indicate he is well respected as a child and adult psychiatrist. He is generous with his time and compassionate. Respondent has devoted much of his practice to working with autistic children.

Respondent's wife testified at the hearing. They have been married almost 18 years. They have two children, one who is adopted. They have an autistic son. Respondent's wife finds him to be a caring and dedicated man.

Respondent also presented a declaration from a psychiatrist, Dr. Kaufman. Dr. Kaufman indicated that respondent does not have a history of mental disorder, but is experiencing a high level of anxiety. Respondent is not presently receiving any counseling or psychiatric treatment.

Respondent has not had any prior disciplinary action taken against him.

29. While this matter is very serious, it involves one "patient" and one set of circumstances. This set of circumstances is not likely to recur. Respondent has not attended any ethics, record keeping, or prescribing courses since the conduct that resulted in the accusation. It is unlikely that respondent will repeat this behavior, but he needs to gain insight into what caused him to participate in such unethical and dishonest conduct. It would not be against the public interest to allow respondent to continue to practice psychiatry under probationary terms and conditions.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, cause for disciplinary action exists pursuant to Business and Professions Code section 2234, subdivision (b) (gross negligence). Respondent's

⁸ There is no evidence of a prior decision on which to base collateral estoppel or *res judicata*.

conduct individually as set forth in Findings 19 (diagnosing and treating a patient without personal contact), 20 (failure to follow up), and 22 (dishonesty), constitutes an extreme departure from the standard of practice. Respondent's conduct taken as a whole clearly constitutes gross negligence.

2. By reason of the matters set forth in Findings 4 through 17, 18, and 21, cause for disciplinary action exists pursuant to Business and Professions Code sections 2234, subdivision (c) (repeated negligent acts). After respondent allowed non-medical personnel to prescribe dangerous drugs for K.W. and approved the prescribing of Ambien without properly assessing the patient, he delegated the taking of the patient history and mental status examination to a non-medical employee.

3. By reason of the matters set forth in Findings 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, and 23, cause for disciplinary action exists pursuant to Business and Professions Code section 2242 (prescribing, furnishing and/or dispensing dangerous drugs as defined in Business and Professions Code section 4022, without a prior good faith examination and medical indication therefore).

4. By reason of the matters set forth in Findings 5, 6, 7, 8, 9, 12, 13, 15, 22, and 24, cause for disciplinary action exists pursuant to Business and Professions Code section 2266 (failure to keep adequate and accurate records). Respondent's records were inaccurate, created to justify his conduct, and did not reflect the care of a patient.

5. By reason of the matters set forth in Findings 5, 10, 14, 15, 16, 22, and 25, cause for disciplinary action exists pursuant to Business and Professions Code section 2261. Respondent knowingly made and signed a document related to the practice of medicine which falsely represented the existence of a state of facts when he wrote and sent the letters dated August 30, 2003 and September 3, 2003.

6. The matters set forth in Findings 4, 26, 27, 28, and 29 have been considered in making the following order.

ORDER

Physician's and Surgeon's certificate Number A38684, issued to Brian D. Halevie-Goldman, M.D. is hereby revoked pursuant to Legal Conclusions 1, 2, 3, 4, and 5, jointly and separately. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Actual Suspension - As part of probation, respondent is suspended from the practice of medicine for 90 days beginning the sixteenth (16th) day after the effective date of this decision.

2. **Controlled Substances- Maintain Records and Access to Records and Inventories** - Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

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

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

3. **Prescribing Practices Course** - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

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

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

4. Medical Record Keeping Course - Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in medical record keeping, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first 6 months of probation is a violation of probation.

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

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

5. Ethics Course - Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

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

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

6. Psychiatric Evaluation/Psychotherapy - Within 30 calendar days of the effective date of this Decision, and on a whatever periodic basis thereafter may be required by the Division or its designee, respondent shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist, who shall consider any information provided by the Division or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Division or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted

towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological testing.

Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Division or its designee, including psychiatric treatment. Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation.

Respondent shall not engage in the practice of medicine until notified by the Division or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation.

If psychotherapy is recommended after the psychiatric evaluation, then respondent must, within 60 calendar days of the effective date of such recommendation, respondent shall submit to the Division or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Division or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Division or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. Respondent shall have the treating psychotherapist submit quarterly status reports to the Division or its designee.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions. Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

7. Monitoring – Practice - Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine or billing, or both, and whether respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or

its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

8. Prohibited Practice - During probation, respondent is prohibited from practicing, performing, or treating any condition except psychiatric conditions. After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, orally notify the patient that respondent does practice, perform or treat any condition except psychiatric conditions. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a patient who seeks the prohibited services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not practice, perform or treat any condition except psychiatric conditions. Respondent shall maintain a copy of the written

notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Division or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

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

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

10. Supervision of Physician Assistants - During probation, respondent is prohibited from supervising physician assistants.
11. Obey All Laws - Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.
12. Quarterly Declarations - Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.
13. Probation Unit Compliance - Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

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

14. Interview with the Division or it's Designee - Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.
15. Residing or Practicing Out-of-State - In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

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

16. Failure to Practice Medicine - California Resident - In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the

terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

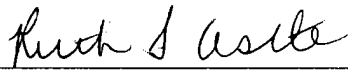
Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

17. Completion of Probation - Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.
18. Violation of Probation - Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
19. License Surrender - Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. Probation Monitoring Costs - Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: 3/23/07



RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings