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Regulated Industries Complaints
Office
Department of Commerce and
Consumer Affairs
State of Hawaii
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828 Fort Street Mall
Honolulu, Hawaii 96813
Telephone: (808) 586-2660

REGULATED INDUSTRIES COMPLAINTS
OFFICE - RICO

MAY 13 1 02 PM '91

HEARINGS OFFICE

Attorney for Petitioner

BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS
HEARINGS OFFICE
AUG 22 11 57 AM '91

In the Matter of the)	MED 92-19-L
License to Practice)	SETTLEMENT AGREEMENT
Medicine of)	AFTER FILING OF
ALVIN E. MURPHY,)	PETITION FOR DISCIPLINARY
Respondent.)	ACTION, AGREEMENT OF
)	SUPERVISING PHYSICIAN,
)	AND BOARD'S FINAL ORDER

SETTLEMENT AGREEMENT AFTER FILING OF
PETITION FOR DISCIPLINARY ACTION, AGREEMENT OF
SUPERVISING PHYSICIAN, AND BOARD'S FINAL ORDER

Respondent ALVIN E. MURPHY ("Respondent") and the Department of Commerce and Consumer Affairs, by and through its Regulated Industries Complaints Office ("RICO") enter into this Settlement Agreement as follows:

A. REPRESENTATIONS AND ACKNOWLEDGEMENTS OF RESPONDENT

Respondent represents and acknowledges that the following statements are true and correct:

1. Respondent was at all times relevant herein licensed to practice medicine as a physician and surgeon, holding license no. MD 1458.
2. Respondent's current business address is 850 West Hind Drive S-121, Honolulu, HI 96821.

3. The Board of Medical Examiners ("Board") has jurisdiction in this matter pursuant to Chapters 91, 92, 453 and 436B, HRS.

4. Respondent is aware of his right to be represented by an attorney and is represented by H. William Goebert, Jr.

5. Respondent understands that, if this case proceeds to a hearing, his actions and omissions may be found to constitute violations of HRS §§453-8(a)(7) or 436B-19(7) and he may be subject to penalties, including revocation or suspension of his license.

6. The parties hereto wish to settle this matter without a hearing or further proceedings.

II. TERMS OF SETTLEMENT

NOW, THEREFORE, the parties agree, subject to the approval and order of the Board of Medical Examiners ("Board"):

1. Board has jurisdiction. The Board has jurisdiction over the subject matter herein and over the parties hereto.

2. Waiver of right to hearing. Respondent is aware of and has full knowledge of his right to a hearing under HRS Chapters 91, 92, 436B and 453. Pursuant to HRS Chapter 91, Respondent gives up his right to a hearing and agrees to a disposition of this case pursuant to the terms and conditions of this Settlement Agreement.

3. Free and voluntary agreement. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress and Respondent acknowledges that he is fully

aware that in doing so he is subject to disciplinary sanctions.

4. Permanent conditions of licensure. As a permanent condition of licensure, Respondent shall abide by the following terms:

- a. Respondent shall follow the "SOAP" method (subjective, objective, assessment, plan) of record keeping in the records of each patient. The records of each patient shall contain an explicit treatment plan which clearly indicates what he seeks to achieve and how he plans to go about it. In the "P" portion of the records of each patient Respondent shall include a statement of, among other things, the reason for every prescription of medication and a record of each prescription.
- b. Whenever polypharmacy (prescribing two or more drugs from the same class, e.g. two benzodiazepines) is employed the records of each patient shall include an adequate statement of the reasons for using polypharmacy.
- c. Whenever potentially addictive medications (as used in this document, "potentially addictive medications" includes any narcotic analgesic) is prescribed, the records of each patient shall contain adequate justification for the use of such addictive medications.

- d. Respondent shall obtain a consultation whenever he attempts to treat a patient with expected long term pain problems with potentially addictive medications, including narcotic analgesics. Consultation may not be needed if the patient has been informed by other physicians who are diagnosing and treating the cause of the patient's chronic pain.
- e. Respondent shall remain a member of the American Society for Psychopharmacology and the American Pain Society and shall be aware of and follow such standards and routines of practice relevant to treatment of chronic pain patients, as these societies may develop.
- f. Respondent shall set up routines that will allow him to closely monitor the use by his patients of potentially addictive drugs. Respondent shall maintain record-keeping techniques that clearly indicate when a patient uses more of a drug than the amount prescribed. Respondent shall use random blood or urine checks if necessary to ensure compliance with the amounts prescribed.
- g. Respondent shall consult with anesthesiologists when using trigger point injections, epidural blocks or other nerve blocks for pain management.
- h. As to each prescription of a potentially addictive

drug the instructions to each patient and the records for each patient shall include the strength of the medication, the amount of the medication given, the time interval that the patient is to take the medication, the maximum amount of medication that can be taken within a 24 hour period, the number of days the prescription is to last at a minimum, and notes to indicate the plan for the use of the drug.

- i. Respondent shall undertake such training and education as necessary and shall acquire certification as a drug abuse counselor within two years following the effective date of this Settlement Agreement. Respondent shall maintain such certification for so long as Respondent treats patients in whom chronic pain is one of the problems being treated.

5. Temporary conditions of licensure. As a condition of licensure during the period prescribed in this paragraph, Respondent shall abide by the following terms:

- a. For a minimum period of one year following the effective date of this Settlement Agreement Respondent shall obtain the consultation and supervision of Dr. Richard A. Markoff, M.D. ("Dr. Markoff"), with respect to all patients under Respondent's care:

- i. in whom chronic pain is one of the problems being treated; or
 - ii. who receive potentially addicting medications as part of their treatment.
- b. For patients who meet the above criteria under Respondent's care and treatment as of the effective date of this Settlement Agreement, Respondent will transmit complete records to Dr. Markoff within two weeks following the effective date of this Settlement Agreement. For patients (who meet the above criteria) who enter under care and treatment of Respondent after the effective date of this Settlement Agreement, Respondent will transmit all patient records, including initial evaluation of the patient and treatment plan, within two weeks following the initial visit. Subsequent record transmissions for each patient will be at a frequency determined by Dr. Markoff, but no less often than every three months.
- c. Dr. Markoff will review the records and return them with his comments in a timely manner (generally within two weeks) to Respondent. Dr. Markoff and Respondent will also hold telephone conversations whenever either of them feel such would be necessary or useful.
- d. Dr. Markoff's review and comments may deal with

any relevant aspects of the clinical problems, but will at minimum deal with the appropriateness of medications and the justification for any non-standard medications, doses, and drug combinations, including combinations which qualify as polypharmacy.

- e. Respondent shall consider seriously Dr. Markoff's advice and opinions, but since he is the treating physician, Respondent may choose another course of action.
- f. Dr. Markoff will inform the RICO if he has reason to believe Respondent is failing or refusing to follow the terms of the Settlement Agreement or to practice in a safe and competent manner.
- g. At the end of the minimum period of one year Dr. Markoff shall submit to the Board and to RICO a report on his findings and opinions regarding Respondent's ability to treat patients in whom chronic pain is one of the problems being treated and patients who receive potentially addicting medications as part of their treatment.
- h. If the report of Dr. Markoff recommends additional or further temporary conditions of licensure, the Board may order further temporary conditions (up to an additional year) as the Board deems appropriate. If the report of Dr. Markoff

recommends no further temporary conditions, the Board will impose no additional or further temporary conditions.

6. Costs of compliance. Respondent shall bear the costs of supervision, training, education and other costs of compliance with the terms of this Settlement Agreement.

7. Further sanctions. If Respondent fails or refuses to abide by the terms of this Settlement Agreement, or if Respondent violates any provision of the statutes or rules governing the conduct of physicians and surgeons licensed in the State of Hawaii, the Board may impose further sanctions against Respondent as provided by law.

8. No objection if Board fails to approve. If the Board does not approve this Settlement Agreement and the matter is subsequently prosecuted through the administrative hearing process for consideration by the Board, Respondent shall not raise any objection to said proceedings on the basis that the Board has become disqualified to act on this matter because of its review of this Settlement Agreement.

9. Settlement may not be used as evidence. This Settlement Agreement as a compromise and settlement of existing disputes and allegations pursuant to Rule 408, Hawaii Rules of Evidence, HRS Chapter 626, and in order to avoid the attendant risks and expense of pursuing the matter in an administrative hearing. If the Board does not approve this Settlement Agreement, this Settlement Agreement shall not be admissible in

evidence and may not be used for or against Respondent in any administrative hearing on the matters covered herein.

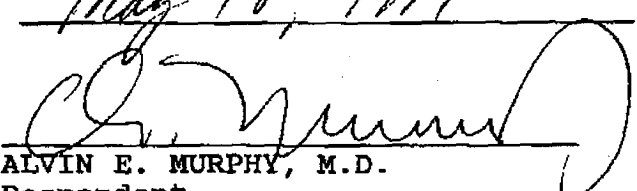
10. Ambiguities construed to protect the public interest.

Any ambiguity in this Settlement Agreement shall be construed in the manner which most completely protects the interests of the consuming public.

11. Complete agreement. This Settlement Agreement:

- (a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto;
- (b) contains the entire agreement of the parties;
- (c) supersedes all prior agreements, understandings and representations, whether written or oral; and
- (d) may only be modified, changed or amended by writing duly executed by all parties hereto.

DATED: Honolulu, Hawaii, May 18, 1994


ALVIN E. MURPHY, M.D.
Respondent


OWEN K. TAMAMOTO
Attorney for Petitioner

I HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND I AGREE TO UNDERTAKE THE RESPONSIBILITIES OF SERVING AS CONSULTANT AND SUPERVISOR OF THE PRACTICE OF RESPONDENT AS SPECIFIED ABOVE:


RICHARD A. MARKOFF, M.D.

IN THE MATTER OF THE LICENSE TO PRACTICE MEDICINE AS A PHYSICIAN
AND SURGEON OF ALVIN E. MURPHY; SETTLEMENT AGREEMENT AFTER FILING
OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
MED 92-19-L

APPROVED AS TO FORM:

H. William Goebert, Jr.
H. WILLIAM GOEBERT, JR., ESQ.

REVIEWED AND RECOMMENDED FOR CONSIDERATION:

Robney L. Mail
HEARINGS OFFICER

MAY 20 1994
Date

APPROVED AND SO ORDERED:

Board of Medical Examiners
State of Hawaii

William E. Barrett, M.D.
Chairman

9-17-94
Date

Melvin M. Kaneshiro, M.D.
Vice-Chairman

[Signature]
Member

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Member

Member

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