

75

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

In the Matter of the Accusation)
Against:)
)
)
Adam Nelson, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 68858)
)
Respondent)
_____)

File No. Case No.12-2002-134386

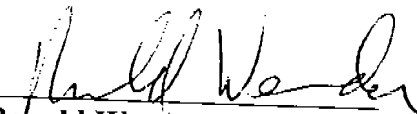
DECISION

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

This Decision shall become effective at 5:00 p.m. on March 12, 2004.

IT IS SO ORDERED February 11, 2004.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald Wender, M.D.
Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
 of the State of California
 2 LAWRENCE A. MERCER, State Bar No. 111898
 Deputy Attorney General
 3 California Department of Justice
 455 Golden Gate Avenue, Suite 11000
 4 San Francisco, CA 94102-7004
 Telephone: (415) 703-5539
 5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 12-2002-134386
 OAH No. N2003 090463

12 **ADAM NELSON, M.D.**
 1030 Sir Francis Drake Blvd., Ste. 120-#3
 13 Kentfield, CA 94904

**STIPULATED SETTLEMENT AND
 DISCIPLINARY ORDER**

14 Physician's and Surgeon's Certificate no. G-68858

15 Respondent.

16
 17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
 18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Complainant Ron Joseph is the Executive Director of the Medical Board
 21 of California who brought this action solely in his official capacity and is represented in this
 22 matter by Bill Lockyer, Attorney General of the State of California, by Lawrence A. Mercer,
 23 Deputy Attorney General.

24 2. Respondent Adam Nelson, M.D., ("respondent") is represented in this
 25 matter by his attorneys John L. Fleer, Law Offices of John L. Fleer, 41 Tara Road, Orinda, CA
 26 94563.

27 3. On or about June 18, 1990, the Medical Board of California issued
 28 Physician's and Surgeon's Certificate No. G-68858 to respondent Adam Nelson, M.D. Said

1 certificate is valid, with an expiration date of March 31, 2004.

2 JURISDICTION

3 4. Accusation No. 12-2002-134386 was filed before the Division of Medical
4 Quality, Medical Board of California of the Department of Consumer Affairs, ("Division"), and
5 is currently pending against respondent. The Accusation, together with all other statutorily
6 required documents, was duly served on respondent on June 17, 2003, and respondent timely
7 filed his Notice of Defense contesting the Accusation.

8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read and discussed with his counsel the nature of
10 the charges and allegations in the Accusation and the effects of this stipulation.

11 6. Respondent is fully aware of his legal rights in this matter, including the
12 right to a hearing on the charges and allegations in the Accusation, the right to be represented by
13 counsel at his own expense, the right to confront and cross-examine the witnesses against him,
14 the right to present evidence and to testify on his own behalf and to the issuance of subpoenas to
15 compel the attendance of witnesses and the production of documents, the right to reconsideration
16 and court review of an adverse decision, and all other rights accorded by the California
17 Administrative Procedure Act and other applicable laws.

18 7. Respondent voluntarily, knowingly and intelligently waives and gives up
19 each and every right set forth above.

20 CULPABILITY

21 8. Respondent understands that the charges and allegations in the Accusation,
22 if proven at a hearing, constitute cause for imposing discipline upon his license to practice
23 medicine in the State of California.

24 9. For the purpose of settlement and to avoid the cost and uncertainty of an
25 administrative hearing, respondent agrees that his license to practice medicine is subject to
26 discipline and he agrees to be bound by the Division's imposition of discipline as set forth in the
27 Order below.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESERVATION

10. The matters agreed to by respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Division of Medical Quality, Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceedings.

CONTINGENCY

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

12. The parties agree that facsimile signatures to this shall have the same legal force and effect as original signatures.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Division shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

14. IT IS HEREBY STIPULATED AND AGREED, based upon the above stipulations and recitals, that the Board, upon its approval of the stipulation herein set forth, may without further notice enter an order whereby respondent, as holder of Physician's and Surgeon's Certificate No. G-68858, shall by way of letter from the President of the Division of Medical Quality of the Medical Board of California be publicly reprimanded; provided, however, that said public reprimand is conditional on respondent's full compliance with the following conditions precedent:

(A) EDUCATION COURSE - MEDICAL RECORD KEEPING

As a condition precedent to the above disciplinary order, and within 60 days from

1 the effective date of this decision, respondent shall enroll in a course in medical record keeping,
2 at respondent's expense, approved in advance by the Division or its designee.

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

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

11 (B) EDUCATION COURSE – ADDITIONAL CME

12 Within 60 days of the effective date of this Decision, respondent shall submit to
13 the Division or its designee for its prior approval an educational program or course(s) which shall
14 not be less than 40 hours. The educational program shall be Category I certified, limited to
15 classroom, conference or seminar settings. The educational program or course(s) shall be at
16 respondent's expense and shall be in addition to the Continuing Medical Education (CME)
17 requirements for renewal of licensure. Following the completion of each course, the Division or
18 its designee may administer an examination to test respondent's knowledge of the course.
19 Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in
20 satisfaction of this condition.

21 (C) COST RECOVERY

22 As a condition precedent to the above disciplinary order, and within 90 days of the
23 effective date of the decision or other period agreed to by the Division or its designee, respondent
24 shall reimburse the Division in the amount of Five Thousand Dollars (\$5,000.00) for its costs of
25 investigation and prosecution. The filing of bankruptcy or period of non-practice by respondent
26 shall not relieve respondent of his obligation to reimburse the Division for its costs.

27 15. Respondent specifically acknowledges and understands that the order for
28 public reprimand as a resolution to the charges in Accusation no. 12-2002-134386 is contingent

1 upon respondent's full compliance with each of the conditions specified in Paragraph 14 of this
2 stipulated settlement. If respondent either fails to complete the required courses or to pay the
3 costs of investigation and enforcement as required, respondent stipulates and agrees that such
4 deficiency shall constitute unprofessional conduct and an independent basis for disciplinary
5 action pursuant to Business and Professions Code section 2234. In the event that any of the
6 above occurs, respondent understands that the Board will be entitled to request a hearing on
7 Accusation no. 12-2002-134386, as well as on a further Accusation alleging any failure of
8 respondent to complete the required education and/or reimburse the Division.

9 16. Upon full compliance with the conditions precedent set forth in Paragraph
10 14 of this Stipulated Settlement and Disciplinary Order, respondent's Physician's and Surgeon's
11 Certificate shall be publicly reprimanded by way of a letter from the President of the Division,
12 which shall be in the same form as the letter attached as Exhibit B hereto.

13 17. Following the effective date of this decision, if respondent ceases
14 practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and
15 conditions of this stipulation, respondent may voluntarily tender his Physician's and Surgeon's
16 Certificate to the Board. The Division reserves the right to evaluate respondent's request or take
17 any other action deemed appropriate and reasonable under the circumstances. Upon formal
18 acceptance of respondent's Physician's and Surgeon's Certificate by the Board, respondent will
19 no longer be subject to the terms and conditions of this stipulation.

20 18. IT IS FURTHER STIPULATED AND AGREED that the terms set forth
21 herein constitute an offer in settlement to the Board. This Stipulated Settlement and Disciplinary
22 Order is not effective until adoption by the Board and shall be null and void, and in no way
23 binding upon the parties hereto, unless and until accepted by the Board. In the event that this
24 stipulated settlement is not adopted by the Board, nothing recited herein shall be construed as a
25 waiver of respondent's right to a hearing or as an admission of the truth of any of the matters
26 charged in the Accusation.

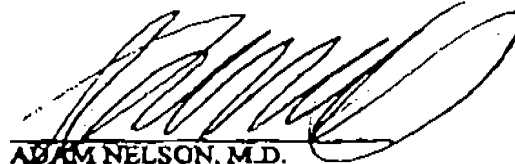
27 19. This Stipulated Settlement and Disciplinary Order, including the exhibits
28 hereto, is intended by the parties herein to be an integrated writing representing the complete,

1 hereto, is intended by the parties herein to be an integrated writing representing the complete
2 final and exclusive embodiment of the agreement between the parties.

3 ACCEPTANCE

4 I have read the above Stipulated Settlement and Disciplinary Order and I have
5 fully understood the terms and conditions and other matters contained therein. I understand the
6 effect this Stipulated Settlement and Disciplinary Order will have on my practice of medicine
7 and agree to be bound thereby. I enter this stipulation freely, knowingly, intelligently and
8 voluntarily. I further agree that a facsimile of this signature page shall have the same legal effect
9 as the original.

10 Dated: 1-8-04

11
12 
13 ADAM NELSON, M.D.
14 Respondent

15
16 I have fully read and fully discussed with Dr. Nelson the terms and conditions and
17 other matters set forth in the above Stipulated Settlement and Disciplinary Order and approve its
18 form and content.

19 Dated: 1-8-04

20 LAW OFFICES OF JOHN L. FLEER

21
22 
23 JOHN L. FLEER, ESQ.
24 Attorney for Respondent
25
26
27
28

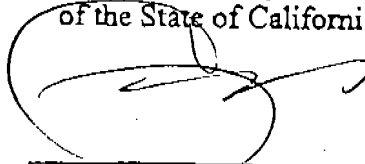
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ENDORSEMENT

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

Dated: 11/9/2004

BILL LOCKYER, Attorney General
of the State of California



LAWRENCE MERCER
Deputy Attorney General

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Exhibit A
Accusation No. 12-2002-134386

1 BILL LOCKYER, Attorney General
of the State of California
2 LAWRENCE A. MERCER, State Bar No. 111898
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5539
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 12-2002-134386

12 ADAM NELSON, M.D.
1030 Sir Francis Drake Blvd., 120-3
13 Kentfield, CA 94904

ACCUSATION

14 Physician's and Surgeon's Certificate No.
G-68858

15
16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Ron Joseph (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs.

23 2. On or about June 18, 1990, the Medical Board of California issued
24 Physician's and Surgeon's Certificate Number G-68858 to Adam Nelson, M.D. (Respondent).
25 The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on March 31, 2004, unless renewed.

27 //

28 //

JURISDICTION

1
2 3. This Accusation is brought before the Division of Medical Quality
3 (Division) for the Medical Board of California, Department of Consumer Affairs, under the
4 authority of the following laws. All section references are to the Business and Professions Code
5 unless otherwise indicated.

6 4. Section 2227 of the Code provides that a licensee who is found guilty
7 under the Medical Practice Act may have his or her license revoked, suspended for a period not
8 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
9 such other action taken in relation to discipline as the Division deems proper.

10 5. Section 2234 of the Code states:

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

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

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

21 "(2) When the standard of care requires a change in the diagnosis, act, or
22 omission that constitutes the negligent act described in paragraph (1), including but not
23 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
24 conduct departs from the applicable standard of care, each departure constitutes a separate
25 and distinct breach of the standard of care."

26 6. Section 2266 of the Code states: "The failure of a physician and surgeon to
27 maintain adequate and accurate records relating to the provision of services to their
28 patients constitutes unprofessional conduct."

1 7. Section 125.3 of the Code provides, in pertinent part, that the Division
2 may request the administrative law judge to direct a licentiate found to have committed a
3 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
4 investigation and enforcement of the case.

5 8. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
6 part:

7 "(a) Upon receipt of written notice from the Medical Board of California, the
8 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
9 that a licensee's license has been placed on probation as a result of a disciplinary action,
10 the department may not reimburse any Medi-Cal claim for the type of surgical service or
11 invasive procedure that gave rise to the probation, including any dental surgery or
12 invasive procedure, that was performed by the licensee on or after the effective date of
13 probation and until the termination of all probationary terms and conditions or until the
14 probationary period has ended, whichever occurs first. This section shall apply except in
15 any case in which the relevant licensing board determines that compelling circumstances
16 warrant the continued reimbursement during the probationary period of any Medi-Cal
17 claim, including any claim for dental services, as so described. In such a case, the
18 department shall continue to reimburse the licensee for all procedures, except for those
19 invasive or surgical procedures for which the licensee was placed on probation."

20 FIRST CAUSE FOR DISCIPLINE

21 (Repeated Negligent Acts)

22 9. Respondent is subject to disciplinary action under section 2234(c) in that
23 respondent committed repeated negligent acts in his care and treatment of Patient B.J. The
24 circumstances are as follows:

25 A. At all relevant times, respondent was a licensed physician and surgeon,
26 with a specialization in adult psychiatry, and was practicing in the County of Marin, State of
27 California. On or about December 30, 2000, Patient B.J. came under respondent's care and
28 treatment for complaints of depressed mood, poor sleep, decreased energy and frequent loss of

1 appetite. Respondent conducted an intake interview, after which it was his impression that the
2 patient suffered from Depression, Not Otherwise Specified. Respondent deferred an Axis II
3 diagnosis at that time. Respondent prescribed Zoloft, 50 mg., and BuSpar, 15 mg.

4 B. Although Patient B.J. met with respondent in his Kentfield office for a full
5 45-50 minute appointment, usually twice per week, respondent's notes are sparse and with little
6 content regarding what transpired during the sessions, his assessment of the patient or his
7 treatment plan for her. The notes for many visits indicate only that an appointment was kept,
8 without further comment. The notes for the patient's visits on January 6 and January 8, 2001,
9 state only "f/u appointment x 1 hr." and do not contain any information regarding the patient's
10 condition or her response to her medications. The note for the next visit, two weeks after the
11 antidepressant medications were started, states only that "rx not helpful" and that respondent
12 changed the patient's medication to Welbutrin, 100 mg. On January 20, respondent added
13 Trazodone, 150 mg., for the patient's complaints of difficulty getting to sleep.

14 C. Respondent's records of his sessions with Patient B.J., when they do
15 reflect the content of the therapy session, make reference to multiple instances of extraordinary
16 behavior by the patient. The events described include the patient lifting her shirt, punching
17 respondent's stomach, attempting to climb onto his lap and other instances of frankly sexual
18 conduct by the patient. If the behavior described in respondent's records actually occurred, it
19 would strongly indicate the presence of a personality disorder. Although respondent reported
20 difficulty in controlling the patient's impulsive conduct, he failed to chart and/or failed to
21 consider a consultation or referral of the patient. Albeit respondent later claimed to have made
22 an Axis II diagnosis of a Cluster B personality disorder for Patient B.J., his records omit any
23 reference to such a diagnosis.

24 D. In March, 2001, respondent prescribed Provigil, 200 mg., for Patient B.J.
25 Respondent was aware that use of Provigil for depression is an off-label, i.e., non-FDA approved,
26 use; However, there is no indication in respondent's records that he discussed the risks and
27 benefits of Provigil in her case.

28 //

1 E. On March 17, respondent ordered a sustained release formulation of
2 Welbutrin for the patient and, on April 30, Ambien, 10 mg., was prescribed. There is no
3 discussion in the records regarding the reasons for these changes in the patient's medications.

4 F. Respondent's records indicate that Remeron was tried as a substitute for
5 Provigil and Welbutrin, approximately June 11 to June 22, 2001. The note for June 13 states that
6 the patient was complaining of fatigue and decreased appetite, which are side effects sometimes
7 associated with Remeron, but that the patient agreed to "try a bit longer". The note dated June
8 22 states that the patient requested renewed prescriptions for Provigil and Welbutrin, as the
9 Remeron left her feeling "too sluggish." Respondent's record is not supported by the pharmacy
10 records. In fact, Patient B.J. never filled the prescription for Remeron and the statements
11 attributed to her are, for that reason, untrue.

12 G. Respondent's records describe the ensuing therapy sessions with Patient
13 B.J. as confrontational and stormy. According to the records, the patient alternately chided
14 respondent for failing to respond to her sexual overtures and sexual fantasies involving
15 respondent and became angry with him for failing to maintain a frequency and intensity of
16 written and verbal communications with her that was commensurate with her expectations.
17 Despite these developments, respondent did not refer the patient or seek consultation regarding
18 management of the patient. Ultimately, on November 7, 2001, respondent recorded an event
19 wherein the patient threatened to disrobe in respondent's office and asked what respondent would
20 do if she did so and then refused to leave respondent's office. Respondent wrote in his notes that
21 the patient began to unbutton her clothing and would not control her impulsive behavior until he
22 threatened to telephone the police. Respondent's records state that he terminated the therapy
23 relationship at that time.

24 H. Following the termination of the therapy, Patient B.J. wrote to respondent
25 and requested that he provide her with a copy of her therapy records. Respondent produced a set
26 of records which he represented to the patient and to the Medical Board were his original records
27 and which were created at the time that the services were provided. Respondent later admitted
28 that the records were not the original records but were created by him between nine and twelve

1 months after therapy began. He asserted that the records were copied from various loose notes,
2 which he then destroyed. At no place in the re-written notes did respondent indicate that the
3 notes were copies produced at a later time.

4 10. Respondent's conduct, as set forth above, constitutes unprofessional
5 conduct in that respondent was guilty of repeated negligent acts in the care and treatment of
6 Patient B.J., including but not limited to the following:

7 A. Respondent failed to maintain a record which set forth the patient's
8 complaints, his assessment, the treatment plan, his reasons for changes in the
9 patient's medication, the patient's informed consent to and response to treatment
10 and his diagnoses;

11 B. Respondent charted information regarding the patient and his care and
12 treatment which was factually incorrect;

13 C. Respondent failed to make and/or to chart an Axis II diagnosis for the
14 patient;

15 D. Respondent failed to either obtain a consultation or to refer the patient;

16 E. Respondent destroyed his original notes regarding Patient B.J.

17 SECOND CAUSE FOR DISCIPLINE

18 (Failure to Maintain Adequate Records)

19 11. Respondent is subject to disciplinary action under section 2266 in that
20 respondent failed to maintain adequate records regarding his care and treatment of Patient B.J.
21 The circumstances are as follows:

22 A. On September 18, 2002, respondent was interviewed by an investigator
23 and a medical consultant for the Medical Board. Respondent was aware that the interview
24 pertained to Patient B.J. and that B.J. had made allegations that his conduct during their sessions
25 was inappropriate and unprofessional. At that time, respondent produced and reviewed a set of
26 documents, which he represented to be a copy of his records pertaining to B.J. Relying upon his
27 notes, respondent denied the allegations made by B.J. and, at one point, stated that he was "quite
28 sure it never happened."

1 B. Respondent was questioned at the interview regarding the time and mode
2 of preparation of the documents purporting to be his records for B.J. Respondent stated that his
3 records were created at the time that the services were provided. He denied that the records were
4 ever re-written. At the time that he made these statements, respondent was aware that the
5 reliability of his written record of the events was being inquired into.

6 C. Respondent's statements to the Medical Board representatives were
7 untrue. When respondent was asked why the records bore a printer's mark of "06/01",
8 respondent was unable to explain the discrepancy. Later, respondent admitted that the records
9 which he represented to be his contemporaneous chart were in fact written by him at a later date.
10 Respondent stated that he organized various loose notes into a single record, thereafter destroying
11 the original notes. He continued to assert that the re-written record was a reliable chronicle of
12 what transpired during therapy with Patient B.J. In fact, as more fully set forth in the first cause
13 for discipline, respondent's records are deficient in many respects, contain statements
14 unsupported by the factual evidence and are neither an accurate nor an adequate record of the
15 therapy sessions with Patient B.J.

16 12. Respondent's conduct as set forth above, constitutes unprofessional
17 conduct in that respondent was guilty of violation of Business and Professions Code 2266, failure
18 to maintain adequate and accurate records.

19 PRAYER

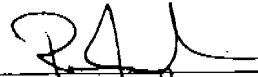
20 WHEREFORE, Complainant requests that a hearing be held on the matters herein
21 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 22 1. Revoking or suspending Physician's and Surgeon's Certificate Number
23 G-68858, issued to Adam Nelson, M.D.;
- 24 2. Revoking, suspending or denying approval of Adam Nelson, M.D.'s
25 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 26 3. Ordering Adam Nelson, M.D. to pay the Division of Medical Quality the
27 reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
28 the costs of probation monitoring;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Taking such other and further action as deemed necessary and proper.

DATED: June 17, 2003



RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

03573160-sf2003ad0243
Accusation.wpd
LAM/ 5-2003