

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

In the Matter of the Accusation Against:)
)
)

EROL F. GIRAY, M.D.)

File No. 08-2002-134350

Physician's and Surgeon's)
Certificate No. G49143)
)

Respondent.)
)


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 September 2, 2005.

IT IS SO ORDERED August 3, 2005.

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald L. Morton, M.D., Chair
Panel A
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
4 Fresno, CA 93721
Telephone: (559) 477-1679
5 Facsimile: (559) 488-7387

6 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 EROL F. GIRAY
14 1551 Bishop Street, Ste. C-320
San Luis Obispo, CA 93401
15 Physician and Surgeon License No. G49143

Respondent.

Case No. 08-2002-134350

OAH No. L-2004-010672

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the
18 public interest and the responsibility of the Division of Medical Quality, Medical Board of
19 California of the Department of Consumer Affairs, the parties hereby agree to the following
20 Stipulated Settlement and Disciplinary Order which will be submitted to the Division for
21 approval and adoption as the final disposition of the Accusation

22 PARTIES

23 1. David T. Thornton (Complainant) is the Executive Director of the Medical
24 Board of California. He brought this action solely in his official capacity and is represented in
25 this matter by Bill Lockyer, Attorney General of the State of California, by Isa R. Rodriguez,
26 Deputy Attorney General.

27 2. Respondent EROL F. GIRAY (Respondent) is represented in this
28 proceeding by attorney Peter R. Osinoff, Esq., whose address is Bonne, Bridges, Mueller,

1 O'Keefe & Nichols, 3699 Wilshire Blvd., 10th. Floor, Los Angeles, CA 90010-2719.

2 3. On or about October 25, 1982, the Medical Board of California issued
3 Physician and Surgeon License No. G49143 to EROL F. GIRAY (Respondent). The License
4 was in full force and effect at all times relevant to the charges brought in Accusation No.
5 08-2002-134350 and will expire on April 30, 2006, unless renewed.

6 JURISDICTION

7 4. Accusation No. 08-2002-134350 was filed before the Division of Medical
8 Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and is
9 currently pending against Respondent. The Accusation and all other statutorily required
10 documents were properly served on Respondent on November 14, 2003. Respondent timely filed
11 his Notice of Defense contesting the Accusation. A copy of Accusation No. 08-2002-134350 is
12 attached as exhibit A and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read, fully discussed with counsel, and
15 understands the charges and allegations in Accusation No. 08-2002-134350. Respondent has
16 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
17 Settlement and Disciplinary Order.

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

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

27 CULPABILITY

28 8. Respondent understands and agrees that the charges and allegations in

1 Accusation No. 08-2002-134350, if proven at a hearing, constitute cause for imposing discipline
2 upon his Physician and Surgeon License.

3 9. For the purpose of resolving the Accusation without the expense and
4 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could set
5 forth a factual basis for the charge of inadequate/inaccurate record keeping in the Accusation, and
6 that Respondent hereby gives up his right to contest this charge.

7 10. Respondent agrees that his Physician and Surgeon License is subject to
8 discipline and he agrees to be bound by the Division's imposition of discipline as set forth in the
9 Disciplinary Order below.

10 CIRCUMSTANCES IN MITIGATION

11 11. Respondent EROL F. GIRAY has never been the subject of any
12 disciplinary action. He is admitting responsibility at an early stage in the proceedings.

13 RESERVATION

14 12. The admissions made by Respondent herein are only for the purposes of
15 this proceeding, or any other proceedings in which the Division of Medical Quality, Medical
16 Board of California, or other professional licensing agency is involved, and shall not be
17 admissible in any other criminal or civil proceeding.

18 CONTINGENCY

19 13. This stipulation shall be subject to approval by the Division of Medical
20 Quality. Respondent understands and agrees that counsel for Complainant and the staff of the
21 Medical Board of California may communicate directly with the Division regarding this
22 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
23 signing the stipulation, Respondent understands and agrees that he may not withdraw his
24 agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon
25 it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
26 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
27 be inadmissible in any legal action between the parties, and the Division shall not be disqualified
28 from further action by having considered this matter.

1 14. The parties understand and agree that facsimile copies of this Stipulated
2 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
3 force and effect as the originals.

4 15. In consideration of the foregoing admissions and stipulations, the parties
5 agree that the Division may, without further notice or formal proceeding, issue and enter the
6 following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician and Surgeon License No. G49143
9 issued to Respondent EROL F. GIRAY is revoked. However, the revocation is stayed and
10 Respondent is placed on probation for ten (10) years on the following terms and conditions.

11 1. ACTUAL SUSPENSION As part of probation, respondent is suspended
12 from the practice of medicine for 30 days broken into two 15-day periods with the first period
13 beginning the sixteenth (16th) day after the effective date of this decision. The second period
14 shall be completed within 6 months after the end of the first period. Respondent shall provide
15 specific dates for the second period of suspension to his probation officer within 30 days
16 following the end of the first period of suspension.

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20 2. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of
21 the effective date of this decision, respondent shall enroll in the PACE Medical Record Keeping
22 Course at respondent's expense. Failure to successfully complete the course during the first 6
23 months of probation is a violation of probation unless the Division or its designee agrees in
24 writing to a later time for completion.

25 If the PACE Medical Record Keeping Course is taken prior to the effective date
26 of the Decision, it may in the sole discretion of the Division or its designee, be accepted towards
27 the fulfillment of this condition.

28 Respondent shall submit a certification of successful completion to the Division

1 or its designee not later than 15 calendar days after successfully completing the course, or not
2 later than 15 calendar days after the effective date of the Decision, whichever is later.

3 3. ETHICS COURSE Within 60 calendar days of the effective date of this
4 Decision, respondent shall enroll in the new course in ethics, at respondent's expense, approved
5 in advance by the Division or its designee. Failure to successfully complete the course during the
6 first year of probation, or such longer time as the Division or its designee may permit, is a
7 violation of probation.

8 If the ethics course is taken prior to the effective date of the Decision, it may in
9 the sole discretion of the Division or its designee, be accepted towards the fulfillment of this
10 condition.

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

14 4. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days
15 from the effective day of this Decision, respondent shall enroll in a professional boundaries
16 program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician
17 Assessment and Clinical Education Program at the University of California, San Diego School of
18 Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the
19 Program's evaluation, and at minimum, a three-day program of interactive education and training
20 in the area of boundaries, which takes into account data obtained from the evaluation and from
21 the Stipulation, Decision, Accusation and any other information that the Program deems relevant.
22 The Program shall provide a written evaluation of the respondent's participation in the Program
23 to the Division or its designee along with any data and results of its assessment.

24 Failure to complete the entire Program not later than six months after respondent's
25 initial enrollment shall constitute a violation of probation unless the Division or its designee
26 agrees in writing to a later time for completion. Based on respondent's performance in and
27 evaluations from the assessment, education, and training, the Program shall advise the Division
28 or its designee of its recommendation(s) for additional education, training, psychotherapy, and

1 other measures necessary to reduce risks in the practice of medicine. Respondent shall comply
2 with Program recommendations and shall comply with the one-year post course follow-up.

3 The Program's determination whether or not respondent successfully completed
4 the Program shall be binding.

5 If the Boundaries Program is taken prior to the effective date of the Decision, it
6 may in the sole discretion of the Division or its designee, be accepted towards the fulfillment of
7 this condition.

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

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

24 Within 60 calendar days of the effective date of this Decision, and continuing
25 throughout probation, or for such shorter period as the Division or its designee may deem
26 appropriate, respondent's practice and billing shall be monitored by the approved monitor.
27 Respondent shall make all records available for immediate inspection and copying on the
28 premises by the monitor at all times during business hours, and shall retain the records for the

1 entire term of probation.

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

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

9 If the monitor resigns or is no longer available, respondent shall, within 5 calendar
10 days of such resignation or unavailability, submit to the Division or its designee, for prior
11 approval, the name and qualifications of a replacement monitor who will be assuming that
12 responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement
13 monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be
14 suspended from the practice of medicine until a replacement monitor is approved and prepared to
15 assume immediate monitoring responsibility. Respondent shall cease the practice of medicine
16 within 3 calendar days after being so notified by the Division or designee.

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

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

26 6. NOTIFICATION Prior to engaging in the practice of medicine, the
27 respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the
28 Chief Executive Officer at every hospital where privileges or membership are extended to

1 respondent, at any other facility where respondent engages in the practice of medicine, including
2 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
3 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
4 Respondent shall submit proof of compliance to the Division or its designee within 15 calendar
5 days.

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

8 7. RESTITUTION As part of this Stipulated Settlement, and without
9 acknowledging any wrongdoing, respondent agrees to reimburse Michael G. the \$29,000 Michael
10 G. paid to Smith Volvo on a car registered to respondent. Respondent shall provide
11 documentation of the reimbursement to the Board.

12 Respondent further agrees, without acknowledging any wrongdoing, to contribute
13 \$100,000 of the \$390,000 received from Patient Patricia S. to a worthy charity and to provide
14 documentation of the charitable contribution to the Board. Respondent shall comply with the
15 agreed to restitution and the agreed to charitable contribution on or before the one hundred
16 twentieth (120th) day after the effective date of this decision.

17 8. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
18 respondent is prohibited from supervising physician assistants.

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

22 10. QUARTERLY DECLARATIONS Respondent shall submit quarterly
23 declarations under penalty of perjury on forms provided by the Division, stating whether there
24 has been compliance with all the conditions of probation. Respondent shall submit quarterly
25 declarations not later than 10 calendar days after the end of the preceding quarter.

26 11. PROBATION UNIT COMPLIANCE Respondent shall comply with the
27 Division's probation unit. Respondent shall, at all times, keep the Division informed of
28 respondent's business and residence addresses. Changes of such addresses shall be immediately

1 communicated in writing to the Division or its designee. Under no circumstances shall a post
2 office box serve as an address of record, except as allowed by Business and Professions Code
3 section 2021(b).

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

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

10 12. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent
11 shall be available in person for interviews either at respondent's place of business or at the
12 probation unit office, with the Division or its designee, upon request at various intervals, and
13 either with or without prior notice throughout the term of probation.

14 13. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent
15 should leave the State of California to reside or to practice, respondent shall notify the Division
16 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-
17 practice is defined as any period of time exceeding 30 calendar days in which respondent is not
18 engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions
19 Code.

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

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

7 14. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

8 In the event respondent resides in the State of California and for any reason
9 respondent stops practicing medicine in California, respondent shall notify the Division or its
10 designee in writing within 30 calendar days prior to the dates of non-practice and return to
11 practice. Any period of non-practice within California, as defined in this condition, will not
12 apply to the reduction of the probationary term and does not relieve respondent of the
13 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
14 any period of time exceeding 30 calendar days in which respondent is not engaging in any
15 activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

23 15. COMPLETION OF PROBATION Respondent shall comply with all
24 financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar
25 days prior to the completion of probation. Upon successful completion of probation,
26 respondent's certificate shall be fully restored.

27 16. VIOLATION OF PROBATION Failure to fully comply with any term or
28 condition of probation is a violation of probation. If respondent violates probation in any respect,

1 the Division, after giving respondent notice and the opportunity to be heard, may revoke
2 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
3 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,
4 the Division shall have continuing jurisdiction until the matter is final, and the period of
5 probation shall be extended until the matter is final.

6 17. COST RECOVERY Within 120 calendar days from the effective date of
7 the Decision or other period agreed to by the Division or its designee, respondent shall reimburse
8 the Division the amount of ten thousand (\$10,000) for its investigative and prosecution costs.
9 The filing of bankruptcy or period of non-practice by respondent shall not relieve the respondent
10 of his obligation to reimburse the Division for its costs.

11 18. LICENSE SURRENDER Following the effective date of this Decision, if
12 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
13 the terms and conditions of probation, respondent may request the voluntary surrender of
14 respondent's license. The Division reserves the right to evaluate respondent's request and to
15 exercise its discretion whether or not to grant the request, or to take any other action deemed
16 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
17 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
18 Division or its designee and respondent shall no longer practice medicine. Respondent will no
19 longer be subject to the terms and conditions of probation and the surrender of respondent's
20 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the
21 application shall be treated as a petition for reinstatement of a revoked certificate.

22 19. PROBATION MONITORING COSTS Respondent shall pay the costs
23 associated with probation monitoring each and every year of probation, as designated by the
24 Division, which are currently set at \$3,173, but may be adjusted on an annual basis. Such costs
25 shall be payable to the Medical Board of California and delivered to the Division or its designee
26 no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of
27 the due date is a violation of probation.

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1 20. REDUCTION/TERMINATION OF PROBATION As part of this
2 Stipulated Settlement, respondent may petition for reduction or early termination of probation at
3 any time after completing four (4) years of probation. However, any reduction or termination of
4 probation shall not begin until on or after the completion of at least five (5) years of probation.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter R. Osinoff, Esq.. I understand the stipulation and the effect it will have on my Physician and Surgeon License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Division of Medical Quality, Medical Board of California.

DATED: 5-16-05



EROL F. GRAY
Respondent

DATED: 5/20/05



PETER R. OSINOFF, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 5/24/05

BILL LOCKYER, Attorney General
of the State of California



ISA R. RODRIGUEZ
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 08-2002-134350

1 BILL LOCKYER, Attorney General
of the State of California
2 ISA R. RODRIGUEZ, State Bar No. 104838
Deputy Attorney General
3 California Department of Justice
2550 Mariposa Mall, Room 5090
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Attorneys for Complainant
6
7

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 14, 20 03
BY Valerie Moore ANALYST

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

13 In the Matter of the Accusation Against:

Case No. 08-2002-134350

14 **EROL F. GIRAY, M.D.**
15 1551 Bishop Street, Suite C-320
San Luis Obispo, CA 93401

A C C U S A T I O N

16 Physician and Surgeon's Certificate
No. G-49143

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 October 25, 1982, the Medical Board of California issued
24 Physician and Surgeon's Certificate Number G-49143 to Erol F. Giray, M.D. (Respondent). The
25 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on April 30, 2004, unless renewed.

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1 JURISDICTION

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

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

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

7. Section 2234 of the Code states:

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

1 (a) Violating or attempting to violate, directly or indirectly,
2 assisting in or abetting the violation of, or conspiring to violate any
3 provision of this chapter [Chapter 5, the Medical Practice Act].

4 (b) Gross negligence.

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

9 (1) An initial negligent diagnosis followed by an act or omission
10 medically appropriate for that negligent diagnosis of the patient
11 shall constitute a single negligent act.

12 (2) When the standard of care requires a change in the diagnosis,
13 act, or omission that constitutes the negligent act described in
14 paragraph (1), including, but not limited to, a reevaluation of the
15 diagnosis or a change in treatment, and the licensee's conduct
16 departs from the applicable standard of care, each departure
17 constitutes a separate and distinct breach of the standard of care.

18 (d) Incompetence.

19 (e) The commission of any act involving dishonesty or corruption
20 which is substantially related to the qualifications, functions, or
21 duties of a physician and surgeon.

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

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

27 **FIRST CAUSE FOR DISCIPLINE**

28 (Dishonest or Corrupt Act)

[Bus. & Prof. Code section 2234 (e)]

9. Respondent is subject to disciplinary action under section 2234 (e) of the
Code, in that Respondent engaged in dishonest and/or corrupt conduct relative to improper
financial dealings with a patient and attempted to defraud state and/or federal tax authorities.
The circumstances are as follows:

10. In or about March 1997, Respondent undertook treatment and care of
patient Michael G. Michael G. sought psychiatric treatment from Respondent following his
wife's diagnosis of terminal cancer. Michael G.'s wife died in May of 1997. Thereafter,

1 Michael G. continued to see Respondent for treatment and/or therapy. Michael G. paid for
2 Respondent's services by check, initially receiving reimbursement from his employer (until his
3 subsequent lay-off). Respondent advised that he did not accept insurance. All Michael G.'s visits
4 as Respondent's patient occurred at Respondent's office at 1551 Bishop Street, San Luis Obispo,
5 CA.

6 A. During Michael G.'s visits, Respondent took few notes and
7 informed Michael G. that this was because he did not want there to be "anything to track".
8 Respondent advised that by taking few notes there would be nothing to track if records were
9 subpoenaed. Michael G. subsequently remarried. During therapy, Respondent became aware
10 that Michael G.'s new wife possessed substantial wealth, which, in turn, gave Michael G. access
11 to large sums of money.

12 B. After Respondent learned of Michael G.'s finances, Respondent
13 began to urge Michael G. during their therapy sessions to provide Respondent with monetary
14 gifts. In or about 2001, on three or four occasions Respondent suggested that Michael G. should
15 help pay Respondent's mortgage. In or about August 2001, Respondent asked Michael G. for
16 \$10,000 to make mortgage payment(s). Michael G. informed Respondent he was concerned
17 about any illegality and was also torn by his "trust/fear relationship" with Respondent as his
18 therapist. Notwithstanding his concerns, Michael G. obtained a cashier's check for \$10,000
19 which he presented to Respondent. Respondent was angered when he learned that the check was
20 traceable by the government due to the amount. Respondent then requested, and Michael G.
21 provided, a personal check to Respondent for \$14,000. When Michael G. asked Respondent
22 about the legality of the payment, Respondent stated that it was "all how you look at it".

23 C. Thereafter, Respondent asked Michael G. to pay off Respondent's
24 full mortgage. Respondent wrote out in detail on a piece of paper how Michael G. could do this.
25 Respondent's house was appraised at \$565,000. Respondent asked Michael G. to provide him
26 with \$400,000 in order to pay off his mortgage. Respondent asked Michael G. not to inform his
27 (the patient's) wife. Respondent informed Michael G. that he wanted the \$400,000 in the form of
28 a gift or gifts, in order to avoid taxes and to avoid having to pay anything to Respondent's former

1 wife. Michael G. informed Respondent that \$400,000 was a lot of money. Respondent replied
2 that "That is nothing to you." Respondent informed Michael G. that if he made the \$400,000
3 gift, Michael and his wife could receive therapy services for life without charge. Michael G.
4 ultimately refused to make the payment and/or "gift". Thereafter, Respondent advised Michael
5 G. that he no longer needed money to pay off his mortgage because he had succeeded in getting
6 another individual to pay off the mortgage.

7 D. In or about August or September of 2001, Respondent informed
8 Michael G. that he wanted to "take you off the books." Respondent explained that this would
9 allow Michael G. to make tax free gifts to Respondent instead of payment for services, so that
10 Respondent could avoid paying taxes and reduce his income for purposes of computing alimony
11 payments to his former wife. Respondent subsequently advised Michael G. that he would destroy
12 Michael G.'s patient records in January of 2002.

13 E. In or about September of 2001, Respondent asked Michael G. to
14 purchase a car for Respondent. On or about October 5, 2001, Respondent repeated his request
15 that Michael G. purchase a car for him, stating to Michael G. that he wanted a specific Volvo
16 automobile at Smith Volvo in San Luis Obispo. Thereafter, Michael G. went to Wells Fargo
17 Bank and got a cashier's check in the amount of \$29,000. Michael G. went to Smith Volvo and
18 paid for a car which was registered to Respondent. Respondent paid \$42,392.65 for the 2001
19 Volvo car, Vehicle Identification Number YV1SZ58D311033719, including a trade-in of
20 Respondent's Chevrolet Tracker valued at \$13,400. Thereafter, Respondent requested that
21 Michael G. purchase a Gateway computer for him, which Michael G. did. The computer was
22 subsequently returned for repair and Michael G. did not return it to Respondent.

23 F. In or about December of 2001, Respondent contacted Michael G.
24 and asked him to come to the office without his wife. At the office, Respondent informed
25 Michael G. that he owed a \$40,000 tax bill, and requested funds from Michael G. to pay the bill.
26 Michael G. expressed concerns about the legality of the request and advised that he needed to
27 consult his accountant. The accountant subsequently advised Michael G. that the proposed gift
28 was illegal. Respondent thereafter suggested to Michael G. that he provide a gift to

1 Respondent's parents who, in turn, could gift the funds to respondent in order to avoid illegality
2 with tax authorities. Michael G. again expressed concerns about the legality of the request, and
3 Respondent said again "It is all how you look at it." Michael G. refused to provide the funds.

4 G. On or about December 10, 2001, Michael G. wrote to Respondent,
5 terminating the doctor-patient relationship and expressing concern about the legality of
6 Respondent's financial requests with his patient.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Dishonest or Corrupt Act)

9 [Bus. & Prof. Code section 2234 (e)]

10 11. Respondent is subject to disciplinary action under section 2234 (e) of the
11 Code, in that Respondent engaged in dishonest and/or corrupt conduct relative to improper
12 financial dealings with a patient and attempted to defraud state and/or federal tax authorities.

13 The circumstances are as follows:

14 12. In or about December of 2001, Respondent solicited and accepted a "gift"
15 from Patricia S., a wealthy, elderly patient, for \$390,000. Respondent used these funds from
16 patient Patricia S. to pay off his personal home mortgage. After receiving the referenced gift from
17 patient Patricia S., Respondent destroyed her patient records on file in his office.

18 **THIRD CAUSE FOR DISCIPLINE**

19 (Gross Negligence)

20 [Bus. & Prof. Code section 2234 (b)]

21 13. Complainant realleges paragraphs 10 and 12, above, and incorporates them
22 by reference herein as if fully set forth at this point.

23 14. Respondent is subject to disciplinary action under section 2234 (b) of the
24 Code in that Respondent was grossly negligent in failing to avoid an improper dual relationship
25 and/or exploitive relations with patients Michael G. and Patricia S. in violation of the ethical
26 standards applicable to psychiatrists and/or psychotherapists.

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FOURTH CAUSE FOR DISCIPLINE
(Gross Negligence)
[Bus. & Prof. Code section 2234 (b)]

15. Respondent is subject to discipline under section 2234 (b) of the Code in that he was grossly negligent in failing to avoid an improper dual relationship and/or exploitive relations with a patient. The circumstances are as follows:

16. In or about 1997, Respondent contracted with Tim H., a patient under Respondent's care for depression, to build an addition to Respondent's residence valued at \$72,420, thereby creating an impermissible dual relationship with a patient in therapy. Patient Tim H. could not produce documentation for any payment from Respondent for the work completed. Respondent kept no records of his treatment nor business transactions with patient Tim H.

FIFTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)
[Bus. & Prof. Code section 2234 (c)]

17. Complainant realleges paragraphs 10, 12 and 16, above, and incorporates them by reference herein as if fully set forth at this point.

18. Respondent is subject to disciplinary action under section 2234 (c) of the Code in that he engaged in negligent conduct with patients Michael G., Patricia S. and Tim H., cited above, and with patient Diane J., described herein below, thereby constituting repeated negligent acts. The circumstances pertaining to patient Diane J. are as follows:

19. In or about the period between January and October 2001, Respondent treated patient Diane J., a female patient. At the time, Ms. J. sought counseling regarding her marriage and her personal relationship with Dr. S., who was also Respondent's patient and the son of patient Patricia S. referenced in paragraph 10, above. Respondent knew that Diane J. was involved in a personal relationship with patient Dr. S. at the time that Respondent accepted Diane J. as a patient and instituted her therapy. Respondent failed to disclose to Diane J. the fact that Dr. S. was also his patient, and counseled Diane J. regarding her relationship with Dr. S. while both were his patients. Respondent thereby created a therapeutic conflict of interest constituting negligent conduct. Respondent kept no records of his treatment of patient Diane J.

1 SIXTH CAUSE FOR DISCIPLINE
2 (Inadequate Record Keeping)
3 [Bus. & Prof. Code section 2266]

4 20. Complainant realleges paragraphs 10, 14 and 17, above, and incorporates
5 them by reference herein as if fully set forth at this point.

6 21. Respondent is subject to disciplinary action under section 2266 of the
7 Code that he failed to keep and maintain adequate and/or accurate patient records for patients
8 Michael G., Patricia S., Tim H. and Diane J.

9 PRAYER

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

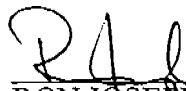
12 1. Revoking or suspending Physician and Surgeon's Certificate Number
13 G-49143, issued to Erol F. Giray, M.D.;

14 2. Revoking, suspending or denying approval of Erol F. Giray, M.D.'s
15 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

16 3. Ordering Erol F. Giray, M.D. to pay the Division of Medical Quality the
17 reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
18 the costs of probation monitoring;

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

20 DATED: November 14, 2003

21 
22 _____
23 RON JOSEPH
24 Executive Director
25 Medical Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant