

OWEN K. TAMAMOTO 2546
Regulated Industries Complaints
Office
Department of Commerce and
Consumer Affairs
State of Hawaii
600A James Campbell Building
828 Fort Street Mall
Honolulu, Hawaii 96813
Telephone: (808) 586-2660

Attorney for Petitioner

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

In the Matter of the) MED 90-77
Medical License of)
)
MARK ANDRE DUNN,)
) SECOND AMENDED SETTLEMENT
) AGREEMENT AFTER FILING OF
) PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL
) ORDER; EXHIBIT "A"
)

SECOND AMENDED SETTLEMENT AGREEMENT AFTER FILING OF
PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Respondent MARK ANDRE DUNN ("Respondent") and the Department of Commerce and Consumer Affairs, by and through its Regulated Industries Complaints Office ("RICO") enter into this Second Amended Settlement Agreement ("Settlement Agreement") as follows:

I. STIPULATED FACTS

Respondent and RICO stipulate as follows:

1. Respondent is and was at all times relevant herein, licensed to practice medicine or surgery by the State of Hawaii, license number MD 4729.

2. The Board of Medical Examiners ("Board") has jurisdiction over Respondent and the subject matter of this Settlement

Agreement.

3. All relevant acts herein occurred in the State of Hawaii.

4. Respondent is aware of his right to be represented by an attorney of his choice and is represented by Reinetta W. Cooper, Esq., with respect to this matter.

5. Respondent is aware of the allegations made by RICO and of his right to a hearing pursuant to Chapters 91, 92 and 453, Hawaii Revised Statutes ("HRS"). Respondent recognizes that he is giving up his right to a hearing by entering into this Settlement Agreement.

6. RICO stands ready to prove the following facts and violations of law by Respondent:

a. On numerous occasions during the period January 1989 through July 1990, Respondent, in violation of Chapter 329, Controlled Substances Act, fraudulently obtained for his own personal use the controlled substances Detussin and Percocet from Longs Drugs Kaneohe Pharmacy, Longs Drugs Kam Shopping Center Pharmacy, Windward Pharmacy and the Times Kaneohe Pharmacy by using the names of members of his family to write fraudulent prescriptions.

b. These actions constitute violations of HRS §§ 453-8(a)(4) (being habituated to the excessive use of drugs), 453-8(a)(7) (professional misconduct), and 453-8(a)(13) (violation of Chapter 329, Controlled Substances Act, or any rule adopted thereunder).

7. Respondent does not admit or deny the allegations above and instead agrees to enter into this Settlement Agreement to avoid extensive litigation on this case.

II. TERMS OF SETTLEMENT

Based upon the stipulation herein, RICO and Respondent each agree to settle this case under the following terms:

1. This Settlement Agreement shall not be binding upon any of the parties unless and until it is approved by the Board.

2. If the Board does not approve or issue an order pursuant to this Settlement Agreement or does not approve a lesser remedy but instead proceeds with an administrative hearing on this case pursuant to the Administrative Procedures Act, Respondent agrees that neither he nor any attorney that he may retain will raise any objection in any administrative proceeding or in any judicial action, to the Board's proceedings against him on the basis that the Board has become disqualified to consider this case because of its review and consideration of this Settlement Agreement.

3. Respondent shall comply with the provisions of the Memorandum of Understanding with the Hawaii Medical Association, a true and correct copy of which Memorandum is attached hereto as Exhibit "A".

4. If, upon a summary hearing after notice, Respondent is shown to have failed to abide by the terms of this Settlement Agreement, the Board shall suspend Respondent's license for two years and may impose further disciplinary action as provided by law, including fines and other sanctions.

5. If Respondent complies with all terms of this Agreement, no further sanctions shall be imposed.

6. The language and terms of this Settlement Agreement are the product of negotiation between the parties hereto and the rule that ambiguities should be construed against the drafter of an agreement does not apply. The parties did not intend to use ambiguous language, but if any ambiguities exist, they should be construed in the manner which most completely protects the interests of the consuming public.

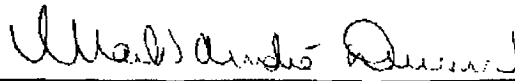
7. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statements, representations, opinions or promises made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter or thing.

8. This Settlement Agreement shall not be construed as precedent for any pending or future case or for any other respondent or party in the cases covered herein.

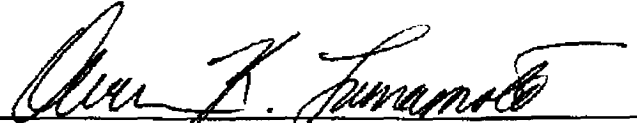
9. This Settlement Agreement: (a) is a complete settlement of the rights, responsibilities and liabilities of the parties hereto; (b) contains the entire agreement of the parties; and (c) supersedes all prior agreements, understandings and representations, whether written or oral. This Agreement may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

parties hereto.

DATED: Honolulu, Hawaii, December 3, 1991.



MARK ANDRE DUNN
Respondent



OWEN K. TAMAMOTO
Attorney for Petitioner

APPROVED AS TO FORM:



REINETTE W. COOPER, ESQ.
Attorney for Respondent

REVIEWED AND RECOMMENDED FOR CONSIDERATION:


RODNEY A. MCNEIL
HEARINGS OFFICER

DEC 6 1991

Date

APPROVED AND SO ORDERED:
Board of Medical Examiners
State of Hawaii

Melvin M. Kamehaha, MD
CHAIRMAN (PAO Term)

December 18, 1991
DATE

Robert H. [Signature]
BOARD MEMBER

BOARD MEMBER

William [Signature]
BOARD MEMBER

BOARD MEMBER

Devin E. Coleman MD
BOARD MEMBER

BOARD MEMBER

William E. [Signature]
BOARD MEMBER

BOARD MEMBER

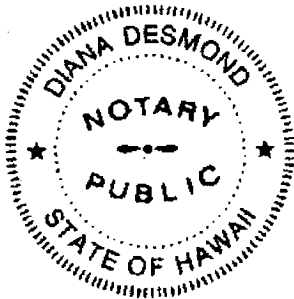
BOARD MEMBER

BOARD MEMBER

(cy1)tamanoto\admin-91\MarkDunn

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

On this 3rd day of December, 1991, before me personally appeared MARK ANDRE DUNN, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Diana Desmond

Notary Public, State of Hawaii
My Commission Expires: 5/29/94



HAWAII MEDICAL ASSOCIATION

1380 SOUTH BERETANIA STREET, HONOLULU, HAWAII 96814
TELEPHONE (808) 536-7702 • FAX (808) 528-2376

MEMORANDUM OF UNDERSTANDING

Mark Dunn, M.D. acknowledges that he has a problem with compulsive use of opiates. He freely agrees to suspend his practice of medicine immediately should he fail to comply with the following:

1. Unless hospitalized as a patient or under treatment by a physician he will not take mind-altering drugs or alcohol on any occasion.
2. Under the direction of Dr. Joseph Giannasio, he agrees to the following:
 - a) Dr. Dunn will attend three NA/AA meetings a week; one of which will be the M.D. AA Group.
 - b) Dr. Dunn will maintain contact with an AA sponsor who will report verbally at least monthly to Dr. Giannasio.
 - c) To participate in weekly psychotherapy sessions with Dr. Giannasio until Dr. Giannasio and Dr. Dunn decide that psychotherapy is required less frequently.
 - d) To attend the Castle Addiction Program's After Care Program once a month or as determined by Dr. Giannasio.
 - e) To submit to random drug urine screens determined by the Castle After Care Program.
3. It is agreed that Dr. Dunn will inform his family that they communicate immediately with Dr. Giannasio should he fail to comply with the above.
4. Compliance reports shall be made monthly by Dr. Giannasio to the HMA Committee on Physicians' Health, verbally for the first 90 days, and written quarterly reports thereafter until termination of the agreement.
5. Noncompliance with any of the above conditions will result in the following:
 - a) Immediate notification of Dr. Giannasio and HMA Committee on Physicians' Health Chairman.
 - b) Immediate cessation of office practice.

EXHIBIT A

- c) Hearing with all parties to the agreement to be scheduled as soon as possible, but in any event no later than (5) days after notification of noncompliance. If after this meeting the agreement was indeed deemed to be breached, it is understood that the HMA Committee on Physicians' Health will report their findings to the HMA Council who will notify the Board of Medical Examiners that Dr. Dunn is believed to be impaired and believed unable to practice with reasonable safety to the public.

This agreement is made voluntarily on the part of Dr. Mark Dunn and with his full knowledge and consent. Dr. Dunn will meet with the committee on a quarterly basis until termination of the agreement. It is to be binding upon Dr. Dunn for two years. At the end of that period, the Hawaii Medical Association Committee on Physicians' Health will interview Dr. Dunn and review Dr. Giannasio's reports and determine if rehabilitation has been achieved. It will be assumed that rehabilitation has occurred if there have been no reports of noncompliance for two years.

DATED:

Honolulu, Hawaii

April 25, 1991

William B. Green, M.D.

Physician

John R. Giannasio, M.D.

Psychotherapist

Richard L. Collins, M.D.

AA Sponsor

Leeward J. J. J.

Chairman, HMA Committee on Physicians' Health