

1 JOHN K. VAN DE KAMP, Attorney General  
2 MARILYN H. LEVIN,  
3 Deputy Attorney General  
4 3580 Wilshire Boulevard  
5 Los Angeles, California 90010  
6 Telephone: (213) 736-2047

7 Attorneys for Complainant

8 BEFORE THE  
9 DIVISION OF MEDICAL QUALITY  
10 BOARD OF MEDICAL QUALITY ASSURANCE  
11 STATE OF CALIFORNIA

|    |                                 |   |                       |
|----|---------------------------------|---|-----------------------|
| 11 | In the Matter of the Accusation | ) | NO. D-3359            |
| 12 | Against:                        | ) |                       |
| 13 | DAVID N. MICHELSON, M.D.        | ) | STIPULATION, DECISION |
| 14 | 14338 Victory Boulevard         | ) | AND ORDER             |
| 15 | Van Nuys, CA 91401              | ) |                       |
| 16 | Physician's and Surgeon's       | ) |                       |
| 17 | Certificate No. G-031906,       | ) |                       |
| 18 | Respondent.                     | ) |                       |

18 IT IS STIPULATED AND AGREED by and between  
19 Kenneth J. Wagstaff, complainant herein, by and through his  
20 attorneys John K. Van De Kamp, Attorney General of the State of  
21 California, by Marilyn H. Levin, Deputy Attorney General and  
22 David N. Michelson, M.D., respondent herein, by and through his  
23 attorney Theodore A. Cohen, Attorney at Law, as follows:

24 1. In or about 1976, respondent David N. Michelson,  
25 M.D. (hereinafter "respondent") was issued Physician's and  
26 Surgeon's Certificate Number G-031906 by the Board of Medical  
27 Quality Assurance (hereinafter the "board"). At all times

1 pertinent hereto, said certificate was in full force and effect  
2 except as set forth hereinbelow.

3 2. On June 7, 1985, respondent was enjoined from  
4 treating patients, prescribing controlled substances,  
5 possessing triplicate or regular prescriptions or practicing  
6 medicine at any place of employment except as approved by the  
7 Board in writing in the case entitled, People of the State of  
8 California and Board of Medical Quality Assurance v. William  
9 Moses, David N. Michelson, M.D., Stanley Douglas Taylor, M.D.  
10 Leimert Park Medical Group, et al., L.A.S.C. No. C47841.

11 3. Complainant Kenneth J. Wagstaff,  
12 Executive Director, Board of Medical Quality Assurance made and  
13 filed as complainant Accusation No. D-3359 on June 19, 1985;  
14 and First Supplemental to Accusation on September 26, 1985.  
15 Said Accusation and First Supplemental Accusation are currently  
16 pending against respondent before the Division of Medical  
17 Quality, Board of Medical Quality Assurance (hereinafter the  
18 "Division").

19 4. Respondent is represented by and has counseled  
20 with Theodore A. Cohen, Attorney-At-Law, Ninth Floor Wells  
21 Fargo Bank, 433 North Camden Drive, Suite 900, Beverly Hills,  
22 California 90212 and has consulted with him concerning the  
23 allegations and charges in said case and the effect of this  
24 stipulation.

25 5. Respondent was duly and properly served with  
26 Accusation No. D-3359, and First Supplemental Accusation  
27 No. D-3359. Said respondent filed a timely Notice of Defense.

1           6. Respondent has received and read Accusation, and  
2 First Supplemental Accusation in Case No. D-3359 and  
3 understands the charges contained therein.

4           7. Respondent is fully aware of his right to an  
5 administrative hearing conducted pursuant to the California  
6 Administrative Procedure Act on the charges and allegations  
7 contained in said Accusation, and First Supplemental  
8 Accusation, his rights to reconsideration of any decision by  
9 the Committee adverse to him, and thereafter appeal to the  
10 Superior Court, and any and all rights which may be accorded to  
11 him pursuant to the California Administrative Procedure Act and  
12 the Code of Civil Procedure of the State of California.  
13 Respondent hereby fully and voluntarily waives these rights  
14 with regard to the Accusation, and First Supplemental  
15 Accusation in Case No. D-3359.

16           8. The admissions made herein are for the purposes of  
17 this proceeding or a proceeding before the board and may not be  
18 used for any other purpose.

19           9. Respondent hereby stipulates that the pleadings in  
20 Case No. D-3360 may be amended or supplemented to conform to  
21 the admissions as set forth hereinbelow.

22           10. Respondent stipulates that a Second Supplemental  
23 Accusation in Case No. D-3359 shall be deemed filed as set  
24 forth hereinbelow in paragraph 10. Respondent admits to the  
25 truth of the following facts:

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1           A. Respondent is further subject to discipline  
2 pursuant to sections 490, 2236(a) and 2237(a) in that,  
3 respondent Michelson has been convicted of a crime  
4 substantially related to the qualifications, functions and  
5 duties of a physician. The circumstances are as follows:

6           (1) On or about April 17, 1985, a ten count  
7 indictment was filed in the case entitled,  
8 United States of America v. David N. Michelson,  
9 Central District of California No. CR 85-360. Said  
10 indictment charged respondent with violations of  
11 21 U.S.C. section 841(a)(1): Distribution of  
12 Controlled Substances; 21 U.S.C. section 843(b): Use  
13 of a Communication Facility; 18 U.S.C. section 2:  
14 Aiding and Abetting; 21 C.F.R. section 1306.04(a)  
15 Issuance of Prescriptions.

16           (2) On or about June 18, 1985, respondent  
17 entered a guilty plea to counts two and ten (21 U.S.C.  
18 section 841(a)(1) and 21 C.F.R. section 1306.04(a).

19           (3) The factual basis of the conviction is as  
20 follows:

21           (a) On or about August 2, 1983, within the  
22 Central District of California, defendant  
23 David N. Michelson, knowingly and intentionally  
24 distributed methaqualone (hereinafter Quaalude),  
25 a Schedule II controlled substance, by writing a  
26 prescription outside the usual course of  
27 professional practice and not for a legitimate

1 medical purpose (21 U.S.C. section 841(a) (1);  
2 21 C.F.R. section 1306.04(a))....

3 (b) On or about August 23 1983 within the  
4 Central District of California, defendant  
5 David N. Michelson, knowingly and intentionally  
6 distributed cocaine, a Schedule II controlled  
7 substance.

8 (4) On or about January 31, 1986, respondent was  
9 convicted (following his plea of guilty) of the  
10 distribution of controlled substances in violation of  
11 21 U.S.C. section 841(a) (1) and issuance of  
12 prescriptions in violation of 21 C.F.R. section  
13 1306.04(a) as charged in counts two and ten of the  
14 indictment.

15 (5) On or about January 31, 1986, respondent was  
16 sentenced to five years imprisonment, suspended, and  
17 was placed on probation for five years probation on  
18 certain terms and conditions, including the  
19 participation in a program for treatment of narcotic  
20 addiction or drug dependency and 2000 hours of  
21 community service as approved by the Probation Office.

22 11. Respondent understands the charges and  
23 allegations of the second supplemental accusation and is aware  
24 of his rights under the California Administrative Procedure Act  
25 and Code of Civil Procedure. Respondent freely and voluntarily  
26 waives those rights with regard to said second supplemental  
27 accusation.

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12. Respondent admits to the truth of the following:

A. APC with Codeine, the trade name for tablets containing codeine, aspirin and phenacetin, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056 and a dangerous drug pursuant to Business and Professions Code section 4211.

B. Talwin, trade name for a compound consisting of pentazocine hydrochloride and aspirin, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057 and a dangerous drug pursuant to Business and Professions Code section 4211.

C. Preludin (Phenmetrazine) is a Schedule II controlled substance pursuant to Health and Safety Code sections 11055, subdivision (c) and 21 C.F.R. section 1308.12 and a dangerous drug pursuant to section 4211 of the Code.

D. Doriden, a trade name for gluthethimide, is a Schedule III controlled substance as defined by section 11056 of the Health and Safety Code and Section 1308.13 of 21 C.F.R. and a dangerous drug as defined by section 4211.

E. Prior to March 1, 1984, Quaalude (Methaqualone) was a state Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (b)(6), a Federal Schedule II controlled substance pursuant to 21 C.F.R., section 1308.12 and a dangerous drug pursuant to section 4211 of the Code. Since March 1, 1984, it has been a state Schedule I controlled substance.

1 F. Cocaine is a Schedule II controlled substance as  
2 defined by section 11055 of the Health and Safety Code and  
3 section 1308.12 of 21 C.F.R. and a dangerous drug as  
4 defined by section 4211.

5 G. PBZ-50 is a trade name for tripeleennanine and is a  
6 dangerous drug as defined by section 4211 of the Business  
7 and Professions Code.

8 13. Respondent further admits to the truth of the  
9 following facts:

10 A. On August 2, 1983, respondent sold for cash  
11 triplicate prescription #83175-006-87 dated August 2, 1983,  
12 for #60 Preludin, 75 mg., in the name of Henry P██████.

13 B. On August 2, 1983, respondent sold for cash a  
14 triplicate prescription #83175-006-86 dated August 2, 1983,  
15 for 30 Quaalude, 300 mg., in the name of Kay N. A██████.

16 C. On August 2, 1983, respondent sold for cash a  
17 triplicate prescription #83175-006-83 dated August 2, 1983,  
18 written for #60 Preludin, 75 mg., in the name of  
19 Juanita P██████.

20 D. On August 2, 1983, respondent sold for cash a  
21 triplicate prescription #83175-006-82 dated August 2, 1983,  
22 for #60 Preludine, 75 mg., in the name of Gregory C██████.

23 E. On August 2, 1983, respondent sold for cash a  
24 triplicate prescription #83175-006-85 dated August 2, 1983,  
25 for #60 Preludin, 75 mg., in the name of Darryl J██████.

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F. On August 2, 1983, respondent sold for cash a triplicate prescription #83175-006-84 dated August 2, 1983, for #60 Preludin, 75 mg., in the name of Earl A [REDACTED]

G. On August 2, 1983, respondent sold for cash a prescription for controlled substance, 30 Talwin, 50 mg., in the name of Pamela D [REDACTED]

H. On August 2, 1983, respondent sold for cash a prescription for #30 PBZ, 50 mg., a dangerous drug in the name of John H [REDACTED]

I. On August 2, 1983, respondent sold for cash a prescription for a controlled substance #30 Doriden, 500 mg., in the name of Jimmy F [REDACTED]

J. On August 2, 1983, respondent sold for cash a prescription for a controlled substance, 30 APC #4 with codeine in the name of Jimmy F [REDACTED]

K. On August 9, 1983, respondent sold .19 grams (net weight) of cocaine for cash.

L. On August 9, 1983, respondent sold for cash ten triplicate prescriptions for #60 Preludin, 75 mg., as follows:

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|    | <u>Date</u> | <u>Number</u> | <u>Patient Name</u>       |
|----|-------------|---------------|---------------------------|
| 1  |             |               |                           |
| 2  | 8-9-83      | 83175-006-88  | Bill B [REDACTED]         |
| 3  | 8-9-83      | 83175-006-89  | Earl B [REDACTED]         |
| 4  | 8-9-83      | 83175-006-90  | Bridgette E [REDACTED]    |
| 5  | 8-9-83      | 83175-006-91  | Albertine D. H [REDACTED] |
| 6  | 8-9-83      | 83175-006-92  | Louise L [REDACTED]       |
| 7  | 8-9-83      | 83175-006-93  | Danny D. M [REDACTED]     |
| 8  | 8-9-83      | 83175-006-94  | Stephanie L. P [REDACTED] |
| 9  | 8-9-83      | 83175-006-95  | Monroe P [REDACTED]       |
| 10 | 8-9-83      | 83175-006-96  | Cheryl R [REDACTED]       |
| 11 | 8-9-83      | 83175-006-07  | Paul R [REDACTED]         |

12 M. On August 23, 1983, respondent sold approximately  
13 27.7 grams (net weight) of cocaine for \$2300 in cash.

14 N. On or about August 9, 1983, respondent snorted  
15 cocaine while engaged in the sale of prescriptions for cash.

16 O. On or about August 14, 1983, he arranged for the  
17 sale of triplicate prescriptions by a Dr. Paul Tsujimoto.  
18 On or about August 16, 1983, Dr. Tsujimoto wrote 10  
19 prescriptions each for Preludin, 75 mg. #60, for a total  
20 of \$600.

21 14. Respondent stipulates that the charges in the  
22 First Supplemental Accusation (attached herein as Exhibit "A"  
23 and incorporated herein by reference) shall remain pending  
24 until either dismissed (with or without prejudice) or until a  
25 final order or decision is rendered by the Division on the  
26 facts and allegations contained therein. Respondent stipulates  
27 that the Division hereby retains jurisdiction to proceed

1 against him on the facts and charges alleged in the First  
2 Supplemental Accusation, and any convictions arising out of the  
3 same facts, by 1) proceeding to hearing on the charges in the  
4 First Supplemental Accusation and merging the decision (or  
5 settlement) with the stipulation for revocation herein;  
6 2) Filing a statement of issues, upon application for  
7 reinstatement by respondent, based upon the facts and charges  
8 alleged in First Supplemental Accusation and any convictions  
9 arising out of the same facts; and/or 3) inquiring into the  
10 charges alleged in the First Supplemental Accusation and any  
11 convictions arising out of the same facts at the time of  
12 application for reinstatement. Respondent hereby waives any  
13 claim of laches.

14 15. Respondent stipulates that there is a pending  
15 criminal complaint filed March 1986 in Santa Cruz County  
16 entitled, People of the State of California v.  
17 David N. Michelson, No. 46-02065, arising out of the facts  
18 alleged in the First Supplemental Accusation. The Board agrees  
19 to postpone proceeding against respondent at this time on the  
20 charges alleged in the First Supplemental Accusation pending a  
21 resolution of the criminal matter. Following a resolution, the  
22 Board may proceed with the pending First Supplemental  
23 Accusation as set forth hereinabove in paragraph 14.

24 16. Pursuant to the waivers, stipulations and  
25 admissions contained herein, cause for discipline has been  
26 established pursuant to Business and Professions Code sections  
27 490, 2236(a), 2237(a), 2234(a), 2234(b), (c), (d), (e), 2238,

1 2242(a), 2239 in conjunction with Health and Safety Code  
2 sections 11153, 11154(a), and 11157.

3 17. In consideration of the stipulations, admissions  
4 and waivers set forth herein, it is agreed that the Division of  
5 Medical Quality may issue the following order:

6 DISCIPLINARY ORDER

7 A. Physician and Surgeon's Certificate No. G-031906  
8 heretofore issued to David N. Michelson, M.D. is hereby  
9 revoked.

10 B. Respondent shall comply with the following  
11 conditions prior to the actual reinstatement of his license  
12 and prior to engaging in the practice of medicine:

13 (1) Respondent shall take and pass an oral  
14 clinical and/or written examination to be administered  
15 by the Division or its designee. The test shall  
16 include a determination of respondent's general  
17 competence in the area of General Medicine, and  
18 Emergency Medicine. If respondent fails these  
19 examinations, respondent must wait three months  
20 between reexaminations, except that after three  
21 failures respondent must wait one year to take each  
22 necessary examination thereafter. The Division shall  
23 pay the cost of the first examination and respondent  
24 shall pay the costs of any subsequent examinations.  
25 Respondent shall not practice medicine until  
26 respondent has passed this examination and has been so  
27 notified in writing.

1 (2) Respondent shall submit to the Division for  
2 its prior approval an educational program or course  
3 related to General Medicine and Medical Therapeutics  
4 which shall not be less than 40 hours per year for  
5 each year of a probationary/restricted license. This  
6 program shall be in addition to the continuing medical  
7 education requirements for relicensure. Following the  
8 completion of each course, the Division or its  
9 designee may administer an examination to test  
10 respondent's knowledge of the course. Respondent  
11 shall submit proof of attendance for 65 hours of  
12 continuing medical education of which 40 hours were in  
13 satisfaction of this condition and were approved in  
14 advance by the Division.

15 (3) Respondent shall provide documentary proof  
16 to the Division that respondent's DEA permit has been  
17 surrendered to the Drug Enforcement Administration for  
18 cancellation, together with any triplicate  
19 prescription forms and federal order forms.  
20 Respondent shall not have prescribed, administered,  
21 dispensed, ordered or possessed any controlled  
22 substances as defined in the California Uniform  
23 Controlled Substances Act.

24 (4) Respondent shall have obeyed all federal,  
25 state and local laws and all rules and regulations  
26 substantially related to the practice of medicine  
27 /

1 including the prescribing and furnishing of controlled  
2 substances and dangerous drugs. . . .

3 C. If respondent's license is actually reinstated, it  
4 shall be reinstated on a restricted/probationary basis for  
5 at least a period of five years. During the probationary  
6 term, respondent shall comply with at least the minimum  
7 following terms and conditions:

8 (1) Respondent shall comply with the continuing  
9 education course requirements on an annual basis for  
10 each year of probationary status as set forth  
11 hereinabove in paragraph 17B(2).

12 (2) Respondent is prohibited from engaging in  
13 solo practice. Respondent shall not practice medicine  
14 until a supervised structured environment has been  
15 approved in writing. Respondent shall submit to the  
16 Division in writing and receive its prior approval in  
17 writing for a plan of practice limited to a supervised  
18 structured environment in which respondent's practice  
19 will be supervised and monitored by a physician duly  
20 licensed to engage in the practice of medicine in the  
21 State of California and whose qualifications to  
22 supervise the respondent are approved by the  
23 Division. The approval shall be based upon  
24 respondent's submittal of a written agreement by the  
25 respondent and the supervising physician. Said  
26 agreement shall contain, among others, the following  
27 terms and conditions:

1 a. At a minimum, the supervision should  
2 consist of weekly review of patient's charts for  
3 each patient examined by respondent; the  
4 supervisor shall meet with respondent at regular  
5 intervals but no less than once a week.

6 b. Supervisors shall submit regular monthly  
7 progress reports to the Division.

8 Respondent shall not be allowed to practice medicine  
9 until respondent has been notified in writing that his  
10 plan of practice has been approved. If the  
11 supervising physician withdraws from his agreement or  
12 changes the terms of the agreement, respondent shall  
13 cease all practice until a suitable replacement is  
14 found and approved by the Division.

15 (3) Respondent is prohibited from practicing  
16 medicine until respondent provides documentary proof  
17 to the Division that respondent's DEA permit has been  
18 surrendered to the Drug Enforcement Administration for  
19 cancellation, together with any triplicate  
20 prescription forms and federal order forms.

21 Respondent shall not prescribe, administer, dispense,  
22 order or possess any controlled substances as defined  
23 in the California Uniform Controlled Substances Act  
24 for a period of five years from the effective date of  
25 reinstatement, or earlier if permitted in writing by  
26 the Division. Respondent shall inform the Division  
27 prior to reapplication for a new DEA permit. As part

1 of respondent's proposal for a supervised structured  
2 environment, respondent may request a waiver from this  
3 paragraph as follows: Respondent may request at the  
4 time of reinstatement, or at any time thereafter, to  
5 have authority to write an order for the  
6 administration of a controlled substance for a patient  
7 in a hospital setting (if justified by the patient's  
8 condition) by entering said order on the patient's  
9 chart or by issuing said order verbally and later  
10 entering said order on the patient's chart in  
11 accordance with accepted hospital practice. However,  
12 respondent shall not handle, touch, or personally  
13 administer said controlled substances. Respondent  
14 shall have such authority only if so permitted by the  
15 Division in writing and only if so permitted by law.

16 (4) Should respondent obtain a new DEA permit,  
17 respondent shall maintain a record of all controlled  
18 substances prescribed, dispensed or administered by  
19 respondent during his probationary period showing all  
20 the following: 1) The name and address of the  
21 patient, 2) The date, 3) The character and quantity  
22 of controlled substances involved, and 4) The  
23 pathology and purpose for which the controlled  
24 substance was furnished. Respondent shall keep these  
25 records in a separate file or ledger, in chronological  
26 order, and shall make them available for inspection  
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and copying by the Division or its designee, upon request.

(5) Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by Section 4211 of the Business and Professions Code or any drugs requiring a prescription; except, however medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

(6) Respondent shall immediately submit to biological fluid testing at respondent's cost, upon request of the Division or its designee.

(7) Respondent shall submit to the Division for its prior approval and enter a drug rehabilitation program in which respondent shall participate weekly during his probationary status and for a period of time to be determined by the Division. Respondent shall provide documentary evidence of continuing participation in this program. The Division may, in its discretion, allow respondent to enroll in the Diversion Program of the Board of Medical Quality Assurance and to participate fully therein as compliance with this paragraph.

(8) Respondent shall obey all federal, state and local laws and all rules and regulations substantially related to the practice of medicine including the

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prescribing and furnishing of controlled substances and dangerous drugs.

(9) Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

(10) Respondent shall comply with the Division's probation surveillance program.

(11) Respondent shall appear in person for interviews with the Division Medical Consultant upon request at various intervals and with reasonable notice.

(12) Respondent shall exercise proper professional judgment prior to prescribing, dispensing or furnishing any drug. Specifically, respondent shall determine prior to prescribing, dispensing or furnishing any drug whether respondent has provided a good faith prior examination and a bona fide medical condition is indicated for the patient.

(13) Respondent shall exercise proper professional judgment and shall not prescribe or administer drugs or treatment in clearly excessive amounts (either dosages or quantities).

(14) Respondent is prohibited from becoming a supervisor of physician assistants in the State of California.

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(15) Respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least 4 hours a month for the first 12 months of probation.

(16) Respondent is prohibited from engaging in or treating patients in the area of obstetrics and gynecology except as permitted by the Division in writing. The Division may require respondent to take and pass an oral/clinical and/or written examination to be administered by the Division or its designee in the area of obstetrics and gynecology.

(17) In the event respondent should leave California to reside or practice out of state, respondent must notify the Division in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period, except as permitted by the Board.

(18) Should respondent violate probation in any respect the board after giving respondent notice and opportunity to be heard may revoke probation and set aside the stay order, may modify or change the terms and period of probation, or may take any other or further action as it deems proper. If a petition to revoke probation is filed against respondent during

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probation, the Division shall have continuing jurisdiction until the matter is final.

18. All remaining charges pending in the Accusation filed June 19, 1985, not stipulated to and found true by this stipulation will be dismissed upon acceptance of this Stipulation by the Board and shall not be filed in any future disciplinary actions against respondent. The charges in the First Supplemental Accusation remain pending as provided hereinabove in paragraph 14.

19. This stipulation shall be subject to the approval of the Division and unless and until adopted by the Division as its decision in Case Number D-3360, this stipulation shall have no force and effect in any present or future proceedings.

JOHN K. VAN DE KAMP, Attorney General  
of the State of California  
MARILYN H. LEVIN,  
Deputy Attorney General.

DATED: September 3, 1986 Marilyn H. Levin  
MARILYN H. LEVIN  
Attorneys for Complainant

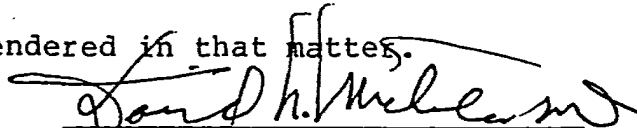
DATED: September 3, 1986 David Michelson, M.D.  
DAVID MICHELSON, M.D.  
Respondent

DATED: September 3, 1986 Theodore Cohen  
THEODORE COHEN, ESQ.  
Attorney for Respondent

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I have read the within stipulation, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving certain rights accorded me by the California Administrative Procedure Act and I willingly, intelligently, and voluntarily waive those rights. I understand that by the terms of this stipulation, my license is to be revoked, and upon my application for reinstatement of my license, I agree to certain terms and conditions set forth herein. I understand that the charges in the First Supplemental Accusation remain pending until dismissal or until a final order or decision is rendered in that matter.

DATED: September 3, 1968

  
DAVID N. MICHELSON  
Respondent

ADOPTION

The above stipulation is hereby adopted by the  
Division of Medical Quality, Board of Medical Quality Assurance  
and shall constitute its decision in this matter. The decision  
is to take effect on March 4, 1987.

DATED: February 2, 1987.



DIVISION OF MEDICAL QUALITY, BOARD  
OF MEDICAL QUALITY ASSURANCE  
JOHN W. SIMMONS  
Secretary-Treasurer

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1 JOHN K. VAN DE KAMP, Attorney General  
 of the State of California  
 2 MARILYN H. LEVIN,  
 Deputy Attorney General  
 3 3580 Wilshire Boulevard  
 Los Angeles, California 90010  
 4 Telephone: (213) 736-2047  
 5 Attorneys for Complainant

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

11 In the Matter of the Accusation ) NO. D-3359  
 Against: )  
 12 ) ACCUSATION  
 David N. Michelson, M.D. )  
 13 14338 Victory Boulevard )  
 Van Nuys, California 91401 )  
 14 )  
 Physician and Surgeon's )  
 15 Certificate No. G-031906, )  
 )  
 16 Respondent. )  
 )

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18 Complainant, Kenneth J. Wagstaff, alleges as follows:

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1. He is the Executive Director of the Board of Medical Quality Assurance, Department of Consumer Affairs, State of California, and brings this accusation solely in said official capacity.

2. In or about 1976, respondent David N. Michelson, M.D. (hereinafter "respondent") was issued physician's and surgeon's certificate number G-031906 by the Board of Medical Quality Assurance (hereinafter the "board").

1 At all times pertinent hereto, said certificate was in full force  
2 and effect.

3 3. Sections 2003 and 2004 of the Business and  
4 Professions Code provide, in pertinent part, that there is a  
5 Division of Medical Quality within the Board of Medical Quality  
6 Assurance, responsible for the enforcement of the disciplinary  
7 provisions of the Medical Practice Act (ch. 5 of div. 2 of the  
8 Bus. & Prof. Code), the administration and hearing of  
9 disciplinary actions, carrying out disciplinary actions  
10 appropriate to findings made by a medical quality review  
11 committee, the division or an administrative law judge, and  
12 suspending, revoking or otherwise limiting certificates after the  
13 conclusion of disciplinary actions. (Hereinafter, all statutory  
14 references are to the Business and Professions Code, unless  
15 otherwise indicated.)

16 4. Sections 2220, 2227 and 2234 authorize the Division  
17 of Medical Quality to suspend or revoke a physician's and  
18 surgeon's certificate, or take other disciplinary action against  
19 a certificate holder who is guilty of unprofessional conduct.

20 5. Section 2038 defines the words "diagnose" or  
21 "diagnosis" as including any undertaking by any method, device,  
22 or procedure whatsoever, and whether gratuitous or not, to  
23 ascertain or establish whether a person is suffering from any  
24 physical or mental disorder. Such terms shall also include the  
25 taking of a person's blood pressure and the use of mechanical  
26 devices or machines for the purpose of making a diagnosis and  
27 representing to such person any conclusion regarding his or her

1 physical or mental condition. Weight or height measurement is  
2 excluded.

3           6. Section 2234, subdivision (a), provides that  
4 unprofessional conduct includes violating or attempting to  
5 violate, directly or indirectly, or assisting in or abetting the  
6 violation of, or conspiring to violate, any provision of the  
7 Medical Practice Act.

8           7. Section 2234, subdivision (e), provides that  
9 unprofessional conduct includes the commission of any act  
10 involving dishonesty or corruption which is substantially related  
11 to the qualifications, functions or duties of a physician and  
12 surgeon.

13           8. Section 2238 provides, in pertinent part, that a  
14 violation of any of the statutes or regulations of this state  
15 regulating narcotics, dangerous drugs, or controlled substances  
16 constitutes unprofessional conduct.

17           9. Section 2242, subdivision (a), provides that  
18 prescribing, dispensing, or furnishing dangerous drugs as defined  
19 in section 4211 without a good faith prior examination and  
20 medical indication therefor, constitutes unprofessional conduct.

21           10. Section 2264 provides that the employing directly or  
22 indirectly, the aiding, or the abetting of any unlicensed person  
23 or any suspended, revoked, or unlicensed practitioner to engage  
24 in the practice of medicine or any other mode of treating the  
25 sick or afflicted which requires a license to practice  
26 constitutes unprofessional conduct.

1 11. Health and Safety Code section 11153,  
2 subdivision (a) provides, in pertinent part, as follows:

3 "A prescription for a controlled substance shall only be  
4 issued for a legitimate medical purpose by an individual  
5 practitioner acting in the usual course of his or her  
6 professional practice. The responsibility for the proper  
7 prescribing and dispensing of controlled substances is on the  
8 prescribing practitioner. . . . Except as authorized by this  
9 division, the following are not legal prescriptions: (1) an  
10 order purporting to be a prescription which is issued not in  
11 the usual course of professional treatment or in legitimate  
12 and authorized research; or (2) an order for an addict or  
13 habitual user of controlled substances, which is issued not  
14 in the course of professional treatment or as part of an  
15 authorized methadone maintenance program, for the purpose of  
16 providing the user with controlled substances sufficient to  
17 keep him or her comfortable by maintaining customary use."

18 12. Health and Safety Code section 11154 prohibits  
19 knowingly prescribing a controlled substance for a person not  
20 under the prescriber's treatment for a pathology or condition.

21 13. Health and Safety Code section 11157 prohibits  
22 issuance of a false or fictitious prescription. Section 4390 of  
23 the code contains a similar provision and defines such conduct as  
24 forgery.

25 14. Title 21, Code of Federal Regulations  
26 section 1306.5, requires that a prescription for a controlled  
27 substance be dated as of the date of issue. Health and Safety

1 Code section 11172 prohibits antedating or postdating  
2 prescriptions.

3 15. Section 2234 provides, in pertinent part, that  
4 unprofessional conduct includes gross negligence  
5 (subdivision (b)), repeated negligent acts (subdivision (c)), and  
6 incompetence (subdivision (d)).

7 16. Section 2239 provides, in pertinent part, that the  
8 use or prescribing for or administering to himself of any  
9 controlled substance in such a manner as to be dangerous or  
10 injurious to the licensee constitutes unprofessional conduct.

11 17. At all relevant times, prior to January 1, 1985,  
12 the provisions of Health and Safety Code sections 11150 through  
13 11208, inclusive, applied to federally scheduled controlled  
14 substances. Since January 1, 1985, they have applied to the  
15 substances listed in the state schedules.

16 18. APC with Codeine, the trade name for tablets  
17 containing codeine, aspirin and phenacetin, is a schedule III  
18 controlled substance pursuant to Health and Safety Code section  
19 11056 and a dangerous drug pursuant to Business and Professions  
20 Code section 4211.

21 19. Talwin, trade name for a compound consisting of  
22 pentazocine hydrochloride and aspirin, is a schedule IV  
23 controlled substance pursuant to Health and Safety Code  
24 section 11057 and a dangerous drug pursuant to Business and  
25 Professions Code section 4211.

26 20. Preludin (Phenmetrazine) is a Schedule II controlled  
27 substance pursuant to Health and Safety Code sections 11055,

1 subdivision (c) and 21 C.F.R. section 1308.12 and a dangerous  
2 drug pursuant to section 4211 of the Code.

3 21. Doriden, a trade name for gluthethimide, is a  
4 Schedule III controlled substance as defined by section 11056 of  
5 the Health and Safety Code and Section 1308.13 of 21 C.F.R. and a  
6 dangerous drug as defined by section 4211.

7 22. Prior to March 1, 1984, Quaaludes (Methaqualone) was  
8 a state Schedule III controlled substance pursuant to Health and  
9 Safety Code section 11056, subdivision (b) (6), a Federal  
10 Schedule II controlled substance pursuant to 21 C.F.R.,  
11 section 1308.12 and a dangerous drug pursuant to section 4211 of  
12 the Code. Since March 1, 1984, it has been a state schedule I  
13 controlled substance.

14 23. Cocaine is a schedule II controlled substance as  
15 defined by section 11055 of the Health and Safety Code and  
16 section 1308.12 of 21 C.F.R. and a dangerous drug as defined by  
17 section 4211.

18 24. PBZ-50 is a trade name for tripeleennanine and is a  
19 dangerous drug as defined by section 4211 of the Business and  
20 Professions Code.

21 25. Respondent is subject to discipline pursuant to  
22 sections 2234, subdivision (a), 2234(b), (c), (d) and (e), 2238  
23 and 2242, subdivision (a) in conjunction with Health and Safety  
24 Code sections 11153, 11154 and 11157 by engaging in the  
25 following:

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1 A. On August 2, 1983, respondent sold for cash  
2 triplicate prescription #83175-006-87 dated August 2, 1983,  
3 for #60 Preludin, 75 mg., in the name of Henry P [REDACTED]

4 B. On August 2, 1983, respondent sold for cash a  
5 triplicate prescription #83175-006-86 dated August 2, 1983,  
6 for 30 Quaalude, 300 mg., in the name of Kay N. A [REDACTED].

7 C. On August 2, 1983, respondent sold for cash a  
8 triplicate prescription #83175-006-83 dated August 2, 1983,  
9 written for #60 Preludin, 75 mg., in the name of  
10 Juanita P [REDACTED]

11 D. On August 2, 1983, respondent sold for cash a  
12 triplicate prescription #83175-006-82 dated August 2, 1983,  
13 for #60 Preludin, 75 mg., in the name of Gregory C [REDACTED]

14 E. On August 2, 1983, respondent sold for cash a  
15 triplicate prescription #83175-006-85 dated August 2, 1983,  
16 for #60 Preludin, 75 mg., in the name of Darryl J [REDACTED]

17 F. On August 2, 1983, respondent sold for cash a  
18 triplicate prescription #83175-006-84 dated August 2, 1983,  
19 for #60 Preludin, 75 mg., in the name of Earl A [REDACTED].

20 G. On August 2, 1983, respondent sold for cash a  
21 prescription for controlled substance, 30 Talwin, 50 mg., in  
22 the name of Pamela D [REDACTED]

23 H. On August 2, 1983, respondent sold for cash a  
24 prescription for #30 PBZ, 50 mg., a dangerous drug in the  
25 name of John H [REDACTED].

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1 I. On August 2, 1983, respondent sold for cash a  
2 prescription for a controlled substance #30 Doriden, 500  
3 mg., in the name of Jimmy F [REDACTED]

4 J. On August 2, 1983, respondent sold for cash a  
5 prescription for a controlled substance, 30 APC #4 with  
6 codeine in the name of Jimmy F [REDACTED]

7 K. On August 9, 1983, respondent sold 0.3 grams of  
8 cocaine for cash.

9 L. On August 9, 1983, respondent sold for cash ten  
10 triplicate prescriptions for #60 Preludin, 75 mg., as  
11 follows:

| <u>Date</u> | <u>Number</u> | <u>Patient Name</u>       |
|-------------|---------------|---------------------------|
| 12 8-9-83   | 83175-006-88  | Bill B [REDACTED]         |
| 13 8-9-83   | 83175-006-89  | Earl B [REDACTED]         |
| 14 8-9-83   | 83175-006-90  | Bridgette E [REDACTED]    |
| 15 8-9-83   | 83175-006-91  | Albertine D. H [REDACTED] |
| 16 8-9-83   | 83175-006-92  | Louise L [REDACTED]       |
| 17 8-9-83   | 83175-006-93  | Danny D. M [REDACTED]     |
| 18 8-9-83   | 83175-006-94  | Stephanie L. P [REDACTED] |
| 19 8-9-83   | 83175-006-95  | Monroe F [REDACTED]       |
| 20 8-9-83   | 83175-006-96  | Cheryl R [REDACTED]       |
| 21 8-9-83   | 83175-006-97  | Paul R [REDACTED]         |

22 M. On August 23, 1983, respondent sold approximately  
23 56.5 grams of cocaine for \$2300 in cash.

24 26. Respondent is further subject to discipline  
25 pursuant to section 2239. The facts and circumstances are as  
26 follows:  
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