

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

In the Matter of the Petition to Revoke)
Probation of:)

DAVID N. MICHELSON, M.D.)
Certificate No. G-31906)

No. D2-84-505250

Respondent.)
_____)

DECISION

The attached Stipulation and Waiver Agreement; Decision and Order is hereby adopted by the Division of Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on September 25, 1998

IT IS SO ORDERED August 26, 1998.

By: Carole Hurvitz
CAROLE HURVITZ, M.D.
Chair - Panel B
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ELISA B. WOLFE,
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 5212
4 Los Angeles, California 90013-1204
Telephone: (213) 897-2555

5 Attorneys for Complainant
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7

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

11 In the Matter of the Petition to) MBC Case No. D2-84-505250
Revoke Probation Against:)
12)
13)
13 **DAVID N. MICHELSON, M.D.**) **STIPULATION AND WAIVER**
2899 Agoura Road, #774) **AGREEMENT; DECISION AND**
14 Westlake Village, California 91301) **ORDER**
Physician's and Surgeon's)
15 Certificate No. G-31906,)
Physician Assistant Supervisor)
16 License No. SA-23339;)
Respondent.)
17)
18)
19)
20)

21 RON JOSEPH ("Complainant"), and DAVID N. MICHELSON,
22 M.D. ("Respondent"), hereby stipulate to the truth of and/or
23 agree to the following matters:
24

25 1. Complainant is the Executive Director of the
26 Medical Board of California ("Board"). As Executive Director,
27 complainant is empowered to bring accusations for disciplinary

1 action against licensees of the Board and to negotiate stipula-
2 tions and other agreements regarding resolutions of disciplinary
3 actions. Complainant is represented by the Attorney General of
4 California, Daniel E. Lungren, by and through Deputy Attorney
5 General Elisa B. Wolfe.

6 2. At all times relevant herein, respondent has been
7 licensed by the Medical Board of California under Physician's and
8 Surgeon's Certificate No. G-31906. Respondent is represented in
9 this matter by Theodore A. Cohen, Esq., whose address is 12100
10 Wilshire Boulevard, Suite 1600, Los Angeles, California 90025.

11 3. On or about April 14, 1992, in Board Case No. 05-
12 84-505250, the Board's Division of Medical Quality ("Division")
13 reinstated respondent's certificate (which previously had been
14 revoked). Said certificate was reinstated in a revoked
15 condition, with the revocation stayed and the license placed on
16 probation for five (5) years. Said license has remained on
17 probation since on or about April 14, 1992.

18 4. On February 26, 1997, complainant, in his official
19 capacity and not otherwise, filed with the Division a Petition to
20 Revoke Probation/ Accusation bearing Board Case No. D2-84-505250.
21 Said Petition to Revoke Probation/ Accusation is currently
22 pending against respondent. A true and correct copy of said
23 Petition/ Accusation is attached hereto and incorporated herein
24 by this reference. (Appended to said Petition/ Accusation is the
25 Board's Decision and Order in Case No. 05-84-505250 which sets
26 forth the terms and conditions of respondent's license
27 probation.)

1 5. On or about February 27, 1997, the Petition to
2 Revoke Probation/ Accusation, together with all statutorily
3 required documents, was duly served on respondent. On or about
4 March 7, 1997, respondent filed his Notice of Defense contesting
5 the Petition to Revoke Probation/ Accusation.

6 6. Respondent and his attorney have fully discussed
7 the charges contained in the Petition to Revoke Probation/
8 Accusation on file in Board Case No. D2-84-505250, and the
9 respondent has been fully advised regarding his legal rights and
10 the effects of this Stipulation and Waiver Agreement
11 ("Stipulation").

12 7. Respondent understands the nature of the charges
13 alleged in the Petition to Revoke Probation/ Accusation and
14 understands that, if proven at hearing, the charges and allega-
15 tions would constitute cause for imposing further discipline upon
16 his Physician's and Surgeon's Certificate. Respondent is fully
17 aware of his right to a hearing on the charges contained in the
18 Petition to Revoke Probation/ Accusation, his right to confront
19 and cross-examine witnesses against him, his right to the use of
20 subpoenas to compel the attendance of witnesses and the
21 production of documents in both defense and mitigation of the
22 charges, his right to reconsideration, appeal and any and all
23 other rights accorded by the California Administrative Procedure
24 Act and other applicable laws. Respondent knowingly, voluntarily
25 and irrevocably waives and gives up each of these rights.
26 Respondent knowingly, voluntarily, and irrevocably enters into
27 this Stipulation with full knowledge of its consequences and

1 effect, and agrees to be bound by the provisions of this
2 Stipulation.

3 8. Complainant can present a prima facie case estab-
4 lishing the allegations and causes for disciplinary action (as to
5 Business and Professions Code § 2234 only ("generic unprofession-
6 al conduct")) in the Petition/ Accusation on file in Board Case
7 No. D2-84-505250. Respondent, however, declines to require
8 complainant to put on its case and hereby waives his right to
9 present a defense to the charges in the Petition/ Accusation.

10 9. Respondent agrees that the Division may impose
11 discipline upon his physician's and surgeon's certificate, and
12 agrees that, by virtue of the stipulations made herein, his
13 license is subject to discipline under Business and Professions
14 Code § 2234 ("generic unprofessional conduct").

15 10. Respondent is aware that, in any petition he files
16 pursuant to Government Code § 11522 and in any other proceeding
17 before the Division or other body which regulates the practice of
18 medicine, the Division or other body may, can and/or will take as
19 true the allegations and causes for license discipline (as to
20 Business and Professions Code § 2234 ("generic unprofessional
21 conduct") only) set forth in the Petition/ Accusation on file in
22 Board Case No. D2-84-505250. ,

23 11. The stipulations herein are for the purpose of
24 this proceeding and any other future proceedings in which the
25 Division of Medical Quality, the Medical Board of California, or
26 other professional licensing agency is involved, and shall not be
27 admissible in any other criminal or civil proceedings.

1 2. **CONTROLLED DRUGS - MAINTAIN RECORD**

2 Respondent shall maintain a record of all controlled
3 substances prescribed, dispensed or administered by respondent
4 during probation, showing all the following: 1) the name and
5 address of patient, 2) the date, 3) the character and quantity of
6 controlled substances involved, and (4) the indications and
7 diagnosis for which the controlled substances was furnished.

8 Respondent shall keep these records in a separate
9 file or ledger, in chronological order, and shall make them
10 available for inspection and copying by the Division or its
11 designee, upon request.

12 3. **BIOLOGICAL FLUID TESTING**

13 Respondent shall immediately submit to biological fluid
14 testing, at respondent's cost, upon the request of the Division
15 or its designee.

16 4. **DIVERSION PROGRAM**

17 Respondent shall continue to be enrolled in and
18 participate in the Division's Diversion Program until the
19 Division determines that further treatment and rehabilitation is
20 no longer necessary, in accordance with recommendations from the
21 Diversion Evaluation Committee. Quitting the program without
22 permission or being expelled for cause shall constitute a
23 violation of probation by respondent.

24 5. **EDUCATION COURSE**

25 Within 90 days from the effective date of this
26 decision, and on an annual basis thereafter, respondent shall
27 submit to the Division or its designee for its prior approval an

1 educational program or course to be designated by the Division,
2 which shall not be less than 40 hours per year, for each year of
3 probation. This program shall be in addition to the Continuing
4 Medical Education requirements for re-licensure. Following the
5 completion of each course, the Division or its designee may
6 administer an examination to test respondent's knowledge of the
7 course. Respondent shall provide proof of attendance for 65
8 hours of continuing medical education of which 40 hours were in
9 satisfaction of this condition and were approved in advance by
10 the Division or its designee.

11 6. **ETHICS COURSE**

12 Within 90 days of the effective date of this decision,
13 respondent shall enroll in a course in Ethics approved in advance
14 by the Division or its designee, and shall successfully complete
15 the course during the first year of probation.

16 7. **SEXUAL HARASSMENT COURSE**

17 Within 90 days of the effective date of this decision,
18 respondent shall enroll in a course in Sexual Harassment approved
19 in advance by the Division or its designee, and shall success-
20 fully complete the course during the first year of probation.
21 Said course may be counted toward fulfillment of the Education
22 Course term set forth above.

23 8. **MONITORING**

24 Within thirty (30) days of the effective date of this
25 decision, respondent shall submit to the Division or its designee
26 for its prior approval a plan of practice in which respondent's
27 practice shall be monitored by another physician in respondent's

1 field of practice, who shall provide periodic reports to the
2 Division or its designee.

3 If the monitor resigns or is no longer available,
4 respondent shall, within fifteen (15) days, move to have a new
5 monitor appointed, through nomination by respondent and approval
6 by the Division or its designee.

7 **9. THIRD PARTY PRESENCE**

8 During probation, respondent shall have a third party
9 present while examining or treating female patients. Respondent
10 shall, within 30 days of the effective date of the decision,
11 submit to the Division or its designee for its approval name(s)
12 of persons who will act as the third party present. The
13 respondent shall execute a release authorizing the third party(s)
14 present to divulge any information that the Division may request
15 during interviews by the probation monitor on a periodic basis.

16 **10. OBEY ALL LAWS**

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

21 **11. QUARTERLY REPORTS**

22 Respondent shall submit quarterly declarations under
23 penalty of perjury on forms provided by the Division, stating
24 whether there has been compliance with all the conditions of
25 probation.

26 **12. PROBATION SURVEILLANCE PROGRAM COMPLIANCE**

27 Respondent shall comply with the Division's probation

1 surveillance program. Respondent shall, at all times, keep the
2 Division informed of his or her addresses of business and
3 residence which shall both serve as addresses of record. Changes
4 of such addresses shall be immediately communicated in writing to
5 the Division. Under no circumstances shall a post office box
6 serve as an address of record.

7 Respondent shall also immediately inform the Division,
8 in writing, of any travel to any areas outside the jurisdiction
9 of California which lasts, or is contemplated to last, more than
10 thirty (30) days.

11 **13. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
12 **DESIGNATED PHYSICIAN(S)**

13 Respondent shall appear in person for interviews with
14 the Division, its designee or its designated physician(s) upon
15 request at various intervals and with reasonable notice.

16 **14. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
17 **IN-STATE NON-PRACTICE**

18 In the event respondent should leave California to
19 reside or practice outside the State or for any reason should
20 respondent stop practicing medicine in California, respondent
21 shall notify the Division or its designee in writing within ten
22 days of the dates of departure and return or the dates of non-
23 practice within California. Non-practice is defined as any period
24 of time exceeding thirty days in which respondent is not engaging
25 in any activities defined in Sections 2051 and 2052 of the Busi-
26 ness and Professions Code. All time spent in an intensive train-
27 considered as time spent in the practice of medicine. Periods of

1 temporary or permanent residence or practice outside California
2 or of non-practice within California, as defined in this condi-
3 tion, will not apply to the reduction of the probationary period.

4 **15. COMPLETION OF PROBATION**

5 Upon successful completion of probation, respondent's
6 certificate shall be fully restored.

7 **16. VIOLATION OF PROBATION**

8 If respondent violates probation in any respect, the
9 Division, after giving respondent notice and the opportunity to
10 be heard, may revoke probation and carry out the disciplinary
11 order that was stayed. If an accusation or petition to revoke
12 probation is filed against respondent during probation, the
13 Division shall have continuing jurisdiction until the matter is
14 final, and the period of probation shall be extended until the
15 matter is final.

16 **17. COST RECOVERY**

17 The respondent is hereby ordered to reimburse the Div-
18 ision the amount of \$3000.00 within 90 days from the effective
19 date of this decision for its investigative and prosecution
20 costs. Failure to reimburse the Division's cost of its inves-
21 tigation and prosecution shall constitute a violation of the
22 probation order, unless the Division agrees in writing to payment
23 by an installment plan because of financial hardship. The filing
24 of bankruptcy by the respondent shall not relieve the respondent
25 of his responsibility to reimburse the Division for its
26 investigative and prosecution costs.

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18. PROBATION COSTS

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Division of Medical Quality at the beginning of each calendar year. Failure to pay costs shall constitute a violation of probation.

Respondent shall also pay the costs associated with compliance with the terms and conditions set forth in this disciplinary order.

19. LICENSE SURRENDER

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to terms and conditions of probation.

CONTINGENCY

This stipulation shall be subject to the approval of the Division. Respondent understands and agrees that Board staff and counsel for complainant may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by respondent or his counsel. If the

1 Division fails to adopt this stipulation as its Decision and
2 Order, then the stipulation shall be of no force or effect, it
3 shall be inadmissible in any legal action between the parties,
4 and the Division shall not be disqualified from further action in
5 this matter by virtue of its consideration of this stipulation.

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ACCEPTANCE

8 I have read the above Stipulation and Waiver Agreement
9 and proposed Disciplinary Order. I have fully discussed the
10 terms and conditions and other matters contained therein with my
11 attorney, Theodore A. Cohen, Esq... I understand the effect this
12 Stipulated Settlement and Disciplinary Order will have on my
13 Physician's and Surgeon's Certificate, and agree to be bound
14 thereby. I enter this stipulation freely, knowingly,
15 intelligently and voluntarily.

16

DATED: November 12, 1997.

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David N. Michelson MD
DAVID N. MICHELSON, M.D.
Respondent

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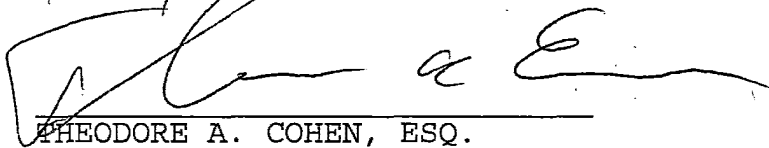
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1 I have read the above Stipulation and Waiver Agreement
2 and proposed Disciplinary Order and approve of it as to form and
3 content. I have fully discussed the terms and conditions and
4 other matters therein with respondent David N. Michelson, M.D..

5 DATED: 12/12/97.

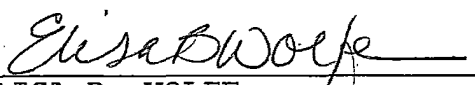
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8 THEODORE A. COHEN, ESQ.
9 Attorney for Respondent

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11 **ENDORSEMENT**

12 The foregoing Stipulation and Waiver Agreement and
13 proposed Disciplinary Order is hereby respectfully submitted for
14 the consideration of the Division of Medical Quality, Medical
15 Board of California.

16 DATED: 12 DECEMBER 1997.

17
18 DANIEL E. LUNGREN, Attorney General
19 of the State of California

20 
21 ELISA B. WOLFE
22 Deputy Attorney General

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26
27 Attorneys for Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
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8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Petition to) MBC Case No. 05-96-61495
12 Revoke Probation Against:)

13 **DAVID N. MICHELSON, M.D.**) **PETITION TO REVOKE**
2899 Agoura Road, #774) **PROBATION;**
14 Westlake Village, California 91301) **ACCUSATION**
Physician's and Surgeon's)
15 Certificate No. G-31906,)
Physician Assistant Supervisor)
16 License No. SA-23339;)

17 Respondent.)
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21 RON JOSEPH ("Complainant"), for causes for discipline,
22 alleges:
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24 **PARTIES**

25 1. Complainant makes and files this petition and
26 accusation solely in his official capacity as the Executive
27 Director of the Medical Board of California ("Board").

1 2. On or about June 25, 1976, the Board issued
2 Physician's and Surgeon's Certificate No. G-31906 to David N.
3 Michelson, M.D. ("respondent"). At all times prior to May 20,
4 1985, this certificate was in full force and effect. . As more
5 particularly described in paragraphs 11 through 13 infra, on or
6 about May 20, 1985, said license was subject to a temporary
7 restraining order which prohibited respondent's practice of
8 medicine. On or about March 4, 1987, said license was revoked.
9 On or about December 18, 1991, said license was granted the right
10 of reinstatement, upon satisfaction of certain conditions. On or
11 about April 14, 1992^{1/}, said license was actually reinstated in a
12 revoked condition, with the revocation stayed and the license
13 placed on probation for five (5) years. Said license has
14 remained on probation since on or about April 14, 1992.

15 3. On or about August 23, 1994, the Board issued
16 Physician Assistant Supervisor License No. SA-23339 to
17 respondent. Said license has been in a delinquent status since
18 February 29, 1996.

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25 1. As of February 27, 1992, the initial date on which the
26 Board attempted reinstatement of respondent's certificate,
27 respondent had not paid his licensure fees. The complete
satisfaction of the conditions precedent to reinstatement did not
occur until April 14, 1992, on which date respondent's licensure
fees were paid.

JURISDICTION AND LEGAL AUTHORITY

1
2 4. This petition and accusation is brought before the
3 Division of Medical Quality ("Division") of the Medical Board of
4 California, Department of Consumer Affairs, pursuant to the
5 authority set forth in the ensuing sections of the California
6 Business and Professions Code ("B&P").

7 5. B&P § 2220 requires that the Division shall
8 enforce and administer the provisions of Article 12^{2/} of the
9 Medical Practice Act^{3/} as to all holders of physician's and
10 surgeon's certificates.

11 6. B&P § 2227 provides that the Division may revoke,
12 suspend for a period not to exceed one year, place on probation
13 and require payment of the costs of probation monitoring, or take
14 other proper disciplinary action against the license of any lic-
15 enseer who has been found guilty under the Medical Practice Act.

16 7. B&P § 2234 provides in relevant part that:

17 "The Division of Medical Quality shall take action
18 against any licensee who is charged with unprofessional con-
19 duct. In addition to other provisions of this article, un-
20 professional conduct includes, but is not limited to, the
21 following:

22 "(a) Violating or attempting to violate, directly or
23 indirectly, or assisting in or abetting the violation of, or
24 conspiring to violate, any provision of this chapter.

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26 2. Business and Professions Code sections 2220-2319.

27 3. Business and Professions Code section 2000 et seq.

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"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

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

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

8. At all times relevant herein, prior to January 1, 1994, B&P § 726 stated in pertinent part that:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer which is substantially related to the qualifications, functions, or duties of the occupation for which a license was issued constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division ..."

9. Effective January 1, 1994, B&P § 726 provided in relevant portion that:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division ... "

10. Section 16.01 of the 1996/1997 Budget Act of the State of California provides, in pertinent part, that: (a) no funds appropriated by this act may be expended to pay any Medi-

1 Cal claim for any service performed by a physician while that
2 physician's license is under suspension or revocation due to a
3 disciplinary action of the Medical Board of California; and, (b)
4 no funds appropriated by this act may be expended to pay any
5 Medi-Cal claim for any surgical service or other invasive
6 procedure performed on any Medi-Cal beneficiary by a physician if
7 that physician has been placed on probation due to a disciplinary
8 action of the Medical Board of California related to the
9 performance of that specific service or procedure on any patient,
10 except in any case where the board makes a determination during
11 its disciplinary process that there exist compelling
12 circumstances that warrant continued Medi-Cal reimbursement
13 during the probationary period.

14

15 **FAILURE TO COMPLY WITH PROBATION TERMS AND CONDITIONS**

16 11. On or about February 2, 1987, the Board adopted,
17 as its own Decision, the Stipulation, Decision, and [proposed
18 disciplinary] Order in the case entitled, In the Matter of the
19 Accusation against David N. Michelson, M.D., Board Case No. D-
20 3359. A true and correct copy of said document, along with the
21 accompanying Accusation and First Supplemental Accusation, are
22 attached hereto as Exhibit "A" and incorporated herein by this
23 reference. Said stipulation, decision, and order, which became
24 effective on March 4, 1987, revoked respondent's physician's and
25 surgeon's certificate.

26 12. On or about November 18, 1991, the Board adopted,
27 as its own Decision, the Proposed Decision in the case entitled,

1 In the Matter of the Petition for Reinstatement of Revoked
2 Certificate of David N. Michelson, M.D., Board Case No. 05-84-
3 505250, OAH Case No. L-54661. A true and correct copy of said
4 document is attached hereto as Exhibit "B" and incorporated
5 herein by this reference. Said decision, which became effective
6 on December 18, 1991, offered a conditional reinstatement of
7 respondent's physician's and surgeon's certificate.

8 13. On or about April 14, 1992,⁴ respondent was
9 deemed to have met the requirements for his reinstatement, and
10 hence, at that time, his physician's and surgeon's certificate
11 was reinstated in a revoked status, with the revocation stayed
12 and the certificate placed on probation for five (5) years, on
13 certain terms and conditions. The terms and conditions (set
14 forth in Exhibit "B") included the following:

15 "(8) Respondent shall obey all federal, state and
16 local laws and all rules and regulations substantially
17 related to the practice of medicine including the
18 prescribing and furnishing of controlled substances and
19 dangerous drugs.

20 ...

21 "(18) Should respondent violate probation in any
22 respect the board after giving respondent notice and
23 opportunity to be heard may revoke probation and set aside
24 the that stay order, amy [sic: may] modify or change the
25 terms and period of probation, or may take any other or
26

27 4. See footnote number 1, supra.

1 further action as it deems proper. If a petition to revoke
2 probation is filed against respondent during probation, the
3 Division shall have continuing jurisdiction until the matter
4 is final. ..."

5
6 **In Re: "J.L." - Sexual Misconduct**

7 14. At all times relevant herein, J.L. was an adult
8 female individual residing in the State of California.

9 15. On or about March 3, 1996, J.L. sought medical
10 care from Encino Urgent Care Medical Center, at which entity
11 respondent was working in his capacity as a physician.

12 16. On or about March 3, 1996, during the course of an
13 ophthalmic examination that respondent was conducting upon J.L.,
14 respondent kissed J.L. on the side of her lips.

15 17. By virtue of the facts set forth above, as to
16 J.L., respondent engaged in sexual abuse and sexual misconduct.
17 Sexual abuse and sexual misconduct are unprofessional conduct, as
18 well as grounds for license discipline under B&P § 726. By
19 engaging in said unprofessional conduct, respondent has violated
20 the terms and conditions of his probation in that he has failed
21 to obey all laws and rules governing the practice of medicine, as
22 required by Probation Term No. 8. Such a violation of the terms
23 and conditions of probation is grounds to revoke probation and
24 impose the underlying license revocation. Such unprofessional
25 conduct constitutes independent grounds to impose discipline upon
26 respondent's Physician's and Surgeon's Certificate pursuant to
27 B&P §§ 2234, 2220, 726.

1 18. By virtue of the facts set forth above, as to
2 J.L., respondent engaged in unprofessional conduct, pursuant to
3 B&P § 2234. By engaging in said unprofessional conduct,
4 respondent has violated the terms and conditions of his probation
5 in that he has failed to obey all laws and rules governing the
6 practice of medicine, as required by Probation Term No. 8. Such
7 a violation of the terms and conditions of probation is grounds
8 to revoke probation and impose the underlying license revocation.
9 Such unprofessional conduct constitutes independent grounds to
10 impose discipline upon respondent's Physician's and Surgeon's
11 Certificate pursuant to B&P §§ 2234, 2220.

12 19. By virtue of the facts set forth above,
13 respondent's care and treatment of J.L. constitutes gross
14 negligence, which is unprofessional conduct under B&P § 2234(b).
15 By engaging in said unprofessional conduct, respondent has
16 violated the terms and conditions of his probation in that he has
17 failed to obey all laws and rules governing the practice of
18 medicine, as required by Probation Term No. 8. Such a violation
19 of the terms and conditions of probation is grounds to revoke
20 probation and impose the underlying license revocation. Such
21 unprofessional conduct constitutes independent grounds for
22 license discipline under B&P §§ 2234, 2220.

23
24 **In Re: "J.E." - Sexual Misconduct**

25 20. At all times relevant herein, J.E. was an adult
26 female individual residing in the State of California.

27 /

1 21. On or about January 5, 1995, and continuing
2 through August 1995, J.E. sought medical care from Advantage Care
3 Medical Group, at which entity respondent was working in his
4 capacity as a physician.

5 22. During the course of one of J.E.'s visits to
6 Advantage Care, respondent performed the examination of J.E., who
7 was experiencing lower back pain. Respondent had J.E. remove her
8 shirt and performed a range-of-motion examination. Respondent
9 then had J.E. pull down her bra straps, and he proceeded to
10 massage J.E.'s neck and shoulders for approximately five minutes.

11 23. By virtue of the facts set forth above, as to
12 J.E., respondent engaged in sexual abuse and sexual misconduct.
13 Sexual abuse and sexual misconduct are unprofessional conduct, as
14 well as grounds for license discipline under B&P § 726. By
15 engaging in said unprofessional conduct, respondent has violated
16 the terms and conditions of his probation in that he has failed
17 to obey all laws and rules governing the practice of medicine, as
18 required by Probation Term No. 8. Such a violation of the terms
19 and conditions of probation is grounds to revoke probation and
20 impose the underlying license revocation. Such unprofessional
21 conduct constitutes independent grounds to impose discipline upon
22 respondent's Physician's and Surgeon's Certificate pursuant to
23 B&P §§ 2234, 2220, 726.

24 24. By virtue of the facts set forth above, as to
25 J.E., respondent engaged in unprofessional conduct, pursuant to
26 B&P § 2234. By engaging in said unprofessional conduct,
27 respondent has violated the terms and conditions of his probation

1 in that he has failed to obey all laws and rules governing the
2 practice of medicine, as required by Probation Term No. 8. Such
3 a violation of the terms and conditions of probation is grounds
4 to revoke probation and impose the underlying license revocation.
5 Such unprofessional conduct constitutes independent grounds to
6 impose discipline upon respondent's Physician's and Surgeon's
7 Certificate pursuant to B&P §§ 2234, 2220.

8 25. By virtue of the facts set forth above,
9 respondent's care and treatment of J.E. constitutes gross
10 negligence, which is unprofessional conduct under B&P § 2234(b).
11 By engaging in said unprofessional conduct, respondent has
12 violated the terms and conditions of his probation in that he has
13 failed to obey all laws and rules governing the practice of
14 medicine, as required by Probation Term No. 8. Such a violation
15 of the terms and conditions of probation is grounds to revoke
16 probation and impose the underlying license revocation. Such
17 unprofessional conduct constitutes independent grounds for
18 license discipline under B&P §§ 2234, 2220.

19
20 **In Re: "C.L." - Unprofessional Conduct**

21 26. At all times relevant herein, C.L. was an adult
22 female individual residing in the State of California.

23 27. On or about December 19, 1996, C.L. was employed
24 at Advantage Care Medical Group, the entity where respondent was
25 then working in his capacity as a physician.

26 28. On or about December 19, 1996, respondent inten-
27 tionally brushed his hand against C.L.'s clothed buttocks area.

1 and enforcement costs up to the date of the hearing, inclu-
2 ding, but not limited to, charges imposed by the Attorney
3 General.

4 "(d) The administrative law judge shall make a
5 proposed finding of the amount of reasonable costs of inves-
6 tigation and prosecution of the case when requested pursuant
7 to subdivision (a). The finding of the administrative law
8 judge with regard to costs shall not be reviewable by the
9 board to increase the cost award. The board may reduce or
10 eliminate the cost award, or remand to the administrative
11 law judge where the proposed decision fails to make a
12 finding on costs requested pursuant to subdivision (a)...."

13
14 **Discipline of Physician Assistant Supervisor Licenses**

15 31. B&P § 3527 provides in pertinent part that:

16 "(c) The board may order ... the suspension or
17 revocation of, or the imposition of probationary conditions
18 upon, an approval to supervise a physician's assistant,
19 after a hearing as required in Section 3528, for
20 unprofessional conduct, which includes, but is not limited
21 to, a violation of this chapter, a violation of the Medical
22 Practice Act, or a violation of the regulations adopted by
23 the committee or the board.

24 "(d) Notwithstanding subdivision (c), the Division of
25 Medical Quality of the Medical Board of California, in
26 conjunction with an action it has commenced against a
27 physician and surgeon, may, in its own discretion and

1 without the concurrence of the board, order the suspension
2 or revocation of, or the imposition of probationary
3 conditions upon, an approval to supervise a physician's
4 assistant, after a hearing as required in Section 3528, for
5 unprofessional conduct, which includes, but is not limited
6 to, a violation of this chapter, a violation of the Medical
7 Practice Act, or a violation of the regulations adopted by
8 the committee or the board...."

9
10 **PRAYER**

11 32. For the reasons set forth in paragraphs 1 through
12 31, inclusive, of this petition and accusation, good cause exists
13 to revoke probation and impose the underlying license revocation
14 and/or impose further discipline upon the Physician's and
15 Surgeon's Certificate and the Physician Assistant Supervisor
16 License issued to respondent.

17 **WHEREFORE**, complainant requests that the Division
18 issue a decision:

- 19 1. Revoking or suspending Physician's and Surgeon's
20 Certificate No. G-31906, heretofore issued to respondent David N.
21 Michelson, M.D.;
- 22 2. Revoking or suspending respondent's authority to
23 supervise physician assistants, pursuant to B&P § 3527;
- 24 3. Ordering respondent to pay the Division the actual
25 and reasonable costs of the investigation and enforcement of this
26 case;

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4. Taking such other and further action as the
Division deems proper.

DATED: February 26, 1997.

for John B. Wolfe D.A.G.
RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

shell.acc [594, 995e rev]

EXHIBIT A

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

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that
this document is true
and correct copy of the
original on file in this
office.

Cynthia Kaysa
SIGNED 1-22-97
DATE

Assist. Custodian of records
TITLE

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 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.

1 12. Respondent admits to the truth of the following:

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

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

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

17 D. Doriden, a trade name for gluthethimide, is a
18 Schedule III controlled substance as defined by section
19 11056 of the Health and Safety Code and Section 1308.13 of
20 21 C.F.R. and a dangerous drug as defined by section 4211.

21 E. Prior to March 1, 1984, Quaalude (Methaqualone)
22 was a state Schedule III controlled substance pursuant to
23 Health and Safety Code section 11056, subdivision (b)(6), a
24 Federal Schedule II controlled substance pursuant to
25 21 C.F.R., section 1308.12 and a dangerous drug pursuant to
26 section 4211 of the Code. Since March 1, 1984, it has been
27 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 tripeleannanine 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 [REDACTED]

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 [REDACTED]

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 [REDACTED].

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 [REDACTED].

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 [REDACTED]

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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:

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

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

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

(3) Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act for a period of five years from the effective date of reinstatement, or earlier if permitted in writing by the Division. Respondent shall inform the Division 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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(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

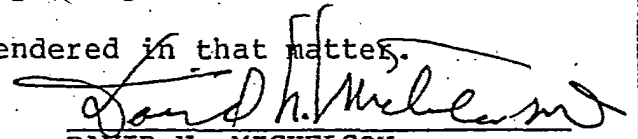
DATED: September 3, 1986 Marilyn H. Levin
MARILYN H. LEVIN
Attorneys for Complainant

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

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

12 DATED: September 3, 1968


13 DAVID N. MICHELSON
14 Respondent

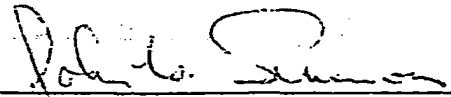
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ADOPTION

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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MEDICAL BOARD OF CALIFORNIA
I do hereby certify that
this document is a
true and correct copy of the
original on file in this
office.

Lynette Young 1-22-97
SECRET DATE

Asst. Custodian of records

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

14 In the Matter of the Accusation) NO. D-3359
15 Against:)
16 David N. Michelson, M.D.) ACCUSATION
17 14338 Victory Boulevard)
18 Van Nuys, California 91401)
19 Physician and Surgeon's)
20 Certificate No. G-031906,)
21 Respondent.)

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

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

27 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 tripeleannanine 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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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 0.3 grams of cocaine for cash.

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

<u>Date</u>	<u>Number</u>	<u>Patient Name</u>
8-9-83	83175-006-88	Bill B [REDACTED]
8-9-83	83175-006-89	Earl B [REDACTED]
8-9-83	83175-006-90	Bridgette E [REDACTED]
8-9-83	83175-006-91	Albertine D. H [REDACTED]
8-9-83	83175-006-92	Louise L [REDACTED]
8-9-83	83175-006-93	Danny D. M [REDACTED]
8-9-83	83175-006-94	Stephanie L. P [REDACTED]
8-9-83	83175-006-95	Monroe P [REDACTED]
8-9-83	83175-006-96	Cheryl R [REDACTED]
8-9-83	83175-006-97	Paul R [REDACTED]

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

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

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

27. Respondent is further subject to discipline pursuant to section 2234, subdivision (e) in that he has committed acts involving dishonesty or corruption. The facts and circumstances are as follows:

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

B. On August 23, 1983, respondent was paid \$650 as his introduction fee for the prescriptions. Dr. Tsujimoto wrote the prescriptions not for legitimate medical purposes and without a good faith prior medical examination.

WHEREFORE, Complainant requests that the Division of Medical Quality Assurance hold a hearing on the matters alleged herein, and that, following said hearing, the Division issue a decision:

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

8 Attorneys for Complainant

MEDICAL BOARD OF CALIFORNIA
I, the undersigned, Clerk of
the Board of Medical Quality Assurance
of the Department of Consumer Affairs
of the State of California, do hereby
certify that the above is a true and
correct copy of the original as
kept in my office.

Cynthia Kaysa 1-28-97
DATE

Assist. Custodian of records

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

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

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

19 28. Complainant is the Executive Director of the
20 Board of Medical Quality Assurance, Department of Consumer
21 Affairs (hereinafter the "Board") and makes this First
22 Supplemental Accusation solely in his official capacity.

23 29. The Board previously filed Accusation
24 No. D-3359 against the above captioned respondent on June 19,
25 1985. The allegations of paragraphs 2, 3 and 4 of the
26 accusation heretofore filed are realleged and incorporated by
27 reference as if fully set forth at this point.

1 30. Section 2234, formerly Section 2361, of the
2 Business and Professions Code (all sectional references herein
3 are to the Business and Professions Code unless otherwise noted)
4 provides that the Division of Medical Quality shall take action
5 against any licensee who is charged with unprofessional conduct.

6 33. Section 2234(b) and (d) [formerly
7 Section 2361(b) and (d)] provide in pertinent part:

8 . . .
9 In addition to other provisions of this article,
10 unprofessional conduct includes, but is not limited to the
11 following:

12 (b) Gross negligence

13 . . .

14 (d) Incompetence

15 34. Respondent's license is further subject to
16 discipline pursuant to section 2234(b) in that respondent has
17 been grossly negligent in discharging his duties as a physician
18 as more specifically alleged herein below:

19 A. From approximately 1981 through
20 February 1, 1983, respondent established a doctor-patient
21 relationship with patient Vickey R. On or about February
22 9, 1983, respondent established a doctor-patient
23 relationship with baby R.

24 B. On or about February 9, 1983, patient Vickey R.,
25 a 17-year-old female, presented herself to respondent as
26 having severe abdominal pain. Respondent elected to
27 evaluate her condition at her residence, in lieu of

1 evaluating her condition, in an environment with a variety
2 of medical instruments and ancillary laboratory and
3 radiologic aids immediately available. Said treatment
4 constitutes gross negligence.

5 C. On or about February 9, 1983, respondent
6 attempted to transport patient Vickey R. to his residence
7 for further evaluation, although his residence was
8 inaccessible to emergency personnel. Respondent failed to
9 transport patient to an appropriate medical facility for
10 medical care. This conduct constitutes gross negligence.

11 D. On or about February 9, 1983, while transporting
12 patient Vickey R. to his residence, respondent stopped at
13 an Exxon gas station at patient's request following
14 statements regarding abdominal pain and bowel urge at
15 approximately 8:00-9:00 p.m. In the restroom respondent
16 observed a face presentation of a fetus and associated
17 same with spontaneous abortion. The reconstruction of
18 regular periodic abdominal pain, followed by severe bowel
19 urge and thereafter by the presentation of a fetal head at
20 the iultrolties would normally suggest labor, not an
21 abortive process. Respondent failed to identify the signs
22 and symptoms of labor and a possible life threatening
23 intra-abdominal condition. This conduct constitutes gross
24 negligence.

25 E. On or about February 9, 1983, respondent exited
26 the restroom at the moment he heard the fetus drop in the
27 toilet bowl. Respondent failed to attempt to resuscitate

1 or treat the fetus. Respondent abandoned both the fetus
2 and patient Vickey R in a life threatening situation and
3 failed to seek additional assistance. This conduct
4 constitutes gross negligence.

5 F. Respondent transported patient Vickey R. to his
6 residence. Respondent failed to transport patient and
7 fetus to an appropriate medical facility. This conduct
8 constitutes gross negligence.

9 G. At 6:30 a.m., on February 10, 1983, a dead male
10 infant was found in a toilet bowl in the women's restroom
11 at the Exxon station.

12 H. Respondent was grossly negligent in the medical
13 care and treatment of Vickey R. and baby R. as follows:

- 14 (1) Respondent failed to attend to the delivery of
15 baby R. into the toilet and abandoned patient
16 Vickey R. and baby R. and/or
- 17 (2) Respondent failed to examine baby R and/or
- 18 (3) Respondent failed to attempt resuscitation of
19 baby R. and/or
- 20 (4) Respondent failed to transport patient Vickey
21 R. to a proper facility for monitoring and
22 treatment prior to delivery and following a
23 precipitous, unsterile, uncontrolled delivery
24 and/or
- 25 (5) Respondent failed to adequately examine
26 patient Vickey R. prior to and following the
27 delivery.

1 35. Respondent is further subject to disciplinary
2 action pursuant to Section 2234(d), in that he has been
3 incompetent as a physician. The circumstances are as follows:

4 (A) The facts alleged hereinabove at paragraph 34
5 are realleged and incorporated herein fully set forth at
6 this point.

7 (B) Respondent was incompetent in that he did not
8 diagnose a term pregnancy in a non-obese female patient
9 and/or if he did make the diagnosis, respondent was
10 incompetent in failing to deliver baby R. when he observed
11 or heard him being born.

12 (C) Respondent was incompetent in that he failed to
13 recognize a viable infant and failed to adequately treat
14 and monitor baby R.

15 (D) Respondent was incompetent in his knowledge of
16 abortions and size of abortions.

17 (E) Respondent was incompetent in his predelivery
18 and post partum care of patient Vickey R. and baby R.

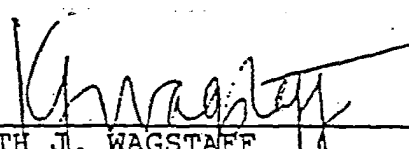
19 WHEREFORE, complainant prays that the Division of
20 Medical Quality hold a hearing on the matters alleged in the
21 Accusation filed on June 19, 1985, and the First Supplemental
22 Accusation herein, and that, following said hearing, the
23 Division issue a decision:

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1 1. Suspending or revoking Physician and Surgeon's
2 Certificate No. G-031906 heretofore issued to respondent
3 David N. Michelson, and/or

4 2. Taking such other action as it deems proper.

5 DATED: September 26, 1985

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11 _____
12 KENNETH J. WAGSTAFF
13 Executive Director
14 Board of Medical Quality Assurance
15 Department of Consumer Affairs

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Complainant

EXHIBIT B

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

In the Matter of the Petition for)
Reinstatement of Revoked)
Certificate of:)

DAVID N. MICHELSON, M.D.)
31567 Lindero Canyon Rd., #4)
Westlake Village, CA 91361)

No. L-54661

Respondent.)

DECISION

The attached Proposed Decision of the Medical Quality Review Committee is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on December 18, 1991.

IT IS SO ORDERED November 18, 1991.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA

Theresa L. Claassen

THERESA L. CLAASSEN
Secretary/Treasurer

MEDICAL BOARD OF CALIFORNIA

Linda Kouza 1-22-91
Asst. Custodian of Records

FINDINGS OF FACT

1.

In 1976 petitioner was first licensed by the State Board of Medical Examiners as a physician and surgeon.

2.

(A) By Board Decision No. D-3359 pursuant to stipulation effective 4 March 1987, the license of petitioner to practice as a physician and surgeon in the State of California was revoked. Further the Board ordered compliance with certain specified conditions prior to reinstatement of his license and, additionally, ordered that any reinstatement would be for a minimum five year probationary term on minimum specified terms and conditions.

(B) Petitioner became addicted to certain controlled substances in 1978. Cause for discipline involved distribution of cocaine and other dangerous substances. As a result thereof petitioner suffered a criminal conviction on 31 January 1986 with a five year sentence and imprisonment suspended and petitioner placed on court-ordered probation. One term thereof was participation in a treatment program for narcotic addiction and drug dependency.

3.

On or about 31 January 1991 petitioner filed subject petition.

4.

Since the time of subject revocation to the present petitioner has achieved the following rehabilitation:

(A) In 1983, he stopped using cocaine. He entered the Physician Diversion program in 1984 and remained in the program until 1986. Between 1986 and 1988, he was a participant in the Federal Drug Program (Correctional Service Associates), a behavior modification program, and successfully completed same. He has been subject to random drug testing since completion of the program and has remained drug-free.

(B) Since 1986, he has participated in group psychotherapy at least twice per week. He has been in Cocaine Anonymous since 1984 and attend meetings twice per week. He is a sponsor and has been a panel member. He has advised Los Angeles County Probation, Narcotics Testing Units on the effects of drug-screening on recovery.

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(C) Over the past five years, he has rendered over 2000 hours of community service counselling substance abusers-- adolescents and adults, victims of rape and other violent crimes. He has also assisted quadriplegic adults in their attempts to maximize function through physical exercise.

(D) He has accumulated 179.5 Category I CME credits and 127 Category 2 credit hours at Family practice, Emergency Medicine, Acute Cardiac Care, and Endocrine seminars. In addition, he has taken 9 credit hours at California State University Northridge, Department of Sociology in Psychodrama and has successfully completed the training course with the California Institute of Psychodrama.

(E) Since 1986, he has earned a living as a medical equipment broker and salesman for West Coast Medical Services; and has operated as a medical management consultant, assisting physicians in their billing and collections.

5.

(A) The evidence as a whole established that, with due regard to the public safety and welfare, petitioner's license should be reinstated at this time. Petitioner has established the rehabilitation set forth in Finding 4. In view of the severity of the acts which caused revocation of petitioner's license, petitioner had the burden of establishing a record of clear and convincing and substantial rehabilitation. He has done so.

(B) Petitioner, clearly and convincingly, by his own testimony and the testimony of others, established a change in attitude from that which existed at the time of said criminal conduct. A number of witnesses, with knowledge of respondent and his past, representing a wide spectrum of petitioner's community, testified in his behalf and expressed opinions concerning petitioner's present good character and reputation and his integrity. Said opinions are credible opinions supported by reasonable inferences from the whole of the evidence. That evidence and other evidence did establish that, at present, petitioner is a socially responsible person.

* * * * *

DETERMINATION OF ISSUES

Petitioner has established good cause to reinstate his certificate consistent with the mandatory requirements set forth in the Board's Order set forth in Decision D-3359.

ORDER

The petition of David N. Michelson, M.D. for reinstatement of revoked certificate is hereby granted; provided however that said grant is pursuant to the requirements of the Disciplinary Order set forth in Board Decision D-3359, line 10 page 11 to line 2 page 19, to wit:

(A) Respondent shall comply with the following conditions prior to the actual reinstatement of his license and prior to engaging in the practice of medicine:

- (1) Respondent shall take and pass an oral clinical and/or written examination to be administered by the Division or its designee. The test shall include a determination of respondent's general competence in the area of General Medicine, and Emergency Medicine. If respondent fails these examinations, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary examination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations. Respondent shall not practice medicine until respondent has passed this examination and has been so notified in writing.
- (2) Respondent shall submit to the Division for its prior approval an educational program or course related to General Medicine and Medical Therapeutics which shall not be less than 40 hours per year for each year of a probationary/restricted license. This program shall be in addition to the continuing medical education requirements for relicensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall submit proof of attendance for 65 hours of continuing medical education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division.

- (3) Respondent shall provide documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Respondent shall not have prescribed, administered, dispensed, ordered or possessed any controlled substances as defined in the California Uniform Controlled Substances Act.
- (4) Respondent shall have obeyed all federal, state and local laws and all rules and regulations substantially related to the practice of medicine including the prescribing and furnishing of controlled substances and dangerous drugs.

(B) If respondent's license is actually reinstated, it shall be reinstated on a restricted/probationary basis for a period of five (5) years. During the probationary term, respondent shall comply with the following terms and conditions:

- (1) Respondent shall comply with the continuing education course requirements on an annual basis for each year of probationary status as set forth hereinabove in paragraph 17(A)(2).
- (2) Respondent is prohibited from engaging in solo practice. Respondent shall not practice medicine until a supervised structured environment has been approved in writing. Respondent shall submit to the Division in writing and receive its prior approval in writing for a plan of practice limited to a supervised structured environment in which respondent's practice will be supervised and monitored by a physician duly licensed to engage in the practice of medicine in the State of California and whose qualifications to supervise the respondent are approved by the Division. The approval shall be based upon respondent's submittal of a written agreement by the respondent and supervising physician. Said agreement shall contain, among others, the following terms and conditions:

- (a) At a minimum, the supervision should consist of weekly review of patient's charts for each patient examined by respondent; the supervisor shall meet with respondent at regular intervals but no less than once a week.
- (b) Supervisors shall submit regular monthly progress reports to the Division.

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

- (3) Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Respondent shall not prescribe, administer, dispense, order or possess any controlled substance as defined in the California Uniform Controlled Substances Act for a period of five years from the effective date of reinstatement, or earlier if permitted in writing by the Division. Respondent shall inform the Division prior to reapplication for a new DEA permit. As part of respondent's proposal for a supervised structured environment, respondent may request a waiver from this paragraph as follows: Respondent may request at the time of reinstatement, or at any time thereafter, to have authority to write an order for the administration of a controlled substance for a patient in a hospital setting (if justified by the patient's condition) by entering said order on the patient's chart or by issuing said order verbally and later entering said order on the patient's chart in accordance with accepted hospital practice.

However, respondent shall not handle, touch, or personally administer said controlled substances. Respondent shall have such authority only if so permitted by the Division in writing and only if so permitted by law.

- (4) Should respondent obtain a new DEA permit, respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during his probationary period showing all the following: 1) The name and address of the patient, 2) The date, 3) The character and quantity of controlled substances involved, and 4) The pathology and purpose for which the controlled substance was furnished. Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection 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 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 judgement 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 judgement 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.
- (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 a 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 that stay order, any 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 probation, the Division shall have continuing jurisdiction until the matter is final.

This Decision shall become effective on
the _____ of _____ 1991.

IT IS SO ORDERED this _____ day of _____,
1991.

PANEL OF DISTRICT 10
MEDICAL QUALITY REVIEW COMMITTEE
DIVISION OF MEDICAL QUALITY ASSURANCE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: Guy Hartman
GUY HARTMAN, M.D.
Chairman

RJL:myg