

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

In the Matter of the Accusation Against:

**DEBORAH ELLEN BANKER, M.D.
23852 Pacific Coast Highway, #342
Malibu, California 90265**

**Physician's and Surgeon's Certificate
Number G 39808**

Respondent.

Case No. 16-1999-95260

OAH No. L1999100241

DECISION AFTER NONADOPTION

This matter came on regularly for hearing on May 25 and 26, 2005, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California. Ron Joseph (Complainant) was represented by John DeCure, Deputy Attorney General. Deborah Ellen Banker, M.D. (Respondent) was present and was represented by William H. Dailey, Attorney at Law. Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

The Administrative Law Judge issued his Proposed Decision on June 15, 2005. The Proposed Decision of the Administrative Law Judge was not adopted by the Division of Medical Quality, Medical Board California ("Board"). The Board issued an Order of Nonadoption on August 2, 2005. On September 30, 2005, the Board issued its Notice of Hearing for Oral Argument.

Having reviewed the record in its entirety including the transcript and written argument submitted by both parties and oral argument on November 3, 2005 by both parties, the Board now makes and enters its Decision After Nonadoption as follows:

FACTUAL FINDINGS

The Board makes the following Factual Findings:

1. Ron Joseph made the First Amended Accusation in his official capacity as Executive Director of the Medical Board of California (Board or California Board).¹
2. On August 24, 1981, the Board issued Physician and Surgeon Certificate No. G 39808 to Respondent. The license is current. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).²
3. Respondent is an ophthalmologist. She is a sole practitioner who primarily practices alternative medicine.
4. In and around July 1998, Respondent was also licensed to practice medicine in the State of Colorado. In July 1998, a Formal Complaint was filed against Respondent by a Colorado State Board of Medical Examiners Inquiry Panel and the Colorado Attorney General, triggering a disciplinary action by the Colorado Board of Medical Examiners (the Colorado Board). The Formal Complaint alleged that Respondent had engaged in unprofessional conduct "as a result of her treatment of patients suffering from macular degeneration with electrotherapy, which is a form of treatment that has not been approved by the United States Food and Drug Administration for that condition, massage, and other modalities that do not meet generally accepted standards of medical practice for the treatment of macular degeneration." The Formal Complaint also alleged that Respondent had prescribed controlled substances after her authority, issued by the United States Drug Enforcement Administration (DEA), had expired.
5. On July 27, 1998, the Colorado Board issued an Order of Summary Suspension against Respondent. Pursuant to that Order, Respondent's license to practice medicine in Colorado was suspended "pending proceedings to determine whether her license should be further disciplined . . .," and Respondent was ordered to "immediately cease, desist, and refrain from performing any act requiring authorization by her license issued by the Board."
6. On December 17, 1998, the Colorado Board approved a Stipulation and Final Agency Order resolving the Colorado action. That Stipulation and Order contained the following language:

Respondent hereby agrees never to reinstate her lapsed license. Respondent hereby agrees never to apply for a new license issued by the Board. Respondent hereby agrees never to perform any act requiring a license issued by the Board.

¹ As of the time of the hearing, Ron Joseph was no longer the Executive Director of the Board. That position is currently held by David T. Thornton.

² All statutory references are to the Business and Professions Code unless otherwise indicated.

Nothing in this agreement shall constitute a finding that Respondent has engaged in unprofessional conduct.

7. On May 20, 1999, Ron Joseph, who was then Executive Director of the California Board, filed an Accusation against Respondent.³ The Accusation alleged one cause for discipline for Out of State Discipline, pursuant to sections 141 and 2305, based on the Order of the Colorado Board.

8. Thereafter, Respondent and the California Board entered into an agreement to resolve that Accusation. As more fully set forth below, Respondent failed to abide by the terms of the settlement, and a First Amended Accusation was filed.

9. At the hearing on the instant matter, Complainant established the allegations in Paragraph 12, subparagraphs A through H of the First Amended Accusation. That paragraph is repeated verbatim below and its allegations are incorporated herein as factual findings:

12. Respondent is subject to disciplinary action under section 2234 of the Business and Professions Code for violating the Division of Medical Quality's Order. The circumstances are as follows:

A. On or about December 5, 2000, respondent entered into a stipulation for disciplinary action with the Division of Medical Quality of the Medical Board of California.

B. In that Stipulated Settlement and Order that was executed by respondent, respondent's counsel, and Complainant's counsel, and adopted as the Division's Decision in the present matter, a public reprimand pursuant to Business and Professions Code section 2227 was ordered by the Division to be issued to respondent upon her completion of certain terms and conditions that are set forth in that stipulation. The Division's Decision was issued on or about March 28, 2001, and became effective on or about April 27, 2001.

C. In the Division's Decision, respondent was ordered by the Division under Condition No. 1 to enroll at her own expense in the Physician Assessment and Clinical Education (PACE) Program at the University of California, San Diego, School of Medicine, within one hundred twenty (120) days from the effective date of the Division's Decision in this matter. She also was ordered to complete the PACE Program no later than six (6) months after her initial enrollment in the PACE Program unless the Division or its designee agrees in writing to an extended period of time for completion of that program.

³ *In the Matter of the Accusation Against Deborah Ellen Banker, M.D.*, Board Case No 16-1999-95260. That Accusation was the original operative pleading in the instant matter.

D. Respondent enrolled in the PACE Program on or about July 9, 2001.

E. On or about January 30, 2002, respondent's counsel requested a six-month extension of time for respondent to complete the PACE Program. The Medical Board granted respondent an extension of time until August 9, 2002, for her to complete the PACE Program.

F. On or about July 31, 2002, respondent's counsel requested an additional six-month extension of time for respondent to complete the PACE Program. The Medical Board granted respondent a second extension of time until February 12, 2003, for her to complete the PACE Program.

G. Respondent has not completed the enrollment requirements of the PACE Program and has failed to timely and successfully complete the PACE Program as ordered by the Division in its Decision in this matter. Such conduct constitutes a violation of an order of the Division and unprofessional conduct.

H. As ordered in the Division's Decision in the present matter, if respondent fails to successfully complete the PACE Program within the time limits set forth in its order, Complainant may file an amended or supplemental accusation alleging any conduct prohibited under Business and Professions Code section 2234 or any related statutes or regulations, based upon deficiencies, if any, noted by the PACE Program, and the matter shall be placed on or returned to the calendar of the Office of Administrative Hearings for hearing on a priority basis.

10. As part of the Stipulation with the Board, Respondent was also required to enroll in and complete an ethics course, and to pay the Board's costs of \$2,000.00. Respondent complied with those terms and conditions.

11. Respondent was represented by her attorney, Scott C. Tips, during the settlement negotiations that resulted in the above-referenced Stipulation and Order.

12. On December 5, 2000, in agreeing to the terms and conditions of the Stipulation and Order, Respondent signed her name under the following two paragraphs:

ACCEPTANCE

I, Deborah Ellen Banker, M.D., have carefully read the above Stipulated Settlement and Order and have fully discussed the terms and conditions and other matters contained therein with my attorney, Scott C. Tips. I understand the effect that this stipulation will have on my physician and surgeon's certificate.

I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the order and Decision of the Division of Medical Quality, Medical Board of California. I further agree that a facsimile copy of this Stipulated Settlement and Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

13. Respondent's attorney, Scott C. Tips, also signed the Stipulation on December 5, 2000, under the following statement:

CONCURRENCE

I have read and fully discussed with Respondent Deborah Ellen Banker, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Order. I approve its form and content.

14. On January 30, 2002, Respondent's present counsel, William H. Dailey, wrote to Pamela Mosher and David Thornton of the Board's Enforcement Division requesting a six-month extension of time for Respondent to complete the PACE Program, on grounds that Respondent had been unable to afford the program's fee. On February 5, 2002, the Board's then Chief of Enforcement, David T. Thornton, wrote to Mr. Dailey granting an extension of time to August 9, 2002 for Respondent to complete the PACE Program.

15. On July 31, 2002, Mr. Dailey again wrote to Pamela Mosher. In that letter, Mr. Dailey requested a second extension of time for Respondent to complete the PACE Program on grounds that Respondent still could not afford the Program's fee and because PACE Program personnel "confirmed that they have no ability to test Dr. Banker's specialized skills." Mr. Dailey requested only an extension of time for completion of the program. He did not request any special dispensation with respect to the "specialized skills" to which he referred in his letter. On August 12, 2002, David Thornton wrote to Mr. Dailey granting an extension of time to February 12, 2003 for Respondent to complete the PACE Program.

16. Respondent has not completed the PACE Program to date. Respondent testified that she has not done so for the following reasons: (1) She is unable to accumulate the funds necessary to pay the program's fees; (2) she is concerned that she will be unable to pass the tests given to PACE participants because the tests are based on Western medicine while the majority of her medical practice is grounded in alternative medicine; and (3) she objects to being subjected to a physical and mental examination at PACE because her physical and mental states were never at issue in either the Colorado or California disciplinary actions.

17. Although most of Respondent's care and treatment of patients is performed using alternative medicine methods and modalities, Respondent does incorporate certain aspects of

Western medicine such as examination and refraction. She continues to prescribe medications to a limited number of patients. She does not perform surgery but did so during her residency⁴.

18. Respondent has, and continues to experience financial difficulties. She is a single parent. She resides in a mobile home. She receives very few, if any, patients whose health insurance covers her fees because neither insurance companies, MediCare nor MediCal cover the type of alternative medicine Respondent practices. Respondent works on a sliding payment scale basis and does not turn away patients because of their inability to pay. She estimates she averages \$50 per hour from which she must pay her office expenses, personal expenses and the salary of her assistant (\$10 per hour/40 hours per week). Respondent has been unable to afford an automobile that is in good mechanical condition. As a result, she has incurred many very expensive car repair bills.

19. Respondent also believes that, by providing false or misleading information about her, certain websites such as www.questionabledoctors.org and the Board's website have reduced the number of new patients who would otherwise have come to her. For example, www.questionabledoctors.org contains the following language about Respondent: "She was disciplined by the California board for engaging in the practice of medicine after her license had lapsed." As stated above, the California action was based on out of state discipline in which no substantive factual findings were made. The Board's website contains the following language about Respondent: "7/27/98-Colorado issued a summary suspension. 12/17/98-Stipulation & final order. Dr. agreed never to reinstate her lapsed license or apply for a new license. This was based on unprofessional conduct and prescribing violations." As indicated above, the Colorado Board never made a finding of unprofessional conduct against Respondent.

20. Respondent requested an installment plan from PACE to pay for the program. That request was denied. Respondent has attempted to procure a loan to pay for the PACE Program but has been unable to do so because, with a credit score of 664, she is considered only a "fair" credit risk. Respondent has organized a foundation to raise funds for her, but the foundation has not yet received its non-profit status.

21. In 2002, Respondent was unsuccessfully prosecuted for an alleged violation of Business and Professions Code section 651⁵. She incurred monetary losses in defending against that action. The action related to an outgoing message on her voice mail. For reasons not disclosed by the evidence, she was required to remove that message. As a result, the number of telephone calls from potential patients decreased.

22. At one point, Respondent had saved a certain amount of money toward the PACE Program. However, beginning in autumn of 2000, that money was seized by the Internal

⁴ The inclusive dates of Respondent's residency were not disclosed by the evidence. However, she graduated from medical school in 1978.

⁵ Business and Professions Code section 651 addresses the dissemination of false or misleading information concerning professional services or products and permissible advertising.

Revenue Service (IRS). Respondent still owes the IRS approximately \$100,000. She is not presently making payments and the IRS is not currently levying against her bank account.

23. Respondent believes she cannot pass the PACE Program's assessment process because she practices alternative medicine, and she will be assessed on the basis of correct answers that would be given by a practitioner of Western medicine. She believes that, in responding to test questions, she might recommend treatment different from that which the program deems appropriate. She denies a disregard for Western medicine, but rather believes it is only one approach to treatment.

24. Respondent also believes she cannot adequately study for those assessment instruments because, although she has 20/20 vision, she suffers from broken binocular vision at 14 inches and has suffered from that condition for many years. That condition makes it difficult to engage in long hours of review. However, Respondent testified she works ten hours per day on weekdays and eight hours per day on the weekends. Much of that work includes research and reading. (Her claim that she limits her reading to approximately one hour for a patient's benefit was belied by her claims of extensive research.) Further, while in medical school, Respondent avoided the problems associated with broken binocular vision and long hours of study by listening to tapes and hiring people to read for her. With a son and a hired assistant, Respondent failed to establish an inability to obtain assistance in that regard.

25. At the hearing, Respondent also claimed that she was coerced into settling her California disciplinary action for a public reprimand, an ethics course, the PACE Program, and costs, because the trial judge was not understanding and the settlement judge informed her that the trial judge would almost definitely revoke her license. That testimony was not credible for the following reasons: (1) At no time following the settlement conference did Respondent make a complaint to the Office of Administrative Hearings regarding the conduct of either the trial judge or the settlement judge, and she did not request either a trial or settlement conference before a different judge. (2) Respondent was represented by an attorney who could have, and presumably did, counsel her with respect to her rights and options. (3) Respondent's present attorney did not object to the conduct of either judge when making his two requests for extensions of time for Respondent to complete the PACE Program, even though he sited a lack of funds in both letters and concerns about the ability of the PACE Program to assess Respondent in his second letter.

26. Respondent objects to undergoing the standard physical and psychological evaluation and assessment at PACE on grounds that those procedures are invasive and unrelated to the acts alleged against her in either Colorado or California. Nonetheless, Respondent was aware of those conditions at the time she entered into the settlement agreement, and she agreed to them after discussing the matter with her attorney.

27. At the hearing, Respondent suggested a few alternatives to the PACE Program such as a practice monitor or courses through the International College of Integrative Medicine (ICIM). She failed to establish that those alternatives would accomplish the purpose sought by

the Board when it agreed to permit Respondent to attend the PACE Program. (Evid. Code §500.)

28. If required to complete the PACE Program, Respondent anticipates accumulating the required fee in approximately one year.

29. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$6,706.75 for its Attorney General fees incurred in the prosecution of this case. Complainant did not request recovery of investigative costs. The requested costs are deemed just and reasonable.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code sections 141, subdivision (a), 2234, subdivision (a), and 2305, based on out of state discipline, as set forth in Findings 4 through 16.

2. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code section 2234, for violating the Division of Medical Quality's Order, as set forth in Findings 4 through 16.

3. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Finding 29.

Discussion

1. On April 11, 2000, the Administrative Law Judge denied Respondent's Motion to Dismiss the instant action. In so doing, he made the following findings:

3. There is no requirement in either Business and Professions Code section 141 or section 2305 that a finding of unprofessional conduct must be made as the basis for discipline in another state before discipline may be imposed in California pursuant to either or both of those statutes.

4. It is the fact that disciplinary action was taken in another state, rather than the underlying reasons or causes for that disciplinary action, which gives rise to a cause for discipline pursuant to Business and Professions Code section 2305. (Marek v. Board of Podiatric Medicine (1993) 16 Cal.App.4th 1089.)

2. The above findings remain valid. Respondent's California certificate is subject to discipline, based on out of state discipline, even though no finding of unprofessional conduct by Respondent was made in the Colorado action.

3. Respondent's settlement with the Colorado Board subjected her California physician and surgeon's certificate to discipline. After an Accusation was filed against her in this State, she entered into a settlement agreement with the advice of her attorney. Then, for a variety of reasons, she failed to comply with the terms of that agreement.

4. Respondent failed to establish grounds to be excused from her agreement to attend the PACE Program. She and her attorney were free, at the time they negotiated the settlement, to negotiate for an alternative method of evaluation such as the SPEX examination. Apparently, they did not do so. Instead, Respondent agreed to participate in the PACE Program. With the possible exception of her financial status, each of the purported drawbacks to the PACE Program cited by Respondent existed at the time she entered into the settlement agreement. The Board was entitled to rely on that agreement and no grounds exist to dissolve it.

5. Respondent's choice to limit her primary practice to alternative medicine does not exempt her from the Board's authority to order her to participate in the PACE Program's evaluation and assessment process. As a licensed physician in California, Respondent is free to practice any type of medicine deemed legal in this State, and is not limited or restricted in any way. Thus, she is not only permitted to engage in the practice of Western medicine, she actually does so to a certain extent. Therefore, the Board is entitled to an assessment of her knowledge and skills common to all practitioners of Western medicine (as well as alternative medicine if it so chooses), and her knowledge and skill within the area of her specialty or sub-specialty (ophthalmology). One method of making that assessment is through the PACE Program. The Board offered that option to Respondent and Respondent knowingly and voluntarily accepted it.

6. Because Respondent violated the settlement agreement with the Board, little will be accomplished by simply reinstating the terms of the original agreement. A period of probation is necessary to ensure Respondent's future compliance with the statutes and regulations that govern the practice of medicine in this State. A probationary period of two years should be sufficient to ensure that compliance.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certificate No. G 39808, issued to Respondent, Deborah Ellen Banker, M.D., is revoked. However, the revocation shall be stayed and Respondent shall be placed on probation for two years upon the following terms and conditions.

1. Within 15 days after the effective date of this decision, Respondent shall provide the Division, or its designee, proof of service that Respondent has served a true copy of this decision

on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent or at any other facility where Respondent engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to Respondent.

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

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

3. 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. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

4. Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

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

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

5. Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

6. In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside

California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

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

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

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

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

8. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Within 90 calendar days from the effective date of the Decision or other period agreed to by the Division or its designee, Respondent shall reimburse the Division the amount of \$6,706.75 for its prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve Respondent of her obligation to reimburse the Division for its costs.

10. 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 request the voluntary surrender of her license. The Division reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver her wallet and wall certificate to the Division or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

11. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

12. Within 12 months of the effective date of this Decision, Respondent shall successfully complete the Physician Assessment and Clinical Education Program offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in that area of practice, which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the PACE Program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

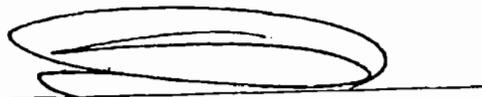
At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. The Program's determination whether or not Respondent passed the examination or successfully completed the Program shall be binding.

Failure to participate in and successfully complete all phases of the clinical training program outlined above is a violation of probation.

13. Upon successful completion of probation, Respondent's certificate shall be fully restored.

This decision shall become effective at 5:00 p.m. on January 13, 2006.

IT IS SO ORDERED THIS December 14, 2005.



STEVE ALEXANDER
Chairperson, Panel A
Division of Medical Quality
Medical Board of California

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MEDICAL BOARD OF CALIFORNIA
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**Physician's and Surgeon's Certificate
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Respondent.

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OAH No. L1999100241

PROPOSED DECISION

This matter came on regularly for hearing on May 25 and 26, 2005, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Ron Joseph (Complainant) was represented by John DeCure, Deputy Attorney General.

Deborah Ellen Banker, M.D. (Respondent) was present and was represented by William H. Dailey, Attorney at Law.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

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2. On August 24, 1981, the Board issued Physician and Surgeon Certificate No. G 39808 to Respondent. The license was scheduled to expire on April 30, 2005. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).²

3. Respondent is an ophthalmologist. She is a sole practitioner who primarily practices alternative medicine.

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D. Respondent enrolled in the PACE Program on or about July 9, 2001.

E. On or about January 30, 2002, respondent's counsel requested a six-month extension of time for respondent to complete the PACE Program. The Medical Board granted respondent an extension of time until August 9, 2002, for her to complete the PACE Program.

F. On or about July 31, 2002, respondent's counsel requested an additional six-month extension of time for respondent to complete the PACE Program. The Medical Board granted respondent a second extension of time until February 12, 2003, for her to complete the PACE Program.

G. Respondent has not completed the enrollment requirements of the PACE Program and has failed to timely and successfully complete the PACE Program as ordered by the Division in its Decision in this matter. Such conduct constitutes a violation of an order of the Division and unprofessional conduct.

H. As ordered in the Division's Decision in the present matter, if respondent fails to successfully complete the PACE Program within the time limits set forth in its order, Complainant may file an amended or supplemental accusation alleging any conduct prohibited under Business and Professions Code section 2234 or any related statutes or regulations, based upon deficiencies, if any, noted by the PACE Program, and the matter shall be placed on or returned to the calendar of the Office of Administrative Hearings for hearing on a priority basis.

10. As part of the Stipulation with the Board, Respondent was also required to enroll in and complete an ethics course, and to pay the Board's costs of \$2,000.00. Respondent complied with those terms and conditions.

11. Respondent was represented by her attorney, Scott C. Tips, during the settlement negotiations that resulted in the above-referenced Stipulation and Order.

12. On December 5, 2000, in agreeing to the terms and conditions of the Stipulation and Order, Respondent signed her name under the following two paragraphs:

ACCEPTANCE

I, Deborah Ellen Banker, M.D., have carefully read the above Stipulated Settlement and Order and have fully discussed the terms and conditions and other matters contained therein with my attorney, Scott C. Tips. I understand the effect that this stipulation will have on my physician and surgeon's certificate.

I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the order and Decision of the Division of Medical Quality, Medical Board of California. I further agree that a facsimile copy of this Stipulated Settlement and Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

13. Respondent's attorney, Scott C. Tips, also signed the Stipulation on December 5, 2000, under the following statement:

CONCURRENCE

I have read and fully discussed with Respondent Deborah Ellen Banker, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Order. I approve its form and content.

14. On January 30, 2002, Respondent's present counsel, William H. Dailey, wrote to Pamela Mosher and David Thornton of the Board's Enforcement Division requesting a six-month extension of time for Respondent to complete the PACE Program, on grounds that Respondent had been unable to afford the program's fee. On February 5, 2002, the Board's then Chief of Enforcement, David T. Thornton, wrote to Mr. Dailey granting an extension of time to August 9, 2002 for Respondent to complete the PACE Program.

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15. On July 31, 2002, Mr. Dailey again wrote to Pamela Mosher. In that letter, Mr. Dailey requested a second extension of time for Respondent to complete the PACE Program on grounds that Respondent still could not afford the Program's fee and because PACE Program personnel "confirmed that they have no ability to test Dr. Banker's specialized skills." Mr. Dailey requested only an extension of time for completion of the program. He did not request any special dispensation with respect to the "specialized skills" to which he referred in his letter. On August 12, 2002, David Thornton wrote to Mr. Dailey granting an extension of time to February 12, 2003 for Respondent to complete the PACE Program.

16. Respondent has not completed the PACE Program to date. She has not done so for the following reasons: (1) She has been unable to accumulate the funds necessary to pay the program's fees; (2) she is concerned that she will be unable to pass the tests given to PACE participants because the tests are based on Western medicine while the majority of her medical practice is grounded in alternative medicine; and (3) she objects to being subjected to a physical and mental examination at PACE because her physical and mental states were never at issue in either the Colorado or California disciplinary actions.

17. Although most of Respondent's care and treatment of patients is performed using alternative medicine methods and modalities, Respondent does incorporate certain aspects of Western medicine such as examination and refraction. She continues to prescribe medications to a limited number of patients. She does not perform surgery but did so during her residency⁴.

18. Respondent has, and continues to experience financial difficulties. She is a single parent. She resides in a mobile home. She receives very few, if any, patients whose health insurance covers her fees because neither insurance companies, MediCare nor MediCal cover the type of alternative medicine Respondent practices. Respondent works on a sliding payment scale basis and does not turn away patients because of their inability to pay. She estimates she averages \$50 per hour from which she must pay her office expenses, personal expenses and the salary of her assistant (\$10 per hour/40 hours per week). Respondent has been unable to afford an automobile that is in good mechanical condition. As a result, she has incurred many very expensive car repair bills.

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⁴ The inclusive dates of Respondent's residency were not disclosed by the evidence. However, she graduated from medical school in 1978.

19. Respondent also believes that, by providing false or misleading information about her, certain websites such as www.questionabledoctors.org and the Board's website have reduced the number of new patients who would otherwise have come to her. For example, www.questionabledoctors.org contains the following language about Respondent: "She was disciplined by the California board for engaging in the practice of medicine after her license had lapsed." As stated above, the California action was based on out of state discipline in which no substantive factual findings were made. The Board's website contains the following language about Respondent: "7/27/98-Colorado issued a summary suspension. 12/17/98-Stipulation & final order. Dr. agreed never to reinstate her lapsed license or apply for a new license. This was based on unprofessional conduct and prescribing violations." As indicated above, the Colorado Board never made a finding of unprofessional conduct against Respondent.

20. Respondent requested an installment plan from PACE to pay for the program. That request was denied. Respondent has attempted to procure a loan to pay for the PACE Program but has been unable to do so because, with a credit score of 664, she is considered only a "fair" credit risk. Respondent has organized a foundation to raise funds for her, but the foundation has not yet received its non-profit status.

21. In 2002, Respondent was unsuccessfully prosecuted for an alleged violation of Business and Professions Code section 651⁵. She incurred monetary losses in defending against that action. The action related to an outgoing message on her voice mail. For reasons not disclosed by the evidence, she was required to remove that message. As a result, the number of telephone calls from potential patients decreased.

22. At one point, Respondent had saved a certain amount of money toward the PACE Program. However, beginning in autumn of 2000, that money was seized by the Internal Revenue Service (IRS). Respondent still owes the IRS approximately \$100,000. She is not presently making payments and the IRS is not currently levying against her bank account.

23. Respondent believes she cannot pass the PACE Program's assessment process because she practices alternative medicine, and she will be assessed on the basis of correct answers that would be given by a practitioner of Western medicine. She believes that, in responding to test questions, she might recommend treatment different from that which the program deems appropriate. She denies a disregard for Western medicine, but rather believes it is only one approach to treatment.

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⁵ Business and Professions Code section 651 addresses the dissemination of false or misleading information concerning professional services or products and permissible advertising.

24. Respondent also believes she cannot adequately study for those assessment instruments because, although she has 20/20 vision, she suffers from broken binocular vision at 14 inches and has suffered from that condition for many years. That condition makes it difficult to engage in long hours of review. However, Respondent testified she works ten hours per day on weekdays and eight hours per day on the weekends. Much of that work includes research and reading. (Her claim that she limits her reading to approximately one hour for a patient's benefit was belied by her claims of extensive research.) Further, while in medical school, Respondent avoided the problems associated with broken binocular vision and long hours of study by listening to tapes and hiring people to read for her. With a son and a hired assistant, Respondent failed to establish an inability to obtain assistance in that regard.

25. At the hearing, Respondent also claimed that she was coerced into settling her California disciplinary action for a public reprimand, an ethics course, the PACE Program, and costs, because the trial judge was not understanding and the settlement judge informed her that the trial judge would almost definitely revoke her license. That testimony was not credible for the following reasons: (1) At no time following the settlement conference did Respondent make a complaint to the Office of Administrative Hearings regarding the conduct of either the trial judge or the settlement judge, and she did not request either a trial or settlement conference before a different judge. (2) Respondent was represented by an attorney who could have, and presumably did, counsel her with respect to her rights and options. (3) Respondent's present attorney did not object to the conduct of either judge when making his two requests for extensions of time for Respondent to complete the PACE Program, even though he cited a lack of funds in both letters and concerns about the ability of the PACE Program to assess Respondent in his second letter.

26. Respondent objects to undergoing the standard physical and psychological evaluation and assessment at PACE on grounds that those procedures are invasive and unrelated to the acts alleged against her in either Colorado or California. Nonetheless, Respondent was aware of those conditions at the time she entered into the settlement agreement, and she agreed to them after discussing the matter with her attorney.

27. At the hearing, Respondent suggested a few alternatives to the PACE Program such as a practice monitor or courses through the International College of Integrative Medicine (ICIM). She failed to establish that those alternatives would accomplish the purpose sought by the Board when it agreed to permit Respondent to attend the PACE Program. (Evid. Code §500.)

28. If required to complete the PACE Program, Respondent anticipates accumulating the required fee in approximately one year.

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29. Pursuant to Business and Professions Code section 125.3, Complainant's counsel requested that Respondent be ordered to pay to the Board \$6,706.75 for its Attorney General fees incurred in the prosecution of this case. Complainant did not request recovery of investigative costs. The requested costs are deemed just and reasonable.

LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code sections 141, subdivision (a), 2234, subdivision (a), and 2305, based on out of state discipline, as set forth in Findings 4 through 16.
2. Cause exists to revoke or suspend Respondent's certificate, pursuant to Business and Professions Code section 2234, for violating the Division of Medical Quality's Order, as set forth in Findings 4 through 16.
3. Cause exists to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Finding 29.

Discussion

1. On April 11, 2000, the Administrative Law Judge denied Respondent's Motion to Dismiss the instant action. In so doing, he made the following findings:

3. There is no requirement in either Business and Professions Code section 141 or section 2305 that a finding of unprofessional conduct must be made as the basis for discipline in another state before discipline may be imposed in California pursuant to either or both of those statutes.

4. It is the fact that disciplinary action was taken in another state, rather than the underlying reasons or causes for that disciplinary action, which gives rise to a cause for discipline pursuant to Business and Professions Code section 2305. (Marek v. Board of Podiatric Medicine (1993) 16 Cal.App.4th 1089.)

2. The above findings remain valid. Respondent's California certificate is subject to discipline, based on out of state discipline, even though no finding of unprofessional conduct by Respondent was made in the Colorado action.

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3. Respondent's settlement with the Colorado Board subjected her California physician and surgeon's certificate to discipline. After an Accusation was filed against her in this State, she entered into a settlement agreement with the advice of her attorney. Then, for a variety of reasons, she failed to comply with the terms of that agreement.

4. Respondent failed to establish grounds to be excused from her agreement to attend the PACE Program. She and her attorney were free, at the time they negotiated the settlement, to negotiate for an alternative method of evaluation such as the SPEX examination. Apparently, they did not do so. Instead, Respondent agreed to participate in the PACE Program. With the possible exception of her financial status, each of the purported drawbacks to the PACE Program cited by Respondent existed at the time she entered into the settlement agreement. The Board was entitled to rely on that agreement and no grounds exist to dissolve it.

5. Respondent has encountered severe financial burdens. However, she anticipates being able to accrue sufficient funds to pay the fee for the PACE Program within one year. She should be permitted time to collect those funds and complete the Program.

6. Respondent's choice to limit her primary practice to alternative medicine does not exempt her from the Board's authority to order her to participate in the PACE Program's evaluation and assessment process. As a licensed physician in California, Respondent is free to practice any type of medicine deemed legal in this State, and is not limited or restricted in any way. Thus, she is not only permitted to engage in the practice of Western medicine, she actually does so to a certain extent. Therefore, the Board is entitled to an assessment of her knowledge and skills common to all practitioners of Western medicine (as well as alternative medicine if it so chooses), and her knowledge and skill within the area of her specialty or sub-specialty (ophthalmology). One method of making that assessment is through the PACE Program. The Board offered that option to Respondent and Respondent knowingly and voluntarily accepted it.

7. Because Respondent violated the settlement agreement with the Board, little will be accomplished by simply reinstating the terms of the original agreement. A period of probation is necessary to ensure Respondent's future compliance with the statutes and regulations that govern the practice of medicine in this State. A probationary period of two years should be sufficient to ensure that compliance.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certificate No. G 39808, issued to Respondent, Deborah Ellen Banker, M.D., is revoked. However, upon proper renewal of the certificate, the revocation shall be stayed and Respondent shall be placed on probation for two years upon the following terms and conditions.

1. Within 15 days after the effective date of this decision, Respondent shall provide the Division, or its designee, proof of service that Respondent has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent or at any other facility where Respondent engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to Respondent.

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

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

3. 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. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

4. Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

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

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

5. Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

6. In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

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

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

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

8. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

9. Within 90 calendar days from the effective date of the Decision or other period agreed to by the Division or its designee, Respondent shall reimburse the Division the amount of \$6,706.75 for its prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve Respondent of her obligation to reimburse the Division for its costs.

10. 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 request the voluntary surrender of her license. The Division reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver her wallet and wall certificate to the Division or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

11. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

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12. Within 12 months of the effective date of this Decision, Respondent shall (re-)enroll in the Physician Assessment and Clinical Education Program offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education in that area of practice, which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Division or its designee deems relevant. Respondent shall pay all expenses associated with the PACE Program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Division or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. The Program's determination whether or not Respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months before the scheduled termination date of the probationary period unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and successfully complete all phases of the clinical training program outlined above is a violation of probation.

13. Upon successful completion of probation, Respondent's certificate shall be fully restored.

DATED: June 15, 2005


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:)
)
)
DEBORAH ELLEN BANKER, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 39808)
)
Respondent.)
_____)

File No. 16-1999-95260

DECISION

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

This Decision shall become effective at 5:00 p.m. on April 27, 2001.

IT IS SO ORDERED March 28, 2001.

MEDICAL BOARD OF CALIFORNIA

By: Ira Lubell
Ira Lubell, M.D., Chair
Panel A
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 DIANE M. L. TAN, State Bar No. 86571
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-8764
5 Facsimile: (213) 897-1071

6 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 **DEBORAH ELLEN BANKER, M.D.**
23852 Pacific Coast Highway, #342
14 Malibu, California 90265

15 Physician and Surgeon's
Certificate No. G 39808,

16 Respondent.

Case No. 16-1999-95260

OAH No. L-1999100241

**STIPULATED SETTLEMENT
AND ORDER**

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

20 **PARTIES**

21 1. Complainant, Ron Joseph, is the Executive Director of the Medical Board
22 of California, and has brought this action solely in his official capacity. Complainant is
23 represented in this matter by Bill Lockyer, Attorney General of the State of California, by
24 Diane M. L. Tan, Deputy Attorney General.

25 2. Respondent, Deborah Ellen Banker, M.D. ("respondent"), is represented in
26 this proceeding by Scott C. Tips, Attorney at Law, whose address is Tips & Associates,
27 Attorneys at Law, 807 Montgomery Street, San Francisco, California 94133.

28 3. On or about July 2, 1979, the Medical Board of California issued

1 Physician and Surgeon's Certificate No. G 39808 to Deborah Ellen Banker, M.D. At all times
2 relevant herein, this license has been valid.

3 **JURISDICTION**

4 4. The Accusation in Case No. 16-1999-95260, was filed with the Division
5 of Medical Quality ("the Division"), Medical Board of California, Department of Consumer
6 Affairs, State of California, on May 20, 1999. This matter is currently pending against
7 respondent. The Accusation and all other statutorily required documents were duly served on
8 respondent on May 20, 1999. Respondent timely filed her Notice of Defense contesting the
9 Accusation. A copy of the Accusation is attached hereto as Exhibit 1 and incorporated herein by
10 reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read and discussed with her counsel the nature of
13 the charges and allegations in the Accusation and the effects of this Stipulated Settlement and
14 Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the
16 right to a hearing on the charges and allegations that are set forth in the Accusation; the right to
17 consult with and be represented by counsel at her own expense; the right to confront and cross-
18 examine the witnesses testifying against her; the right to present evidence and to testify on her
19 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
20 production of documents and other things in her defense and as proof of mitigation; the right to
21 reconsideration and court review of an adverse decision; and all other rights accorded by the
22 California Administrative Procedure Act (Gov. Code, §§ 11340 et seq., 11370 et seq., 11400 et
23 seq., and 11500 et seq.) and other applicable laws.

24 7. Respondent voluntarily, knowingly and intelligently waives and gives up
25 each and every right as stated above, unless this matter is rescheduled for hearing pursuant to the
26 Division's Order as set forth below.

27 **ADMISSIONS**

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

1 Accusation, if proven at a hearing, constitute cause for imposing discipline upon her physician
2 and surgeon's certificate.

3 9. Respondent admits that she engaged in the practice of medicine in
4 Colorado after her license to practice medicine in that state lapsed as alleged in the Formal
5 Complaint in the Matter of the Disciplinary Proceeding Regarding the License to Practice
6 Medicine in the State of Colorado of Deborah E. Banker, M.D., License No. 28591, although she
7 subsequently reapplied for her license, and that such out-of-state conduct constitutes sufficient
8 cause for the issuance of a Public Reprimand by the Division. These admissions are made for the
9 purpose of this Stipulated Settlement and Order only and may not be used for any other purpose.

10 10. Respondent agrees to be bound by the Division's Order as set forth below.

11 **CONTINGENCY**

12 11. This Stipulated Settlement and Order shall be subject to the approval of
13 the Division. Respondent understands and agrees that the Medical Board of California's staff and
14 counsel for Complainant may communicate directly with the Division regarding this stipulation
15 and settlement, without notice to or participation by respondent or her counsel. If the Division
16 does not adopt this stipulation as its Decision in this matter, except for this paragraph, the
17 Stipulated Settlement and Order shall have no force or effect on any of the parties, it shall be
18 inadmissible in any legal action between the parties, and the Division shall not be disqualified
19 from taking any further action by having considered this matter.

20 12. The parties agree that facsimile copies of this Stipulated Settlement and
21 Order, including facsimile signatures thereto, shall have the same force and effect as the original
22 Stipulated Settlement and Order and signatures.

23 13. For the purpose of resolving all of the matters alleged in the Accusation in
24 Case No. 16-1999-95260, and in consideration of the foregoing admissions and stipulations, the
25 parties agree that the Division shall, without further notice or formal proceeding, issue and enter
26 the following Order:

27 **ORDER**

28 **IT IS HEREBY ORDERED** that a Public Reprimand pursuant to section 2227

1 of the Business and Professions Code (“the Code”) shall be issued to respondent, Deborah Ellen
2 Banker, M.D., for having a restriction or limitation imposed on her license to practice medicine
3 in the State of Colorado based upon her practice of medicine in that state with a lapsed license in
4 violation of section 2305 of the Code, after respondent fully complies with the following terms
5 and conditions:

6 1. **PACE PROGRAM.** Within one hundred twenty (120) days from the
7 effective date of the Division’s Decision in this matter (“the Division’s Decision”), respondent
8 shall enroll at her own expense in the Physician Assessment and Clinical Education (PACE)
9 Program at the University of California, San Diego, School of Medicine. That program shall
10 include a physician assessment, clinical training and examination, and any other requirements
11 deemed appropriate by the PACE Evaluation Committee or its designee. Respondent shall
12 undergo the comprehensive assessment program, including an evaluation of her medical skills
13 and knowledge, and her physical and mental health, and psychological testing, if necessary.
14 After such assessment, the PACE Evaluation Committee will review all results and make a
15 recommendation to the Division or its designee, respondent and other authorized personnel as to
16 what clinical training is required, including the scope and length of the training, treatment of any
17 medical and/or psychological condition, and any other factors affecting respondent's practice of
18 medicine. Respondent shall undertake whatever clinical training and treatment of any medical
19 and/or psychological condition that may be recommended by the PACE Evaluation Committee,
20 or its designee, and respondent’s physician or therapist.

21 At the completion of the PACE Program, respondent shall submit to an
22 examination on its contents and substance. The examination shall be designed and administered
23 by the PACE faculty. Respondent shall not be deemed to have successfully completed the
24 program unless she passes the examination. Respondent and Complainant agree that the
25 determination of the PACE Program’s faculty as to whether or not respondent has passed the
26 examination and/or successfully completed the PACE Program shall be binding upon the parties.

27 If the PACE Evaluation Committee or its designee recommends that respondent
28 undergo medical treatment and/or psychotherapy, respondent shall within 30 days of such

1 recommendation submit to the Division or its designee for its approval the name and
2 qualifications of a physician and/or psychotherapist of respondent's choice. Respondent shall
3 undergo and continue medical treatment and/or psychotherapy until further notice in writing
4 from the Division or its designee. Respondent shall have the physician and/or psychotherapist
5 submit quarterly status reports to the Division or its designee indicating whether respondent is
6 capable of practicing medicine safely.

7 Except for any treatment recommended by the PACE Evaluation Committee or its
8 designee, respondent shall complete the PACE Program no later than six (6) months after her
9 initial enrollment in the PACE Program unless the Division or its designee agrees in writing to
10 an extended period of time for completion of that program.

11 If respondent successfully completes the PACE Program, including the
12 examination referenced above, she shall request the PACE representatives to forward a
13 Certification of Successful Completion of the PACE Program to the Division or its designee.

14 If respondent fails to successfully complete the PACE Program within the time
15 limits set forth above, Complainant may file an amended or supplemental accusation alleging
16 any conduct prohibited under Business and Professions Code section 2234 or any related statutes
17 or regulations, based upon the deficiencies, if any, noted by the PACE Program, and the matter
18 shall be placed on or returned to the calendar of the Office of Administrative Hearings for
19 hearing on a priority basis.

20 2. **ETHICS COURSE.** Within sixty (60) days from the effective date of the
21 Division's Decision, respondent shall enroll at her own expense in a course in Ethics approved in
22 advance by the Division or its designee, and shall successfully complete the course within six (6)
23 months after her enrollment in that course.

24 If respondent fails to successfully complete a Division-approved Ethics course
25 within the time period specified above, such failure shall constitute a violation of the Division's
26 Order and Complainant may file an amended or supplemental accusation and have this matter
27 placed on or returned to the calendar of the Office of Administrative Hearings for hearing on a
28 priority basis.

1 3. **COST RECOVERY.** Respondent is hereby ordered to reimburse the
2 Division the amount of Two Thousand Dollars (\$2,000.00) for the cost of prosecution of the
3 above-entitled matter. Such amount shall be paid within a one (1) year period with quarterly
4 payments as follows:

5 Within ninety (90) days from the effective date of the Division's Decision,
6 respondent shall pay her first quarterly payment of \$500.00 to the Division. Thereafter,
7 respondent shall pay to the Division the amount of \$500.00 each and every three months after the
8 initial payment until the total amount of \$2,000.00 is paid in full.

9 Failure by respondent to reimburse the Division for these costs according to this
10 condition shall constitute a violation of the Division's Order and she shall be subject to the
11 provisions of Business and Professions Code section 125.3 or any related statutes or regulations,
12 unless the Division agrees in writing to payment by a revised payment plan because of financial
13 hardship.

14 The filing of bankruptcy by the respondent shall not relieve respondent of her
15 responsibility to reimburse the Division for such costs.

16 4. **COMPLETION OF CONDITIONS.** Upon respondent's successful
17 completion of these conditions, a Public Reprimand shall be issued against respondent as ordered
18 herein; the Accusation in Case No. 16-1999-95260, OAH No. L-1999100241, shall not be
19 withdrawn; and this matter shall be considered resolved.

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ACCEPTANCE

I, Deborah Ellen Banker, M.D., have carefully read the above Stipulated Settlement and Order and have fully discussed the terms and conditions and other matters contained therein with my attorney, Scott C. Tips. I understand the effect that this stipulation will have on my physician and surgeon's certificate.

I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the Order and Decision of the Division of Medical Quality, Medical Board of California. I further agree that a facsimile copy of this Stipulated Settlement and Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

DATED: Dec 5, 2000.



DEBORAH ELLEN BANKER, M.D.
Respondent

CONCURRENCE

I have read and fully discussed with Respondent Deborah Ellen Banker, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Order. I approve its form and content.

DATED: December 5, 2000.

TIPS & ASSOCIATES



SCOTT C. TIPS
Attorney at Law
Attorneys for Respondent

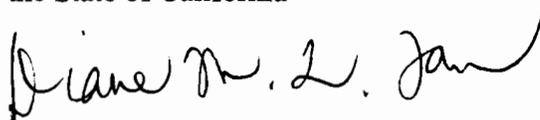
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ENDORSEMENT

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

DATED: December 5, 2000

BILL LOCKYER, Attorney General
of the State of California



DIANE M. L. TAN
Deputy Attorney General

Attorneys for Complainant

DOJ Docket No. 03573160-LA99AD1552

Accusation
Case No. 16-1999-95260

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, Supervising
Deputy Attorney General
3 STEPHEN M. BOREMAN
Deputy Attorney General
4 1300 I Street, Suite 125
Post Office Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 323-8203
6

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 20 19 99
BY Victoria Cruz ANALYST

7 **Attorneys for Complainant**

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

11 In the Matter of the Accusation Against:) Case No. 16-1999-95260
12)
12 **DEBORAH ELLEN BANKER, M.D.**)
127 Spruce Street)
13 Boulder, CO 80302) **ACCUSATION**
14)
14 Physician and Surgeon's)
Certificate No. G-39808)
15)
16 Respondent.)

17 The Complainant alleges:

18 **PARTIES**

19 1. Complainant, Ronald Joseph, is the Executive Director of the Medical
20 Board of California (hereafter the "Board") and brings this accusation solely in his official
21 capacity.

22 2. On or about July 2, 1979, Physician and Surgeon's Certificate No.
23 G-39808 was issued by the Board to Deborah Ellen Banker, M.D. (hereafter "respondent"). This
24 certificate is renewed and current, with an expiration date of April 30, 2001.

25 **JURISDICTION**

26 3. This accusation is brought before the Division of Medical Quality of the
27 Medical Board of California, Department of Consumer Affairs (hereafter the "Division"), under

1 the authority of the following sections of the California Business and Professions Code (hereafter
2 "Code") and/or other relevant statutory enactment:

3 A. Section 2227 of the Code provides that the Board may revoke, suspend for
4 a period not to exceed one year, or place on probation, the license of any licensee who has
5 been found guilty under the Medical Practice Act, and may recover the costs of probation
6 monitoring if probation is imposed.

7 B. Section 2305 of the Code provides that the revocation, suspension, or
8 other discipline, restriction, or limitation imposed by another state upon a license to
9 practice medicine issued by that state, or the revocation, suspension, or restriction of the
10 authority to practice medicine by any agency of the federal government, that would have
11 been grounds for discipline in California under the Medical Practice Act, constitutes
12 grounds for discipline for unprofessional conduct.

13 C. Section 141(a) of the Code provides that a disciplinary action taken by
14 another state, any agency of the federal government, or by another country against a
15 holder of a California physician and surgeon's certificate for any act substantially related
16 to the practice of medicine may be a ground for disciplinary action in California.

17 D. Section 125.3 of the Code provides that the Board may request the
18 administrative law judge to direct any licensee found to have committed a violation or
19 violations of the licensing act to pay the Board a sum not to exceed the reasonable costs
20 of the investigation and enforcement of the case.

21 E. Section 14124.12(a) of the Welfare & Institutions Code provides in
22 pertinent part that upon written notice of the Medical Board of California that a physician
23 and surgeon's medical license has been placed on probation as a result of a disciplinary
24 action, no Medi-Cal claim for the type of surgical service or invasive procedure giving
25 rise to the probationary order and performed on or after the effective date of said
26 probationary order or during the period of probation shall be reimbursed, except upon a
27 prior determination that compelling circumstances warrant the continuance of

1 reimbursement during the probationary period for procedures other than those giving rise
2 to the probationary order.

3 4. Respondent is subject to discipline for unprofessional conduct within the
4 meaning of Code section 2305 and to discipline for out-of-state disciplinary action within the
5 meaning of Code section 141(a) as set forth in greater particularity below.

6 **FIRST CAUSE FOR DISCIPLINE**
7 **(Out-of State Discipline)**
8 **[Bus. & Prof. Code §§ 141(a) and 2305]**

9 5. On or about July 27, 1998 the Colorado Board of Medical Examiners
10 issued an Order of Summary Suspension of respondent's license to practice medicine, based on
11 findings of unprofessional conduct and prescribing violations. On or about December 17, 1998
12 the Colorado Board of Medical Examiners issued a Stipulation and Final Agency Order whereby
13 respondent agreed never to reinstate her lapsed Colorado license, never to apply for a new license
14 issued by the Board, and never to perform any act requiring a license issued by the Board. This
15 Order was issued because the Colorado Board found respondent guilty of deliberate and wilful
16 violation of Colorado's Medical Practice Act.

17 Respondent was charged under Colorado statutes with unprofessional conduct as a
18 result of her treatment of several patients suffering from macular degeneration with
19 electrotherapy, a treatment not approved by the United States Food and Drug Administration for
20 that condition, with massage, and other modalities which do not meet generally accepted
21 standards of medical practice for the treatment of macular degeneration. Respondent was found
22 to have prescribed controlled substances after her Drug Enforcement Administration (D.E.A.)
23 license had expired on July 31, 1997. Respondent also continued to practice medicine in
24 Colorado without a license after her license in that state lapsed on May 31, 1997.

25 A true and correct copy of the Colorado Board of Medical Examiners' Stipulation
26 and Final Agency Order is attached as "Exhibit A" and incorporated herein by reference.
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6. Respondent's conduct and the actions of the Colorado State Board of Medical Examiners described in paragraph 5, above, subject respondent to discipline within the meaning of Code sections 141 (a) and 2305.

PRAYER

WHEREFORE complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Division issue a decision:

- 1. Revoking or suspending Physician and Surgeon's Certificate No. G 39808 heretofore issued to respondent Deborah Ellen Banker, M.D.;
- 2. Revoking, suspending or denying approval of respondent's authority to supervise physician assistants pursuant to Code section 3527;
- 3. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case and the costs of probation monitoring if probation is imposed; and
- 4. Taking such other and further action as the Division may deem necessary or proper.

DATED: May 20, 1999



 Ronald Joseph
 Executive Director
 Medical Board of California
 Department of Consumer Affairs
 State of California

Complainant

EXHIBIT A

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
DEBORAH E. BANKER, M.D., LICENSE NO. 28591,

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Deborah E. Banker, M.D. ("Respondent") as follows:

1. Respondent was licensed to practice medicine in the state of Colorado on January 14, 1988, and was issued license no. 28591 which Respondent has held continuously since that date.

2. Respondent's license lapsed on May 31, 1997, for failure to renew.

3. On July 27, 1998, the Panel filed a formal complaint against Respondent pursuant to the provisions of § 12-36-118(5), C.R.S.

4. It is the purpose of this agreement to resolve all matters alleged in that formal complaint.

5. Respondent understands that:

a. She has the right to be represented by an attorney of Respondent's choice and is so represented;

b. She has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.;

c. By entering into this agreement, Respondent is knowingly and voluntarily giving up the right to a hearing.

d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

6. Respondent hereby agrees never to reinstate her lapsed license. Respondent hereby agrees never to apply for a new license issued by the Board. Respondent hereby agrees never to perform any act requiring a license issued by the Board.

7. Nothing in this agreement shall constitute a finding that Respondent has engaged in unprofessional conduct.

8. Respondent holds no privileges at Colorado hospitals.

9. This agreement shall have the same force and effect as an order entered pursuant to § 12-36-118(5)(g)(III), C.R.S. This agreement and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S.

10. This agreement shall be effective upon approval by the Panel and signature by a Panel member. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

Deborah E Banker, M.D.
Deborah E. Banker, M.D.

290 30th St

Boulder, CO. 80304
Address

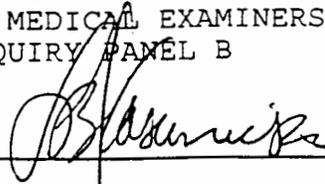
The foregoing was acknowledged before me this 16th day of November by Deborah E. Banker, M.D.

Marjorie W. Skowron
NOTARY PUBLIC

My Commission expires:
January 19, 2012

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 17th day of December, 1998.

FOR THE COLORADO STATE BOARD
OF MEDICAL EXAMINERS
INQUIRY PANEL B



APPROVED AS TO FORM:

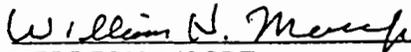
FOR THE RESPONDENT

FOR THE BOARD OF MEDICAL EXAMINERS

GALE A. NORTON
Attorney General

RICHARD A. WESTFALL
Solicitor General

LINDA L. SIDERIUS
Deputy Attorney General



WILLIAM MOORE
910 East Victory Dr.
Savannah, Georgia
31405-2424



MATTHEW E. NORWOOD*
First Assistant Attorney General
Regulatory Law Section

Attorneys for the Colorado State
Board of Medical Examiners

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: 866-5307
*Counsel of Record

JUL 27 1998

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

Case No. ME 98-

ORDER OF SUMMARY SUSPENSION

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
DEBORAH E. BANKER, M.D., LICENSE NO. 28591,

Respondent.

TO: Deborah E. Banker, M.D.
2060 Broadway, Suite 255
Boulder, Colorado 80302

ORDER OF SUMMARY SUSPENSION

THIS MATTER having come before Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board"), the Panel does find and order with respect to the license to practice medicine in the state of Colorado of Deborah E. Banker, M.D. ("Respondent"), that her license to practice medicine be summarily suspended pursuant to § 24-4-104(4), C.R.S. As grounds wherefore the Panel has reasonable cause to believe and finds:

1. That the allegations set forth in the Formal Complaint filed herewith and incorporated in this Order, show that the Respondent is guilty of deliberate and willful violation of the Medical Practice Act.

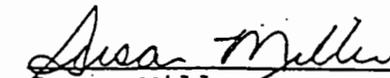
2. That the allegations set forth in the Formal Complaint filed herewith and incorporated in this Order, show that the public health, safety and welfare imperatively require emergency action.

3. WHEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice medicine is summarily suspended pending proceedings to determine whether Respondent's license should be further disciplined in accordance with § 12-36-118, C.R.S. of the Colorado Medical Practice Act.

4. IT IS FURTHER ORDERED that Deborah E. Banker, M.D. immediately cease, desist, and refrain from performing any act requiring authorization by her license issued by the Board.

DATED this 27th day of July, 1998.

COLORADO STATE BOARD
OF MEDICAL EXAMINERS



Susan Miller
Program Administrator

AG File: P:\RL\RLNORWME\Banker3

20. On or about November 20, 1997, the Panel sent Respondent a 30 day letter regarding her failure to renew her license and whether she had practiced medicine after her license had lapsed. (Board case no. 5198021790).

21. Upon information and belief, Respondent received the 30 day letter regarding her failure to renew.

22. Respondent failed to respond to the 30 day letter regarding her failure to renew.

23. On or about March 11, 1998, the Panel sent Respondent a 30 day letter regarding a complaint from the British Columbia Association of Optometrists regarding statements Respondent made on a radio talk show. (Board case no. 5198022800).

24. Upon information and belief, Respondent received the 30 day letter regarding her statements on the radio talk show.

25. Respondent failed to respond to the 30 day letter regarding her failure to renew.

26. On or about March 19, 1998, the Panel sent Respondent a 30 day letter regarding a complaint from the College des Medecins du Quebec (the Quebec Licensing Board for Physicians). The Quebec Board's complaint related to workshops given by the Respondent in Montreal, Quebec, November 1 and 2, 1997. (Board case no. 5198022870).

27. Upon information and belief, Respondent received the 30 day letter regarding the complaint from the Quebec Board.

28. Respondent failed to respond to the 30 day letter regarding the complaint from the Quebec Board.

Improper Prescribing

29. Respondent's authority to prescribe controlled substances issued by the United States Drug Enforcement Administration ("DEA") expired July 31, 1997.

30. Respondent has continued to prescribe controlled substances after that date.

31. In particular, but not by way of limitation, Respondent has prescribed controlled substances to patient B.W. after July 31, 1997.

Count I

32. The conduct set forth in paragraphs 5 through 13 above establish that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(p), C.R.S.: an act or omission which fails to meet generally accepted standards of medical practice.

Count II

33. The conduct set forth in paragraph 14 above establishes that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(n), C.R.S.: violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of the Medical Practice Act. The provision at issue is §12-36-106(2), C.R.S.

Count III

34. The conduct set forth in paragraphs 17 through 28 above establishes that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(gg), C.R.S.: failing to respond in a timely manner to a complaint issued pursuant to section 12-36-118(4), C.R.S.

Count IV

35. The conduct set forth in paragraphs 29 through 31 above establishes that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(g), C.R.S.: administering, dispensing, or prescribing any habit-forming drug, as defined in §12-22-102(13), or any controlled substance, as defined in §12-22-303(7), other than in the course of legitimate professional practice. The conduct set forth in paragraphs 29 through 31 above also establishes that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(p), C.R.S.: an act or omission which fails to meet generally accepted standards of medical practice.

WHEREFORE the Panel respectfully requests that appropriate disciplinary action, as provided by law, be imposed.

NOTICE TO SET INFORMAL PREHEARING CONFERENCE

YOU ARE HEREBY NOTIFIED that the attorney for Inquiry Panel B of the Colorado State Board of Medical Examiners will appear on Tuesday, August 11, 1998 at 1:30 p.m. in the Office of the Division of Administrative Hearings, 1120 Lincoln Street, Suite 1400, Denver, Colorado 80203 for the purpose of obtaining a date for an informal prehearing conference in conformance with Division of Administrative Hearings Rule 21 B. In the event you wish to

obtain an earlier date to set the informal prehearing conference, please contact the undersigned. You are invited to appear in person or by counsel. If you cannot be present personally or through counsel, you may contact the setting clerk at the Division of Administrative Hearings (303) 894-2500 on the aforementioned date and time to participate in the setting.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to § 12-36-118, C.R.S., and § 24-4-105, C.R.S., a hearing on the Formal Complaint of the Attorney General will be held before an administrative law judge, on a date to be set, for the purpose of determining whether you engaged in unprofessional conduct as set forth in § 12-36-117(1)(g), (n) and (p), C.R.S. of the Colorado Medical Practice Act, and whether your license to practice medicine in Colorado should be revoked, suspended, or otherwise disciplined, pursuant to § 12-36-118(5), C.R.S. of the Colorado Medical Practice Act.

At the hearing, you shall have the right to appear in person with legal counsel, to cross-examine any witness, to rebut any evidence presented by the complainant, and to present evidence in your own defense.

The Panel's statement with regard to an option to engage in mediation is attached for your review and signature.

NOTICE OF DUTY TO ANSWER

YOU ARE HEREBY NOTIFIED that, pursuant to § 24-4-105(2)(b), C.R.S., you are required to file a written answer to the Formal Complaint with the Division of Administrative Hearings, 1120 Lincoln Street, Suite 1400, Denver, Colorado 80203, within 30 days after the service or mailing of this Formal Complaint of the Attorney General, Notice to Set, Notice of Hearing, Notice of Duty to Answer and Statement With Regard to Alternative Dispute Resolution. You must also mail a copy of such answer to the Panel's attorney, Matthew E. Norwood, First Assistant Attorney General, Office of the Attorney General, 1525 Sherman St., 5th Floor, Denver, Colorado 80203.

If you fail to file your written answer within the applicable time period, an order entering a default decision may be issued against you for the relief requested in the Formal Complaint, without further notice, or such other penalties which may be provided for by law, without further notice.

Date: 7/27/98

GALE A. NORTON
Attorney General

RICHARD A. WESTFALL
Solicitor General

LINDA L. SIDERIUS
Deputy Attorney General



MATTHEW E. NORWOOD, 15181*
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*Counsel of Record

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