

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

In the Matter of the Accusation and)	
Petition to Revoke Probation Against:)	
)	
ALLAN ISRAEL FRANKEL, M.D.)	Case No. D2-2007-184365
)	
Physician's and Surgeon's)	
Certificate No. G 34474)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

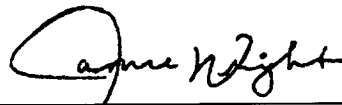
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 8, 2016.

IT IS SO ORDERED March 10, 2016.

MEDICAL BOARD OF CALIFORNIA

By: _____



**Jamie Wright, J.D., Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 RANDALL R. MURPHY
Deputy Attorney General
4 State Bar No. 165851
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against:

13 ALLAN ISRAEL FRANKEL, M.D.

14 1304 15th Street, #405
Santa Monica, California 90404

15 Physician's and Surgeon's Certificate No. G 34474,
16 Respondent.
17

Case No. D2-2007-184365

OAH No. 2014100378

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California ("Board"), the parties hereby
21 agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to
22 the Board for approval and adoption as the final disposition of the Accusation and Petition to
23 Revoke Probation.

24 **PARTIES**

25 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Board. She
26 brought this action solely in her official capacity and is represented in this matter by Kamala D.
27 Harris, Attorney General of California, by Randall R. Murphy, Deputy Attorney General.
28

2. Respondent Allan Israel Frankel, M.D. ("Respondent") is represented in this proceeding by attorney John L. Flee, whose office is located at 1850 Mt. Diablo Boulevard, Suite 120, Walnut Creek, California 94596.

3. On June 27, 1977, the Board issued Physician's and Surgeon's Certificate number G-34474 to Allan Israel Frankel, M.D. That Certificate was in full force and effect at all times relevant to the charges brought in Accusation and Petition to Revoke Probation No. D2-2007-184365 and will expire on January 31, 2017, unless renewed.

JURISDICTION

4. Accusation and Petition to Revoke Probation No. D2-2007-184365 was filed before the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on June 30, 2014. Respondent filed a timely Notice of Defense contesting the Accusation and Petition to Revoke Probation.

5. A copy of Accusation and Petition to Revoke Probation No. D2-2007-184365 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation and Petition to Revoke Probation No. D2-2007-184365. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Petition to Revoke Probation No. D2-2007-184365 and that he gives up his right to contest these charges.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

11. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Petition to Revoke Probation No. D2-2007-184365 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

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

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. G 34474
6 issued to Respondent Allan Israel Frankel, M.D. is revoked. However, the revocation is stayed
7 and Respondent is placed on probation for three (3) years on the following terms and conditions.
8 It is understood that the following terms and conditions and this disciplinary order supersedes any
9 previous disciplinary order currently in force against Respondent's license.

10 1. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** Respondent shall not
11 issue an oral or written recommendation or approval to a patient or a patient's primary caregiver
12 for the possession or cultivation of marijuana for the personal medical purposes of the patient
13 within the meaning of Health and Safety Code section 11362.5, except to patients referred to
14 Respondent by a medical professional licensed by the Medical Board of California. Respondent
15 shall not use TeleHealth or any other video service or other methodology to examine patients or
16 to make any medical marijuana recommendations and Respondent shall only issue an oral or
17 written recommendation or approval to a patient or a patient's primary caregiver for the
18 possession or cultivation of marijuana for the personal medical purposes of the patient after
19 physically examining the patient in person. Respondent shall not make any recommendation or
20 approval to a patient or a patient's primary caregiver for the possession or cultivation of
21 marijuana for the personal medical purposes of the patient within the meaning of Health and
22 Safety Code section 11362.5, except as is allowed under Health and Safety Code section 11362.7.

23 2. **CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO**
24 **RECORDS AND INVENTORIES.** Respondent shall maintain a record of all medical marijuana
25 recommendations made or ordered, prescribed, dispensed, administered, or any medical
26 marijuana actually possessed by Respondent, and any recommendation or approval which enables
27 a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical
28 purposes of the patient within the meaning of Health and Safety Code section 11362.5, during

1 probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the
2 character and quantity of controlled substances involved; and 4) the indications and diagnosis for
3 which the controlled substances were furnished. Respondent shall keep these records in a
4 separate file or ledger, in chronological order. All records and any inventories of controlled
5 substances shall be available for immediate inspection and copying on the premises by the Board
6 or its designee at all times during business hours and shall be retained for the entire term of
7 probation.

8 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
9 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
10 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
11 Respondent shall participate in and successfully complete that program. Respondent shall
12 provide any information and documents that the program may deem pertinent. Respondent shall
13 successfully complete the classroom component of the program not later than six (6) months after
14 Respondent's initial enrollment, and the longitudinal component of the program not later than the
15 time specified by the program, but no later than one (1) year after attending the classroom
16 component. The professionalism program shall be at Respondent's expense and shall be in
17 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

18 A professionalism program taken after the acts that gave rise to the charges in the
19 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
20 or its designee, be accepted towards the fulfillment of this condition if the program would have
21 been approved by the Board or its designee had the program been taken after the effective date of
22 this Decision.

23 Respondent shall submit a certification of successful completion to the Board or its
24 designee not later than 15 calendar days after successfully completing the program or not later
25 than 15 calendar days after the effective date of the Decision, whichever is later.

26 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
27 Decision, Respondent shall submit to the Board or its designee for prior approval as a Practice
28 Monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose

1 licenses are valid and in good standing, and who are preferably American Board of Medical
2 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
3 relationship with Respondent, or other relationship that could reasonably be expected to
4 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
5 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
6 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

7 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
8 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
9 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
10 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
11 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
12 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
13 signed statement for approval by the Board or its designee.

14 Within 60 calendar days of the effective date of this Decision, and continuing throughout
15 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
16 make all records available for immediate inspection and copying on the premises by the monitor
17 at all times during business hours and shall retain the records for the entire term of probation.

18 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
19 date of this Decision, Respondent shall receive a notification from the Board or its designee to
20 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
21 shall cease the practice of medicine until a monitor is approved to provide monitoring
22 responsibility.

23 The monitor(s) shall submit a quarterly written report to the Board or its designee which
24 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
25 are within the standards of practice of medicine, and whether Respondent is practicing medicine
26 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
27 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
28 preceding quarter.

1 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
2 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
3 name and qualifications of a replacement monitor who will be assuming that responsibility within
4 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
5 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
6 notification from the Board or its designee to cease the practice of medicine within three (3)
7 calendar days after being so notified Respondent shall cease the practice of medicine until a
8 replacement monitor is approved and assumes monitoring responsibility.

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

15 5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
16 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
17 Chief Executive Officer at every hospital where privileges or membership are extended to
18 Respondent, at any other facility where Respondent engages in the practice of medicine,
19 including all physician and locum tenens registries or other similar agencies, and to the Chief
20 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
21 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
22 calendar days.

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

24 6. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
25 prohibited from supervising physician assistants.

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

1 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
2 under penalty of perjury on forms provided by the Board, stating whether there has been
3 compliance with all the conditions of probation.

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

6 9. GENERAL PROBATION REQUIREMENTS.

7 Compliance with Probation Unit

8 Respondent shall comply with the Board's probation unit and all terms and conditions of
9 this Decision.

10 Address Changes

11 Respondent shall, at all times, keep the Board informed of Respondent's business and
12 residence addresses, email address (if available), and telephone number. Changes of such
13 addresses shall be immediately communicated in writing to the Board or its designee. Under no
14 circumstances shall a post office box serve as an address of record, except as allowed by Business
15 and Professions Code section 2021(b).

16 Place of Practice

17 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
18 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
19 facility.

20 License Renewal

21 Respondent shall maintain a current and renewed California physician's and surgeon's
22 license.

23 Travel or Residence Outside California

24 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
25 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
26 (30) calendar days.

27 In the event Respondent should leave the State of California to reside or to practice
28 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of

1 departure and return.

2 10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
3 available in person upon request for interviews either at Respondent's place of business or at the
4 probation unit office, with or without prior notice throughout the term of probation.

5 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
6 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
7 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
8 defined as any period of time Respondent is not practicing medicine in California as defined in
9 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
10 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
11 time spent in an intensive training program which has been approved by the Board or its designee
12 shall not be considered non-practice. Practicing medicine in another state of the United States or
13 Federal jurisdiction while on probation with the medical licensing authority of that state or
14 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
15 not be considered as a period of non-practice.

16 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
17 months, Respondent shall successfully complete a clinical training program that meets the criteria
18 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
19 Disciplinary Guidelines" prior to resuming the practice of medicine.

20 Respondent's period of non-practice while on probation shall not exceed two (2) years.

21 Periods of non-practice will not apply to the reduction of the probationary term.

22 Periods of non-practice will relieve Respondent of the responsibility to comply with the
23 probationary terms and conditions with the exception of this condition and the following terms
24 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, 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 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining 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 Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John L. Flee. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

1
2 DATED:

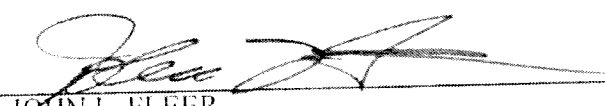
1/22/16


ALLAN ISRAEL FRANKEL, M.D.
Respondent

3
4 I have read and fully discussed with Respondent Allan Israel Frankel, M.D. the terms and
5 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
6 I approve its form and content.

7 DATED:

1/22/16


JOHN L. FLEER
Attorney for Respondent

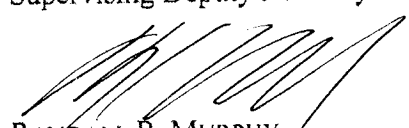
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10 ENDORSEMENT

11 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
12 submitted for consideration by the Medical Board of California.

13 Dated:

Respectfully submitted,

14 KAMALA D. HARRIS
15 Attorney General of California
16 ROBERT MCKIM BELL
17 Supervising Deputy Attorney General


18 RANDALL R. MURPHY
19 Deputy Attorney General
20 Attorneys for Complainant

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Exhibit A

Accusation and Petition to Revoke Probation No. D2-2007-184365

1 KAMALA D. HARRIS
2 Attorney General of California
3 E. A. JONES III
4 Supervising Deputy Attorney General
5 JOHN E. RITTMAYER
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7 State Bar No. 67291
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9 300 South Spring Street, Suite 1702
10 Los Angeles, CA 90013
11 Telephone: (213) 897-7485
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13 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 30 20 14
BY P. F. - D. G. S. ANALYST

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

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 **ALLAN FRANKEL, M.D.**
15 **1304 15th Street, #405**
16 **Santa Monica, CA 90404**

17 **Physician's and Surgeon's**
18 **Certificate Number G 34474**

Respondent.

Case No. D2-2007-184365

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

19 Complainant alleges:

20 PARTIES

21 1. Kimberly Kirchmeyer (complainant) brings this Accusation and Petition to Revoke
22 Probation solely in her official capacity as the Executive Director of the Medical Board of
23 California, Department of Consumer Affairs (Board).

24 2. On or about June 27, 1977, the Board issued Physician's and Surgeon's Certificate
25 Number G 34474 to Allan Frankel, M.D. (respondent). The Physician's and Surgeon's Certificate
26 was in effect at all times relevant to the charges brought herein and will expire on January 31,
27 2015, unless renewed.

28 3. In a disciplinary action titled *In the Matter of Accusation Against Allan Frankel*,

1 M.D., Case No. 17-2007-184365, the Board issued a decision, effective April 22, 2010, in which
2 respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was
3 stayed and respondent's Physician's and Surgeon's Certificate was placed on probation for a
4 period of five (5) years with certain terms and conditions. A copy of that decision is attached as
5 Exhibit A and is incorporated by reference.

6 JURISDICTION

7 4. This Accusation and Petition to Revoke Probation is brought before the Board under
8 the authority of the following laws. All section references are to the Business and Professions
9 Code unless otherwise indicated.

10 5. Section 2004 of the Code states:

11 "The board shall have the responsibility for the following:

12 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
13 Act.

14 "(b) The administration and hearing of disciplinary actions.

15 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
16 administrative law judge.

17 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
18 disciplinary actions.

19 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
20 certificate holders under the jurisdiction of the board.

21 "..."

22 6. Section 2051 of the Code states:

23 The physicians and surgeons certificate authorizes the holder to use drugs or devices in or
24 upon human beings and to sever or penetrate the tissue of human beings and to use any and all
25 other methods in the treatment of diseases, injuries, deformities, and other physical and mental
26 conditions.

27 7. Section 2052 of the Code states:

28 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who

1 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
2 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
3 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
4 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
5 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
6 authorized to perform the act pursuant to a certificate obtained in accordance with some other
7 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
8 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not
9 exceeding one year, or by both the fine and either imprisonment.

10 "(b) Any person who conspires with or aids or abets another to commit any act described in
11 subdivision (a) is guilty of a public offense, subject to the punishment described in that
12 subdivision.

13 "(c) The remedy provided in this section shall not preclude any other remedy provided by
14 law."

15 8. Section 2234 of the Code, states:

16 "The board shall take action against any licensee who is charged with unprofessional
17 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
18 limited to, the following:

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

21 "...

22 9. Section 2264 of the Code states:

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

27 10. Section 2285 of the Code states: "The use of any fictitious, false, or assumed name, or
28 any name other than his or her own by a licensee either alone, in conjunction with a partnership or

1 group, or as the name of a professional corporation, in any public communication, advertisement,
2 sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to
3 Section 2415 constitutes unprofessional conduct.”

4 11. Section 2415 of the Code states: “Any physician and surgeon, who as a sole
5 proprietor, or in a partnership, group, or professional corporation, desires to practice under any
6 name that would otherwise be a violation of Section 2285 may practice under that name if the
7 proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-
8 name permit.”

9 **CAUSE FOR DISCIPLINE**

10 **(Aiding and Abetting the Unlicensed Practice of Medicine)**

11 12. Respondent is subject to disciplinary action under sections 2234, subdivision (a), and
12 2264 in that he aided and abetted others to practice medicine without having Physician’s and
13 Surgeon’s Certificates. The circumstances are as follows

14 13. Beginning in or about February, 2011 two individuals (“business owners”), at a
15 business that they owned called “420 Wellness Today” at 722 N. Garey Avenue, Pomona,
16 California, hired physicians including R.A., J.K. and E.S. to evaluate complaints of illness of
17 persons who wished to obtain recommendations to use marijuana for medical purposes (patients).
18 The business owners either themselves or through lay employees, took the patients’ medical
19 histories and measured their vital signs. Thereafter, the business owners arranged for R.A., J.K.
20 or E.S. to interview each patient via a real-time computerized audio-video link and issued a
21 recommendation for medical marijuana if those physicians deemed the recommendation
22 appropriate.

23 14. Neither the business owners nor their lay employees had a license or training to assist
24 in the patients’ evaluations as they did. On or about September 4, 2012, respondent signed a
25 Fictitious Name Permit Application to the Board. This application listed “420 Wellness Today”
26 as its first choice for a fictitious name but respondent later changed the name to “Wellness Center
27 Today.” Eventually, the Board issued to respondent Fictitious Name Permit number 43472 for
28 Wellness Center Today located at 722 N. Garey Avenue, Pomona, California. This permit made

1 it appear to anyone who examined public records that respondent owned the marijuana
2 recommendation operation. In fact, the business owners continued to own it.

3 15. Neither of the business owners had a Physician's and Surgeon's certificate. The
4 business owners provided office space, all the equipment and documentation used in the
5 evaluation process and hired the staff.

6 16. The facts alleged in the previous paragraph constitute the practice of medicine by the
7 business owners and lay employees, the unlawful aiding and abetting thereof by respondent in
8 violation of section 2052, subdivision (b), of the Code and unprofessional conduct under sections
9 2234, subdivision (a), and 2264 of the Code.

10 **CAUSE TO REVOKE PROBATION**

11 **(Obey All Laws)**

12 17. At all times after the effective date of respondent's probation, Condition 14 stated in
13 part: "Respondent shall obey all federal, state and local laws [and] all rules governing the practice
14 of medicine in California...."

15 18. Respondent's probation is subject to revocation because he failed to comply with
16 Probation Condition 14, referenced above. The facts and circumstances regarding this violation
17 are as follows:

18 19. The allegations of the Cause for Discipline are incorporated by reference as if set
19 forth in full.

20 **PRAYER**

21 WHEREFORE, complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Medical Board of California issue a decision:

23 1. Revoking the probation that was granted by the Medical Board of California in Case
24 No. 17-2007-184365 and imposing the disciplinary order that was stayed thereby revoking
25 Physician's and Surgeon's Certificate No. G 34474 issued to Allan Frankel, M.D.;

26 2. Revoking or suspending Physician's and Surgeon's Certificate No. G 34474, issued to
27 Allan Frankel, M.D.;

28 3. Revoking, suspending or denying approval of Allan Frankel, M.D.'s authority to

1 supervise physician assistants, pursuant to section 3527 of the Code;

2 4. Ordering Allan Frankel, M.D., if placed on probation, to pay the Board the costs of
3 probation monitoring;

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

5
6 DATED: June 30, 2014


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 17-2007-184365

By: Shelton Duruisseau
Shelton Duruisseau, Chair
Panel A

1 EDMUND G. BROWN JR.
Attorney General of California
2 PAUL C. AMENT
Supervising Deputy Attorney General
3 EDWARD K. KIM
Deputy Attorney General
4 State Bar No. 195729
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-7336
6 Facsimile: (213) 897-9395
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **ALLAN FRANKEL, MD.**
13 **3007 Washington Blvd. #110**
Marina Del Rey, CA 90292

14 **Physician and Surgeon's Certificate**
15 **No. G34474**

16 Respondent.

Case No. 17-2007-184365

OAH No. 2009050411

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

19 PARTIES

20 1. Barbara Johnston (Complainant) is the Executive Director of the Medical Board of
21 California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Edward K.
23 Kim, Deputy Attorney General.

24 2. Respondent Allan Frankel, MD. (Respondent) is represented in this proceeding by
25 attorney Daniel Ritkes, whose address is 2530 Wilshire Blvd., Third Floor, Santa Monica, CA
26 90403.

27 3. On or about June 27, 1977, the Medical Board of California issued Physician and
28 Surgeon's Certificate No. G34474 to Allan Frankel, MD. The Physician and Surgeon's

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 17-2007-184365 and will expire on January 31, 2009, unless renewed.

3 JURISDICTION

4 4. Accusation No. 17-2007-184365 was filed before the Medical Board of California,
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on April 22,
7 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 17-2007-184365 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 17-2007-184365. Respondent has also carefully read,
12 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

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

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

23 CULPABILITY

24 8. Respondent admits the truth of each and every charge and allegation in the First and
25 Sixth Causes of Action set forth in Accusation No. 17-2007-184365.

26 9. Respondent agrees that his Physician and Surgeon's Certificate is subject to discipline
27 and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
28 Order below.

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1 California Uniform Controlled Substances Act.

2 Respondent shall not issue an oral or written recommendation or approval to a patient or a
3 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical
4 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If
5 Respondent forms the medical opinion, after a good faith prior examination, that a patient's
6 medical condition may benefit from the use of marijuana, Respondent shall so inform the patient
7 and shall refer the patient to another physician who, following a good faith examination, may
8 independently issue a medically appropriate recommendation or approval for the possession or
9 cultivation of marijuana for the personal medical purposes of the patient within the meaning of
10 Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the
11 patient's primary caregiver that Respondent is prohibited from issuing a recommendation or
12 approval for the possession or cultivation of marijuana for the personal medical purposes of the
13 patient, and that the patient or the patient's primary caregiver may not rely on Respondent's
14 statements to legally possess or cultivate marijuana for the personal medical purposes of the
15 patient. Respondent shall fully document in the patient's chart that the patient or the patient's
16 primary caregiver was so informed. Nothing in this condition prohibits Respondent from
17 providing the patient or the patient's primary caregiver information about the possible medical
18 benefits resulting from the use of marijuana. All of the terms and conditions set forth in this
19 paragraph shall be referred to hereinafter as the "Marijuana Restrictions." If, on the date that is
20 the one-year anniversary of the effective date of this Decision, the Respondent is, and throughout
21 the term of his probation has been, in compliance with all of the terms and conditions of this
22 Disciplinary Order, then, only the Marijuana Restriction set forth in this paragraph will no longer
23 be applicable to the Respondent for the remainder of his probationary term. However,
24 notwithstanding the foregoing, the total restriction on controlled substances set forth in the first
25 paragraph of this condition shall continue throughout the duration of the probationary term.

26 2. CONTROLLED SUBSTANCES - SURRENDER OF DEA PERMIT Within ten
27 (10) days of the effective date of this Decision, Respondent shall provide documentary proof to
28 the Board or its designee that Respondent's DEA permit has been surrendered to the Drug

1 Enforcement Administration for cancellation, together with any state prescription forms and all
2 controlled substances order forms. Thereafter, Respondent shall not reapply for a new DEA
3 permit without the prior written consent of the Board or its designee.

4 3. CONTROLLED SUBSTANCES - ABSTAIN FROM USE Respondent shall abstain
5 completely from the personal use or possession of controlled substances as defined in the
6 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
7 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not
8 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
9 illness or condition.

10 Within 15 calendar days of receiving any lawful prescription medications, Respondent shall
11 notify the Board or its designee of the: issuing practitioner's name, address, and telephone
12 number; medication name and strength; and issuing pharmacy name, address, and telephone
13 number.

14 4. ALCOHOL - ABSTAIN FROM USE Respondent shall abstain completely from the
15 use of products or beverages containing alcohol. This prohibition does not apply to medications
16 lawfully used by or prescribed to Respondent by another practitioner for a bona fide illness or
17 condition.

18 5. BIOLOGICAL FLUID TESTING Respondent shall immediately submit to
19 biological fluid testing, at Respondent's expense, upon request of the Board or its designee. Prior
20 to practicing medicine, Respondent shall, at Respondent's expense, contract with a laboratory or
21 service approved in advance by the Board or its designee that will conduct random, unannounced,
22 observed, urine testing a minimum of four times each month. The contract shall require results of
23 the urine tests to be transmitted by the laboratory or service directly to Board or its designee
24 within four hours of the results becoming available. Failure to maintain this laboratory or service
25 during the period of probation is a violation of probation. A certified copy of any laboratory test
26 result may be received in evidence in any proceedings between the Board and Respondent.
27 Failure to submit to or comply with the time frame for submitting to, or failure to complete the
28 required biological fluid testing, is a violation of probation.

1 6. PREScribing PRACTICES COURSE Within 60 calendar days of the effective
2 date of this Decision, Respondent shall enroll in a course in prescribing practices, at Respondent's
3 expense, approved in advance by the Board or its designee. Failure to successfully complete the
4 course during the first 6 months of probation is a violation of probation.

5 A prescribing practices course taken after the acts that gave rise to the charges in the
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
7 or its designee, be accepted towards the fulfillment of this condition if the course would have
8 been approved by the Board or its designee had the course been taken after the effective date of
9 this Decision.

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

13 7. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective
14 date of this decision, Respondent shall enroll in a course in medical record keeping, at
15 Respondent's expense, approved in advance by the Board or its designee. Failure to successfully
16 complete the course during the first 6 months of probation is a violation of probation.

17 A medical record keeping course taken after the acts that gave rise to the charges in the
18 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
19 or its designee, be accepted towards the fulfillment of this condition if the course would have
20 been approved by the Board or its designee had the course been taken after the effective date of
21 this Decision.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.

25 8. ETHICS COURSE Within 60 calendar days of the effective date of this Decision,
26 Respondent shall enroll in a course in ethics, at Respondent's expense, approved in advance by
27 the Board or its designee. Failure to successfully complete the course during the first year of
28 probation is a violation of probation.

1 An ethics course taken after the acts that gave rise to the charges in the Accusation, but
2 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,
3 be accepted towards the fulfillment of this condition if the course would have been approved by
4 the Board or its designee had the course been taken after the effective date of this Decision.

5 Respondent shall submit a certification of successful completion to the Board or its
6 designee not later than 15 calendar days after successfully completing the course, or not later than
7 15 calendar days after the effective date of the Decision, whichever is later.

8 9. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days from the
9 effective date of this Decision, Respondent shall enroll in a professional boundaries program, at
10 Respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment
11 and Clinical Education Program at the University of California, San Diego School of Medicine
12 ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's
13 assessment of Respondent's competency, mental health and/or neuropsychological performance,
14 and at minimum, a 24 hour program of interactive education and training in the area of
15 boundaries, which takes into account data obtained from the assessment and from the Decision(s),
16 Accusation(s) and any other information that the Board or its designee deems relevant. The
17 Program shall evaluate Respondent at the end of the training, and the Program shall provide any
18 data from the assessment and training as well as the results of the evaluation to the Board or its
19 designee.

20 Failure to complete the entire Program not later than six months after Respondent's initial
21 enrollment shall constitute a violation of probation unless the Board or its designee agrees in
22 writing to a later time for completion. Based on Respondent's performance in and evaluations
23 from the assessment, education, and training, the Program shall advise the Board or its designee
24 of its recommendation(s) for additional education, training, psychotherapy and other measures
25 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
26 Program recommendations. At the completion of the Program, Respondent shall submit to a final
27 evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

28 The Program's determination whether or not Respondent successfully completed the

1 Program shall be binding.

2 Failure to participate in and complete successfully all phases of the Program, as outlined
3 above, is a violation of probation.

4 If Respondent fails to complete the Program within the designated time period, Respondent
5 shall cease the practice of medicine within 72 hours after being notified by the Board or its
6 designee that Respondent failed to complete the Program.

7 10. PSYCHIATRIC EVALUATION Within 30 calendar days of the effective date of
8 this Decision, and on whatever periodic basis thereafter may be required by the Board or its
9 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
10 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
11 consider any information provided by the Board or designee and any other information the
12 psychiatrist deems relevant, including information submitted from the Respondent, and shall
13 furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted
14 prior to the effective date of the Decision shall not be accepted towards the fulfillment of this
15 requirement. Respondent shall pay the cost of all psychiatric evaluations and psychological
16 testing.

17 Respondent shall comply with all restrictions or conditions recommended by the evaluating
18 psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to
19 undergo and complete a psychiatric evaluation and psychological testing, or comply with the
20 required additional conditions or restrictions, is a violation of probation.

21 Respondent shall not engage in the practice of medicine until notified by the Board or its
22 designee that Respondent is mentally fit to practice medicine safely. The period of time that
23 Respondent is not practicing medicine shall not be counted toward completion of the term of
24 probation.

25 11. PSYCHOTHERAPY Within 60 calendar days of the effective date of this Decision,
26 Respondent shall submit to the Board or its designee for prior approval the name and
27 qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral
28 degree in psychology and at least five years of postgraduate experience in the diagnosis and

1 treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and
2 continue treatment, including any modifications to the frequency of psychotherapy, until the
3 Board or its designee deems that no further psychotherapy is necessary.

4 The psychotherapist shall consider any information provided by the Board or its designee
5 and any other information the psychotherapist deems relevant and shall furnish a written
6 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
7 psychotherapist any information and documents that the psychotherapist may deem pertinent.
8 Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or
9 its designee. The Board or its designee may require Respondent to undergo psychiatric
10 evaluations by a Board-appointed board certified psychiatrist.

11 If, prior to the completion of probation, Respondent is found to be mentally unfit to resume
12 the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over
13 Respondent's Certificate, and the period of probation shall be extended until the Board
14 determines that Respondent is mentally fit to resume the practice of medicine without restrictions.
15 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

16 Failure to undergo and continue psychotherapy treatment, or comply with any required
17 modification in the frequency of psychotherapy, is a violation of probation.

18 12. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent shall
19 provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief
20 Executive Officer at every hospital where privileges or membership are extended to Respondent,
21 at any other facility where Respondent engages in the practice of medicine, including all
22 physician and locum tenens registries or other similar agencies, and to the Chief Executive
23 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.
24 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
25 days.

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

27 13. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is
28 prohibited from supervising physician assistants.

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

4 15. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations
5 under penalty of perjury on forms provided by the Board, stating whether there has been
6 compliance with all the conditions of probation. Respondent shall submit quarterly declarations
7 not later than 10 calendar days after the end of the preceding quarter.

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

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

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

19 17. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE Respondent shall be
20 available in person for interviews either at Respondent's place of business or at the probation unit
21 office, with the Board or its designee, upon request at various intervals, and either with or without
22 prior notice throughout the term of probation.

23 18. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should
24 leave the State of California to reside or to practice, Respondent shall notify the Board or its
25 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
26 defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in
27 any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

28 All time spent in an intensive training program outside the State of California which has

1 been approved by the Board or its designee shall be considered as time spent in the practice of
2 medicine within the State. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice. Periods of temporary or permanent residence or practice outside
4 California will not apply to the reduction of the probationary term. Periods of temporary or
5 permanent residence or practice outside California will relieve Respondent of the responsibility to
6 comply with the probationary terms and conditions with the exception of this condition and the
7 following terms and conditions of probation: Obey All Laws and Probation Unit Compliance.

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

14 19. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

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

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

27 Respondent's Certificate shall be automatically cancelled if Respondent resides in
28 California and for a total of two years, fails to engage in California in any of the activities

1 described in Business and Professions Code sections 2051 and 2052.

2 20. COMPLETION OF PROBATION Respondent shall comply with all financial
3 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
4 completion of probation. Upon successful completion of probation, Respondent's certificate shall
5 be fully restored.

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

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

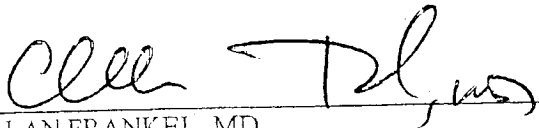
24 23. PROBATION MONITORING COSTS Respondent shall pay the costs associated
25 with probation monitoring each and every year of probation, as designated by the Board, which
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
27 California and delivered to the Board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

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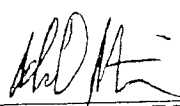
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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Daniel Ritkes. I understand the stipulation and the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 2/1/10 
ALLAN FRANKEL, MD.
Respondent

I have read and fully discussed with Respondent Allan Frankel, MD. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 2/1/10 
DANIEL RITKES
Attorney for Respondent


ENDORSEMENT

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

1 Dated: 2/1/10

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
PAUL C. AMENT
Supervising Deputy Attorney General

4 
5 EDWARD K. KIM
6 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 17-2007-184365

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 PAUL C. AMENT
Supervising Deputy Attorney General
3 VLADIMIR SHALKEVICH, State Bar No. 173955
EDWARD K. KIM, State Bar No. 195729
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-7336
Facsimile: (213) 897-9395

6 Attorneys for Complainant

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

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 23, 2009
BY Valerie Moran ANALYST

11 In the Matter of the Accusation Against:

12 ALLAN I. FRANKEL, M.D.
3007 Washington Blvd. # 110
13 Marina Del Rey, CA 90292

14 Physician's and Surgeon's Certificate
No. G 34474

Case No. 17-2007-184365

OAH No.

ACCUSATION

15
16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Barbara Johnston (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.

23 2. On or about June 27, 1977, the Medical Board of California issued
24 Physician's and Surgeon's Certificate Number G 34474 to Allan I. Frankel, M.D. (Respondent).
25 Said Certificate is renewed and current and will expire on January 31, 2011, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Medical Board of California
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code (Code) unless otherwise indicated.

2 4. Section 2234 of the Code states:

3 "The Division of Medical Quality¹ shall take action against any licensee who is
4 charged with unprofessional conduct. In addition to other provisions of this article,
5 unprofessional conduct includes, but is not limited to, the following:

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

9 "(b) Gross negligence.

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

14 "(1) An initial negligent diagnosis followed by an act or omission medically
15 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
16 act.

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

22 "(d) Incompetence.

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

25
26 1. California Business and Professions Code section 2002, as amended and effective
27 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used
28 in the State Medical Practice Act (Cal. Bus. & Prof. Code, section 2000, et. seq.) means the
"Medical Board of California," and references to the "Division of Medical Quality" and
"Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the
Board.

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

3 5. Section 2238 of the Code states, in pertinent part:

4 A violation of any federal statute or federal regulation or any of the statutes or regulations
5 of this state regulating dangerous drugs or controlled substances constitutes unprofessional
6 conduct.

7 6. Health and Safety Code section 11157 states:

8 "No person shall issue a prescription that is false or fictitious in any respect."

9 7. Health and Safety Code section 11170 states:

10 "No person shall prescribe, administer, or furnish a controlled substance for himself."

11 8. Section 2239 of the Code states, in pertinent part:

12 "(a) The use or prescribing for or administering to himself or herself, of any
13 controlled substance, or the use of any of the dangerous drugs specified in Section 4022,
14 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
15 injurious to the licensee, or to any other person or to the public, or to the extent that such
16 use impairs the ability of the licensee to practice medicine safely or more than one
17 misdemeanor or any felony involving the use, consumption, or self-administration of any
18 of the substances referred to in this section, or any combination thereof, constitutes
19 unprofessional conduct. ..."

20 9. Section 2242 of the Code states, in pertinent part:

21 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
22 4022 without an appropriate prior examination and a medical indication, constitutes
23 unprofessional conduct...."

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Violation of Drug Laws and Self-Prescribing of Controlled Substances)

3 11. Respondent is subject to disciplinary action under sections 2238, 2239 and
4 2242 in that he violated statutes and/or regulations dealing with prescribing dangerous drugs
5 and/or controlled substances, and prescribed controlled substances to himself. The
6 circumstances are as follows:

7 12. Adderall is an amphetamine, and is defined in Health and Safety Code
8 section 11055, subdivision (d) (1) as a Schedule II controlled substance. It is generally used to
9 treat Attention Deficit Hyperactivity Disorder, but also has a high potential for abuse. It is a
10 dangerous drug as defined in Business and Professions Code section 4022.

11 Demerol is a narcotic analgesic and is defined in Health and Safety Code
12 section 11055, subdivision (c) (19), as a Schedule II controlled substance. It is generally used for
13 treatment of pain, but also has a high potential for abuse. It is a dangerous drug as defined in
14 Business and Professions Code section 4022.

15 Hydrocodone is an opiate and is defined in Health and Safety Code section
16 11055, subdivision (b) (1) (J), as a Schedule II controlled substance. Hydrocodone is an orally-
17 active narcotic analgesic and antitussive. It is marketed, in its varying forms, under a number of
18 trademarks, including Vicodin, Hycodan (or generically Hydromet), Lorcet, Lortab, Norco, and
19 Hydrokon, among others. Hydrocodone also has a high potential for abuse. It is a dangerous
20 drug as defined in Business and Professions Code section 4022.

21 Oxycodone is an opiate and is defined in Health and Safety Code section
22 11055, subdivision (b) (1) (N), as a Schedule II controlled substance. It is generally used as an
23 analgesic, but it also has a high potential for abuse. It is a dangerous drug as defined in Business
24 and Professions Code section 4022;

25 Flurazepam is a benzodiazepine - based sedative and is defined in Health
26 and Safety Code section 11057, subdivision (d) (14), as a Schedule IV controlled substance. It is
27 generally used as a sleeping aid. It is a dangerous drug as defined in Business and Professions
28 Code section 4022.

Clonazepam is a benzodiazepine - based sedative and is defined in Health and Safety Code section 11057, subdivision (d) (7), as a Schedule IV controlled substance. It is also sold under the trade name Klonopin. It is generally used to control seizures and panic disorder. It is a dangerous drug as defined in Business and Professions Code section 4022.

Estazolam is a benzodiazepine - based sedative and is defined in Health and Safety Code section 11057, subdivision (d)(10), as a schedule IV controlled substance. It is generally used as a sleeping aid. It is a dangerous drug as defined in Business and Professions Code section 4022.

Cymbalta is a trade name for duloxetine, which is an antidepressant in a group of drugs called selective serotonin and norepinephrine reuptake inhibitors. It is a dangerous drug as defined in Business and Professions Code section 4022.

Cialis is a trade name for tadalafil. It is used to treat erectile dysfunction. It is a dangerous drug as defined in Business and Professions Code section 4022.

Viagra is a trade name for sildenafil. It is used to treat erectile dysfunction. It is a dangerous drug as defined in Business and Professions Code section 4022.

(R.C. and N.C)

13. From approximately 2004 through approximately the end of 2005, Respondent was involved in a personal relationship with R.C.². Respondent shared his residence with R.C. and her daughter, N.C. during a portion of that period. In approximately 2004, Respondent started to prescribe controlled substances for R.C. and N.C. He did so without conducting or recording any prior physical or mental examination or testing of patients R.C. or N.C., and without making any record of the reason for said prescriptions. Respondent did not maintain any records whatsoever pertaining to patients N.C. or R.C.

14. During Respondent's relationship with R.C., Respondent prescribed 45

2. The relevant names of individuals other than Respondent are designated by their initials herein, to protect their privacy. Upon an appropriate request for discovery by the Respondent, the names of all individuals described herein will be provided to the Respondent or his counsel.

1 tablets of Adderall XR, 30 mg to R.C., on or about November 4, 2005. Respondent did not make
2 any record nor did he document whether this prescription was intended for R.C. or for N.C.

3 15. During Respondent's relationship with R.C., Respondent prescribed
4 controlled substances to R.C.'s daughter N.C. as follows:

5 20 tablets of Demerol 100 mg/ml on or about July 7, 2005. This medication was diverted
6 for Respondent's own use;
7 30 tablets of Adderall 20 mg on or about July 9, 2005;
8 30 tablets of Adderall 20 mg on or about August 2, 2005;
9 60 tablets of Adderall 20 mg on or about August 6, 2005;
10 30 tablets of amphetamine salt combo 10 mg on or about August 10, 2005;
11 60 tablets of Adderall 20 mg on or about September 16, 2005.

12 16. In approximately the end of 2005, Respondent's relationship with R.C.
13 ended, and R.C. and N.C. moved out of Respondent's residence. At that time, R.C. believed that
14 Respondent did not write any more Adderall prescriptions to her daughter, N.C. Respondent,
15 however, continued to write prescriptions for Adderall in N.C.'s name, and picked up this
16 medication and diverted it for his personal use, as follows:

17 60 tablets of Adderall XR, 30 mg on or about December 9, 2005;
18 60 tablets of Adderall XR, 30 mg on or about January 3, 2006;
19 90 tablets of Adderall XR, 30 mg on or about February 8, 2006;
20 100 tablets of Adderall XR, 30 mg on or about March 21, 2006;
21 60 tablets of Adderall XR, 30 mg on or about August 21, 2006;
22 60 tablets of Adderall XR, 30 mg on or about September 23, 2006;
23 60 tablets of Adderall XR, 30 mg on or about November 4, 2006.

24 17. On or about December 9, 2005, Adderall in the name of N.C. was billed to
25 Respondent's account at the pharmacy. On or about January 3, 2006, Adderall in the name of
26 N.C. was billed to Respondent's account at the pharmacy. On or about February 8, 2006,
27 Adderall in the name of N.C. was billed to Respondent's account at the pharmacy. On or about
28 March 21, 2006, Adderall prescribed in N.C.'s name was picked up at the pharmacy by the same

1 person, and at the same time, as Respondent's prescription for Cialis and Flurazepam. These
2 medications were billed to Respondent's account at the pharmacy. On about September 23,
3 2006, Adderall prescribed in N.C.'s name was picked up at the pharmacy by the same person,
4 and at the same time, as Respondent's prescription for Cialis. These medications were billed to
5 Respondent's account at the pharmacy. On or about November 1, 2006, Adderall prescribed in
6 R.C.'s name was picked up at the pharmacy by the same person, and at the same time, as
7 Respondent's prescription for Viagra and Cymbalta. These medications were billed to
8 Respondent's account with the pharmacy.

9 (L.H. and A.H.)

10 18. From approximately 2003 through May, 2006, Respondent was involved
11 in a personal relationship with L.H. who had a daughter, A.H. L.H. and A.H. resided with
12 Respondent at some time during that relationship. Respondent wrote prescriptions for L.H. and
13 A.H., during that relationship, including prescriptions for Adderall, hydrocodone and
14 Oxycodone.

15 19. At no time did respondent perform and/or document any physical
16 examination or mental evaluation, or any testing of L.H. and/or A.H. Respondent did not
17 maintain any records pertaining to L.H. and/or A.H.

18 20. During Respondent's relationship with L.H. he prescribed controlled
19 substances to her, and those substances, once obtained from the pharmacy, were diverted for his
20 use. These prescriptions are as follows:

21 25 tablets of hydrocodone 500 mg on or about January 31, 2005;

22 40 tablets of hydrocodone 500 mg on or about October 4, 2005;

23 30 tablets of Oxycodone 20 mg on or about May 28, 2006;

24 240 ml of hydrocodone syrup on or about May 30, 2006.

25 21. During the relationship with L.H., respondent wrote prescriptions for
26 Adderall to her daughter A.H. as follows:

27 10 tablets of Adderall XR 10 mg on or about March 22, 2006;

28 10 tablets of Adderall XR 20 mg on or about March 29, 2006;

1 15 tablets of Adderall XR 20 mg on or about April 9, 2006;
2 90 tablets of Adderall XR 30 mg on or about May 3, 2006;
3 20 tablets of Adderall XR 30 mg on or about June 12, 2006;
4 30 tablets of Adderall XR 30 mg on or about August 28, 2006.

5 (Self Prescribing)

6 22. Respondent's pattern of prescribing controlled substances to himself began
7 as early as January 29, 2000. Between approximately January 2000 and January of 2002,
8 Respondent prescribed Lortab, Klonopin and Estazolam to himself on many occasions. On or
9 about June 26, 2002, Respondent prescribed 60 tablets of clonazepam 1 mg to himself. On or
10 about July 14, 2002, Respondent prescribed hydrocodone bitartrate with acetaminophen
11 10mg/500m to himself. On or about September 23, 2002, Respondent prescribed 200 tablets of
12 Lortab to himself. On or about September 25, 2002, Respondent prescribed 60 tablets of
13 clonazepam 1mg to himself. On or about December 20, 2002, Respondent prescribed 200 tablets
14 of Lortab to himself.

15 23. Respondent underwent drug dependency treatment in approximately 2004
16 and 2005, which included administration of methadone. After undergoing this treatment,
17 Respondent, resumed self-prescribing controlled substances and dangerous drugs as follows:

18 Homatropine with hydrocodone on or about May 26, 2005;
19 25 tablets of hydrocodone (generic Vicodin) on or about September 23, 2005;
20 30 tablets of hydrocodone on or about October 10, 2005;
21 30 tablets of Lortab 500/10 on or about October 19, 2005;
22 25 tablets of Lortab 500/10 on or about October 20, 2005;
23 140 ml. Hycodan antitussive on or about December 20, 2005;
24 240 ml. Hycodan antitussive on or about December 26, 2005;
25 25 tablets of hydrocodone on October 19, 2005;
26 25 tablets of hydrocodone on October 20, 2005;
27 Cialis and Flurazepam on or about March 21, 2006, at the same time as N.C.'s Adderall;
28 Cialis and Flurazepam on or about September 23, 2006, at the same time as N.C.'s

1 Adderall;

2 Cymbalta and Cialis on or about November 1, 2006, at the same time as N.C.'s Adderall;

3 Hydromet on or about December 19, 2006;

4 Homatropine /hydrocodone on or about December 20, 2006,

5 and Homatropine /hydrocodone on or about December 26, 2006.

6 24. Respondent's actions as detailed in paragraphs 12 to 23, inclusive,
7 violated Health and Safety Code sections 11157 and 11170 as well as Business and Professions
8 Code sections 2239 and 2242. Taken together, the actions described in paragraphs 12 to 23
9 violated Business and Professions Code section 2238.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Gross Negligence, Patient S.D.)**

12 25. Respondent is subject to disciplinary action under sections 2234,
13 subdivision (b), in that he was grossly negligent in his care and treatment of several patients.
14 The circumstances are as follows:

15 26. Patient S.D. has been Respondent's patient for approximately 15 years.
16 For approximately the last 8 years, Respondent has been managing S.D.'s orthopedic pain and
17 sleeping difficulties.

18 27. Respondent's complete medical records in regard to patient S.D. consist of
19 four largely blank pages, which represent a single office visit, and are undated. The chief
20 complaints are listed as chronic pain, sleeping difficulties, anxiety, insomnia. The record reflects
21 that the patient has been taking Vicodin as needed, but no dose or frequency is recorded. A
22 physical examination is not documented; nor are any vital signs. The discussion portion of the
23 record reflects the fact that the patient is in chronic pain, that she has sleeping difficulties,
24 anxiety and a left shoulder tear. The plan portion of the records indicates that the patient will be
25 placed on Vicodin ES #100 and Acyclovir #100. The Diagnosis is "Anxiety." The medical
26 record is signed by Respondent but neither the record nor his signature on the record is dated.

27 28. Respondent's records do not reflect a single physical examination of the
28 patient; do not contain evidence of any other contact with the patient beyond the single undated

1 visit; and do not reflect any consideration of treatment efficacy, sufficient treatment plan, or
2 consideration of alternative pain management modalities or referrals to any specialist.
3 Nevertheless, Respondent made or authorized refilling of numerous controlled substance
4 prescriptions for S.D. Specifically, Respondent prescribed to S.D. 100 tablets of
5 Hydrocodone 10/500, on or about August 9, 2004; January 26, 2005; February 25, 2005;
6 March 29, 2005; April 29, 2005; June 7, 2005; August 5, 2005; September 13, 2005;
7 October 4, 2005; November 3, 2005; December 15, 2005; January 16, 2006; February 22, 2006;
8 March 21, 2006; April, 25 2006; May 24, 2006; July 5, 2006; August 10, 2006;
9 September 5, 2006; October 5, 2006; November 7, 2006; December 18, 2006;
10 November 15, 2007; February 22, 2007; March 12, 2007; March 14, 2007; April 16, 2007;
11 June 20, 2007; and November 23, 2007. Respondent also prescribed to S.D. 100 tablets of
12 hydrocodone on or about March 4, 2008 and April 8, 2008. These controlled substance
13 prescriptions are excessive and unjustified by the record of this patient's treatment.

14 29. Respondent's treatment of S.D. represents an extreme departure from the
15 standard of care.

16 THIRD CAUSE FOR DISCIPLINE

17 (Gross Negligence, Patient A.H.)

18 30. Respondent is subject to disciplinary action under sections 2234,
19 subdivision (b), in that he was grossly negligent in his care and treatment of patient A.H. The
20 circumstances are as follows:

21 31. Allegations of paragraphs 12, 18, 19 and 21 are incorporated herein by
22 reference.

23 32. Respondent's treatment of A.H., as detailed above, represents an extreme
24 departure from the standard of care.

25 FOURTH CAUSE FOR DISCIPLINE

26 (Gross Negligence, Patient N.C.)

27 33. Respondent is subject to disciplinary action under sections 2234,
28 subdivision (b), in that he was grossly negligent in his care and treatment of N.C. The

1 circumstances are as follows:

2 34. Allegations of paragraphs 12, through 17, inclusive, are incorporated
3 herein by reference.

4 35. Respondent's treatment of N.C. represents an extreme departure from the
5 standard of care.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 36. Respondent is subject to disciplinary action under sections 2234,
9 subdivision (c), in that he committed repeated negligent acts in his care and treatment of
10 patients. The circumstances are as follows:

11 37. Allegations of paragraphs 12 through 23 and 26 through 28, inclusive, are
12 incorporated herein by reference.

13 38. Respondent's care and treatment of patients N.C., A.H. and S.D. was
14 below the standard of care.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Record Keeping)**

17 39. Respondent is subject to disciplinary action under sections 2266, in that
18 he failed to maintain complete and accurate records of his treatment of patients N.C., A.H. and
19 S.D. The circumstances are as follows:

20 40. Allegations of paragraphs 12 through 23 and 26 through 28, inclusive, are
21 incorporated herein by reference.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Medical Board of California issue a decision:


25 1. Revoking or suspending Physician's and Surgeon's Certificate Number
26 G34474, issued to Allan I. Frankel, M.D.

27 2. If placed on probation, ordering Allan I. Frankel, M.D. to pay the Medical
28 Board of California the reasonable costs of probation monitoring.

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3. Revoking Allan I. Frankel, M.D.'s authority to supervise physician assistants.
4. Taking such other and further action as deemed necessary and proper.

DATED: April 22, 2009


BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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