

By: Shelton Duruisseau  
Shelton Duruisseau, Chair  
Panel A

1 EDMUND G. BROWN JR.  
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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:

Case No. 17-2007-184365

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

OAH No. 2009050411

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

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 Respondent.

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.

1 CIRCUMSTANCES IN MITIGATION

2 10. During his thirty-four (34) years of practice, Respondent Allan Frankel, MD. has  
3 never been the subject of any disciplinary action or sued for malpractice. In this matter,  
4 Respondent has been honest in admitting his errors and at all times has been candid to the Board.

5 CONTINGENCY

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

16 12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
17 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
18 effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
20 the Board may, without further notice or formal proceeding, issue and enter the following  
21 Disciplinary Order:

22 DISCIPLINARY ORDER

23 IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. G34474  
24 (Certificate) issued to Allan Frankel, MD. (Respondent) is revoked. However, the revocation is  
25 stayed and Respondent is placed on probation for five (5) years on the following terms and  
26 conditions.

27 1. CONTROLLED SUBSTANCES - TOTAL RESTRICTION Respondent shall not  
28 order, prescribe, dispense, administer, or possess any controlled substances as defined in the

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.

1 ///

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3 ///

4 ACCEPTANCE

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

10  
11 DATED: 2/1/10

ALLAN FRANKEL, MD.  
Respondent

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

16 DATED: 2/1/10

DANIEL RITKES  
Attorney for Respondent

18  
19 ENDORSEMENT

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

1 Dated: 2/1/10

Respectfully Submitted,

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

4 

EDWARD K. KIM  
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  
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Facsimile: (213) 897-9395

6 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

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

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

15  
16 Respondent.

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO April 23 20 09  
BY Valerie Mon ANALYST

Case No. 17-2007-184365

OAH No.

**ACCUSATION**

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 Quality<sup>1</sup> 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.

1                    Clonazepam is a benzodiazepine - based sedative and is defined in  
2 Health and Safety Code section 11057, subdivision (d) (7), as a Schedule IV controlled  
3 substance. It is also sold under the trade name Klonopin. It is generally used to control seizures  
4 and panic disorder. It is a dangerous drug as defined in Business and Professions Code section  
5 4022.

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

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

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

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

17                                    **(R.C. and N.C)**

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

25                    14.        During Respondent's relationship with R.C., Respondent prescribed 45  
26 \_\_\_\_\_

27                    2. The relevant names of individuals other than Respondent are designated by their initials  
28 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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