

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)
)
DEIRDRE SUE STEPHENS, P.A.)
)
)
DEIRDRE SUE TUNTLAND, P.A.)
)
Physician Assistant)
Certificate No. PA 13292)
)
)
Respondent)
_____)

Case No. 1E-2008-189712

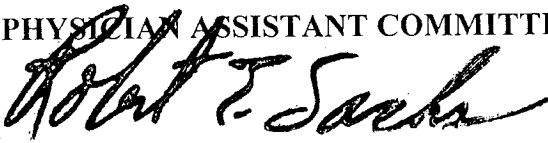
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 24, 2012.

IT IS SO ORDERED April 24, 2012.

PHYSICIAN ASSISTANT COMMITTEE

By: 
Robert E. Sachs, P.A., Chair

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Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
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8
9 **BEFORE THE**
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 1E-2008-189712

13 **DEIRDRE SUE TUNTLAND, P.A.**
14 **1815 Buttonshell Lane**
Newport Beach, CA 92660

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Physician Assistant License No. PA 13292**

16 Respondent.
17

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

20 **PARTIES**

21 1. Elberta Portman (Complainant) is the Executive Officer of the Physician Assistant
22 Committee. She brought this action solely in her official capacity and is represented in this
23 matter by Kamala D. Harris, Attorney General of the State of California, by Samuel K.
24 Hammond, Deputy Attorney General.

25 2. Deirdre Tuntland, P.A. (Respondent) is represented in this proceeding by attorney
26 John D. Harwell, Esq., whose address is: John D. Harwell, Esq., Attorney at Law,
27 225 27th Street, Manhattan Beach, CA 90266.

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1 3. On or about February 18, 1994, the Physician Assistant Committee issued Physician
2 Assistant License No. PA 13292 to Deirdre Tuntland, P.A. (Respondent). The Physician
3 Assistant License was in full force and effect at all times relevant to the charges brought in
4 Accusation No. 1E-2008-189712 and will expire on September 30, 2013, unless renewed.

5 **JURISDICTION**

6 4. On December 17, 2010, Accusation No. 1E-2008-189712 was filed before the
7 Physician Assistant Committee (Committee) for the Medical Board of California, Department of
8 Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the
9 Accusation and all other statutorily required documents were properly served on Respondent on
10 December 17, 2010. Respondent timely filed her Notice of Defense contesting the Accusation.
11 A true and correct copy of Accusation No. 1E-2008-189712 is attached hereto, as Exhibit A and
12 incorporated herein by reference.

13 **ADVISEMENT AND WAIVERS**

14 5. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Accusation No. 1E-2008-189712. Respondent has also carefully read,
16 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
17 Disciplinary Order.

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

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

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1 CULPABILITY

2 8. Respondent admits the complete truth and accuracy of each and every charge and
3 allegation in Accusation No. 1E-2008-189712.

4 9. Respondent agrees that her Physician Assistant License No. PA 13292 is subject to
5 discipline and she agrees to be bound by the Committee's imposition of discipline as set forth in
6 the Disciplinary Order below.

7 CONTINGENCY

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

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

21 12. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Committee may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician Assistant License No. PA 13292 issued to Deirdre Tuntland, P.A. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years from the effective date of this Decision on the following terms and conditions.

1. **MEDICAL RECORD KEEPING COURSE** Within 60 calendar days of the effective date of this decision, Respondent shall enroll in a course in medical record keeping approved in advance by the committee or its designee. The course shall be Category I certified, limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first 6 months of probation. Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the committee or its designee within 15 days after completing the course.

2. **ETHICS COURSE** Within 60 days of the effective date of this decision, Respondent shall submit to the committee or its designee for its prior approval a course in ethics. The course shall be limited to classroom, conference, or seminar settings. Respondent shall successfully complete the course within the first year of probation. Respondent shall pay the cost of the course.

Respondent shall submit a certification of successful completion to the committee or its designee within 15 days after completing the course.

3. **PROHIBITED PRACTICE AREAS** During probation, Respondent is prohibited from performing pellet hormone replacement therapy procedures.

4. **APPROVAL OF SUPERVISING PHYSICIAN** Within 30 days of the effective date of this decision, Respondent shall submit to the committee or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and frequency of supervision to be provided. Respondent shall not practice until the supervising physician and practice plan are approved by the committee or its designee.

Respondent shall have the supervising physician submit quarterly reports to the committee or its designee.

1 If the supervising physician resigns or is no longer available, Respondent shall, within 15 days,
2 submit the name and license number of a new supervising physician for approval.

3 5. **ON-SITE SUPERVISION** During the period of probation, the Board-approved
4 supervising physician shall be on site and shall provide on site supervision of Respondent's
5 practice at least 50% of the time Respondent is practicing.

6 6. **NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN**
7 Respondent shall notify her current and any subsequent employer and supervising physician(s) of
8 the discipline and provide a copy of the accusation, decision, and order to each employer and
9 supervising physician(s) during her period of probation, at onset of that employment. Respondent
10 shall ensure that each employer informs the committee or its designee, in writing within 30 days,
11 verifying that the employer and supervising physician(s) have received a copy of Accusation,
12 Decision, and Order.

13 7. **OBEY ALL LAWS** Respondent shall obey all federal, state, and local laws, and all
14 rules governing the practice of medicine as a physician assistant in California, and remain in full
15 compliance with any court ordered criminal probation, payments, and other orders.

16 8. **QUARTERLY REPORTS** Respondent shall submit quarterly declarations under
17 penalty of perjury on forms provided by the committee or its designee, stating whether there has
18 been compliance with all the conditions of probation.

19 9. **PROBATION SURVEILLANCE PROGRAM COMPLIANCE** Respondent
20 shall comply with the committee's probation unit. Respondent shall, at all times, keep the
21 committee and probation unit informed of Respondent's business and residence addresses.
22 Changes of such addresses shall be immediately communicated in writing to the committee and
23 probation unit. Under no circumstances shall a post office box serve as an address of record,
24 except as allowed by California Code of Regulations 1399.523.

25 Respondent shall appear in person for an initial probation interview with committee or its
26 designee within 90 days of the decision. Respondent shall attend the initial interview at a time
27 and place determined by the committee or its designee. Respondent shall, at all times, maintain a
28 current and renewed physician assistant license.

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

10. **INTERVIEW WITH MEDICAL CONSULTANT** Respondent shall appear in person for interviews with the committee's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

11. **TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE** The period of probation shall not run during the time Respondent is residing or practicing outside the jurisdiction of California. If, during probation, Respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, Respondent is required to immediately notify the committee in writing of the date of departure and the date of return, if any.

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

12. **FAILURE TO PRACTICE AS A PHYSICIAN ASSISTANT – CALIFORNIA RESIDENT** In the event Respondent resides in California and for any reason Respondent stops practicing as a physician assistant in California, Respondent shall notify the committee or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not practicing as a physician assistant.

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1 All time spent in a clinical training program that has been approved by the committee or its
2 designee, shall be considered time spent in the practice of medicine. For purposes of this
3 condition, non-practice due to a committee ordered suspension or in compliance with any other
4 condition or probation, shall not be considered a period of non-practice.

5 Respondent's license shall be automatically canceled if, for a total of two years,
6 Respondent resides in California and fails to practice as a physician assistant.

7 13. **UNANNOUNCED CLINICAL SITE VISIT** The committee or its designee may
8 make unannounced clinical site visits at any time to ensure that Respondent is complying with all
9 terms and conditions of probation.

10 14. **CONDITION FULFILLMENT** A course, evaluation, or treatment completed
11 after the acts that gave rise to the charges in the accusation but prior to the effective date of the
12 decision may, in the sole discretion of the committee or its designee, be accepted towards the
13 fulfillment of the condition.

14 15. **COMPLETION OF PROBATION** Respondent shall comply with all financial
15 obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the
16 completion of probation. Upon successful completion of probation, Respondent's license will be
17 fully restored.

18 16. **VIOLATION OF PROBATION** If Respondent violates probation in any
19 respect, the committee, after giving Respondent notice and the opportunity to be heard, may
20 revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition
21 to revoke probation is filed against Respondent during probation, the committee shall have
22 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
23 the matter is final.

24 17. **COST RECOVERY** Respondent shall reimburse the Physician Assistant
25 Committee the amount of \$23,000 for its investigative and prosecution costs. The cost recovery
26 amount may be paid in installment provided the entire amount is paid before the sixth (6th) month
27 of the last year of probation. Failure to reimburse the committee's costs for its investigation shall
28 constitute a violation of the probation order, unless the committee agrees in writing to payment by

1 an installment plan because of financial hardship. The filing of bankruptcy by the Respondent
2 shall not relieve the Respondent of his/her responsibility to reimburse the committee for its
3 investigative and prosecution costs.

4 18. **PROBATION MONITORING COSTS** Respondent shall pay the costs
5 associated with probation monitoring each and every year of probation, as designated by the
6 committee, which may be adjusted on an annual basis. The costs shall be made payable to the
7 Physician Assistant Committee and delivered to the committee no later than January 31 of each
8 calendar year.

9 19. **VOLUNTARY LICENSE SURRENDER** Following the effective date of this
10 probation, if Respondent ceases practicing due to retirement, health reasons, or is otherwise
11 unable to satisfy the terms and conditions of probation, Respondent may request the voluntarily
12 surrender of Respondent's license to the committee. The committee reserves the right to evaluate
13 the Respondent's request and to exercise its discretion whether to grant the request, or to take any
14 other action deemed appropriate and reasonable under the circumstances. Upon formal
15 acceptance of the surrender, Respondent shall within 15 days deliver Respondent's wallet and
16 wall certificate to the committee or its designee and shall no longer practice as a physician
17 assistant. Respondent will no longer be subject to the terms and conditions of probation and the
18 surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies
19 for a physician assistant license, the application shall be treated as a petition for reinstatement of a
20 revoked license.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John D. Harwell, Esq. I understand the stipulation and the effect it will have on my Physician Assistant License No. 13292. 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 Physician Assistant Committee, Medical Board of California.

DATED: 11/14/11


DEIRDRE TUNTLAND, P.A.
Respondent

I have read and fully discussed with Respondent Deirdre Tuntland, P.A., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/15/11


JOHN D. HARWELL, ESQ.
Attorney for Respondent

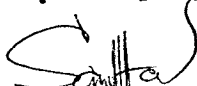
ENDORSEMENT

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

DATED: 11/16/11

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General



SAMUEL K. HAMMOND
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1E-2008-189712

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Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 1E-2008-189712

DEIRDRE SUE TUNT LAND, P.A.
1815 Buttonshell Lane
Newport Beach, CA 92660

ACCUSATION

Physician Assistant License No. PA 13292

Respondent.

Complainant alleges:

PARTIES

1. Elberta Portman (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Committee.
2. On or about February 18, 1994, the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California (hereinafter "Committee"), issued Physician Assistant License Number PA 13292 to Deirdre Sue Tuntland, P.A. (Respondent). The Physician Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the Committee, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527, subdivision (a), of the Code, states, in pertinent part, that a licensee who is found guilty of unprofessional conduct which includes violation of any provision of the Physician Assistant Practice Act and violation of any provision of the Medical Practice Act (Code section 2000, et seq.), may have his or her license revoked, suspended or placed on probation and be required to pay costs probation monitoring.

5. Section 2234 of the Code states:

"The Division of Medical Quality¹ shall take action against any licensee who is charged with unprofessional conduct.² In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

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

"(b) Gross negligence.

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

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 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.

² Unprofessional conduct is conduct which breaches the rules or ethical code of the medical profession, or conduct unbecoming a member in good standing of the medical profession and demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

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

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

8 "(d) Incompetence.

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

11 "(f) Any action or conduct which would have warranted the denial of a certificate.
12 "..."

13 6. Section 2261 of the Code states:

14 "Knowingly making or signing any certificate or other document directly or indirectly
15 related to the practice of medicine or podiatry which falsely represents the existence or
16 nonexistence of a state of facts, constitutes unprofessional conduct."

17 7. Section 2266 of the Code states:

18 "The failure of a physician and surgeon to maintain adequate and accurate records
19 relating to the provision of services to their patients constitutes unprofessional conduct."

20 8. Section 3502 of the Code states:

21 "(a) Notwithstanding any other provision of law, a physician assistant may perform
22 those medical services as set forth by the regulation of the board when the services are
23 rendered under the supervision of a licensed physician and surgeon who is not subject to a
24 disciplinary condition imposed by the board prohibiting the supervision or prohibiting the
25 employment of a physician assistant.

26 "..."

27 "(c)(1). A physician assistant and his or her supervising physician and surgeon shall
28 establish written guidelines for the adequate supervision of the physician assistant. The

1 requirement may be satisfied by the physician and surgeon adopting protocols for some or
2 all of the tasks performed by the physician assistant. The protocols adopted under this
3 subdivision shall comply with the following requirements:

4 “(A) A protocol governing diagnosis and management shall, at a minimum, include
5 the presence or absence of symptoms, signs, and other data necessary to establish a
6 diagnosis or assessment, any appropriate test or studies to order, drugs to recommend to the
7 patient, and education to be provided to the patient.

8 “(B) A protocol governing procedures shall set forth the information to be provided
9 to the patient, the nature of the consent to be obtained from the patient, the preparation and
10 technique for the procedure, and the follow-up care.

11 “(C) Protocols shall be developed by the supervising physician and surgeon or
12 adopted from, or referenced to texts or other sources.

13 “(D) Protocols shall be signed and dated by the supervising physician and surgeon
14 and the physician assistant.

15 (2) The supervising physician and surgeon shall review, countersign, and date a
16 sample consisting of, 5 percent of the medical records of patients treated by the physician
17 assistant functioning under the protocol within 30 days of the date of treatment by the
18 physician assistant.

19 “...

20 9. Section 3502.1 of the Code states:

21 “(a) In addition to the services authorized in the regulations adopted by the board and
22 except as prohibited by section 3502, while under the supervision of a licensed physician
23 and surgeon or physicians and surgeons authorized by law to supervise a physician
24 assistant, a physician assistant may administer or provide medication to a patient, or
25 transmit orally, or in writing on a patient’s record or in a drug order, an order to a person
26 who may lawfully furnish the medication or medical device pursuant to subdivisions (c)
27 and (d).
28

1 “(1) A supervising physician and surgeon who delegates authority to issue a drug
2 order to a physician assistant may limit this authority by specifying the manner in which the
3 physician assistant may issue delegated prescriptions.

4 “(2) Each supervising physician and surgeon who delegates the authority to issue a
5 drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice
6 specific, formulary and protocols that specify all criteria for the use of a particular drug or
7 device, and any contraindications for the selection. Protocols for Schedule II controlled
8 substances shall address the diagnosis of the illness, injury, or condition for which the
9 Schedule II controlled substance is being administered, provided, or issued. The drugs
10 listed in the protocols shall constitute the formulary and shall include only drugs that are
11 appropriate for use in the type of practice engaged in by the supervising physician and
12 surgeon. When issuing a drug order, the physician assistant is acting on the behalf of and
13 as an agent for a supervising physician and surgeon.

14 “...

15 “(c) A drug order for any patient cared for by the physician assistant that is issued by
16 the physician assistant shall either be based on the protocols described in subdivision (a) or
17 shall be approved by the supervising physician and surgeon before it is filled or carried out

18 (1) A physician assistant shall not administer or provide a drug or issue a drug order
19 for a drug other than for a drug listed in the formulary without advance approval from a
20 supervising physician and surgeon for the particular patient. At the direction and under the
21 supervision of a physician and surgeon, a physician assistant may hand to a patient of the
22 supervising physician and surgeon a properly labeled prescription drug prepackaged by a
23 physician and surgeon manufacturer as defined in the Pharmacy Law, or a pharmacist.

24 “....”

25 10. Section 125.3 of the Code states, in pertinent part, that any board within the
26 Department of Consumer Affairs may request the administrative law judge to direct any licensee
27 found to have committed a violation or violations of the licensing act, to pay the board a sum not
28 to exceed the reasonable costs of the investigation and enforcement of the case.

11. Section 1399.540 of Title 16 of the California Code of Regulation provides:

“(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant’s education, training and experience and which are delegated in writing by a physician and surgeon who is responsible for the patients cared for by the physician assistant.

“(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

“....”

12. Section 1399.545 of Title 16 of the California Code of Regulation provides:

“(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

“(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician’s specialty or usual and customary practice and with the patient’s health and condition.

“(c) A supervising physician shall observe or review evidence of the physician assistant’s performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

“....”

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

13. Respondent Deirdre Sue Tuntland, P.A., is subject to disciplinary action under sections 3527, subsection (a), and 2234, as defined by section 2234, subdivision (b) of the Code, in that respondent engaged in gross negligence in the care and treatment of patient L.K., as more particularly alleged below:

INTRODUCTION

1
2 A. In about 1999, respondent commenced providing weight loss services to patients
3 at her facility known as the Millennium Medical Spa (Millennium) located in Newport
4 Beach. D.L., then a licensed physician and surgeon, acted as respondent's supervising
5 physician for medical services provided by Millennium.³ Although D.L. was a trained
6 urologist and had some experience performing hair transplantation procedures, he had no
7 training or experience in weight loss treatment or bariatric medicine. Respondent and D.L.
8 signed a Delegation of Services Agreement (Agreement) and a separate Contract, however,
9 neither document contained protocols on the appropriateness and method of evaluation or
10 of the selection of treatment respondent was authorized to follow. Moreover, the
11 Agreement and Contract did not include any protocol on drug orders or their administration,
12 and did not authorize respondent to perform any surgeries. D.L. acted as respondent's
13 supervising physician until about May or June 2008.

14 B. During the period D.L. acted as respondent's supervising physician, respondent
15 did not meet with D.L. at anytime, and D.L. never provided care to any patient at
16 Millennium. D.L. would go to the offices of Millennium, once a week, at night, to review
17 and countersign medical charts. Respondent paid D.L. \$500 a month for this service.⁴

18 C. Sometime in or after October 2005, respondent commenced offering pellet
19 hormone replacement therapy, a procedure that involves an incision and implantation of
20 hormone pellets under the skin under local anesthesia. D.L. had no training or experience
21 in pellet hormone replacement therapy. Respondent commenced providing pellet hormone
22 replacement therapy to patients without D.L.'s authorization.

23 ///

24 ///

25 ³ D.L.'s Physician's and Surgeon's Certificate No. C 40016 was revoked on September
26 26, 2008.

27 ⁴ In about January 2008, respondent and Mr. D.L. signed a new agreement that required
28 respondent to pay Mr. D.L. \$1000 a month.

1 **Patient L.K.**

2 D. On or about April 7, 2004, L.K., a female patient then 57 years old, consulted
3 with respondent at respondent's Millennium facility for facial and skin care treatment. The
4 patient was menopausal, and her medical history included a hysterectomy in about 1994
5 and removal of both ovaries in about 2000. The patient was on hormone replacement
6 therapy for fatigue and lack of energy. She was prescribed Premarin for hormone
7 replacement, but this was changed to the Triple Hormone Cream, (estrogen, testosterone
8 and progesterone compound) which she applied to the skin. The patient was also taking the
9 drug Lexapro for anxiety. On this date (April 7, 2004) respondent applied a facial
10 rejuvenation cream to the patient's face. Thereafter, the patient made regular visits during
11 which respondent provided facial and skin care treatments including Botox and Radiance
12 injections.

13 E. During visits in about September or October 2005, respondent recommended
14 the patient undergo the pellet hormone replacement therapy known as Sottopelle⁵ pellet
15 procedure to replace the patient's Triple Hormone Cream. The patient repeatedly informed
16 respondent that she had lost about nine (9) pounds and was doing well on the Triple
17 Hormone Cream. During a visit in about November 2005, respondent told the patient that
18 she (respondent) underwent Sottopelle pellet procedure and that the Sottopelle pellet
19 procedure would make the patient feel younger, give her more energy and improve her sex
20 drive. Thereafter, patient agreed to undergo the Sottopelle pellet procedure.

21 F. On or about November 21, 2005, the patient had her blood drawn "in order to
22 calculate the dose of hormone to use" in performing the Sottopelle pellet procedure. The
23 laboratory results showed the patient's Estrogen was low (at 26 pg/mL) and the Follicle
24 Stimulating Hormone (FSH) was high (at 48.4mIU/mL), Testosterone was normal (at 26
25 ng/dL) and the Thyroid Hormone (T4) was normal (at 10.9 mcg/dL).

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27 _____
28 ⁵ Sottopelle is a trademark for a bioidentical hormone pellet procedure.

1 G. On or about December 8, 2005, respondent performed the Sottopelle pellet
2 procedure on patient L.K. by implanting a 37.5 mg Estradiol and a 100 mg Testosterone
3 pellets into the patient's left buttock.⁶ Respondent arrived at the Sottopelle pellet dosages
4 without the authorization or approval of D.L. In fact, respondent never discussed her
5 intention to perform the Sottopelle pellet procedure on the patient with D.L., and she
6 performed the procedure without D.L.'s authorization. Moreover, respondent failed to
7 perform and/or document she performed, a physical examination of the patient prior the
8 Sottopelle pellet procedure. Further, respondent failed to obtain and/or document she
9 obtained the patient's informed consent prior to the procedure. The evening of the
10 procedure (December 8, 2005), the patient began to experience nausea and tender and
11 swollen breast, and had symptoms similar to symptoms she experienced during her "first
12 trimester of pregnancy." The patient's symptoms worsened the next day (December 9,
13 2005). She had extreme fatigue, pain and swelling in her breasts, could not sleep and could
14 not move her left foot. These symptoms continued until about December 16, 2005.

15 H. On or about December 9, 2005, patient L.K. repeatedly telephoned
16 respondent's facility to complain about her symptoms. Respondent did not return the
17 patient's call until about December 14, 2005. After listening to her complaints and
18 symptoms, respondent informed the patient she would prescribe some medication for the
19 nausea. Respondent neither informed nor consulted with D.L. about the patient's
20 symptoms.⁷ Moreover, respondent failed to consult with a gynecologist about the patient's
21 symptoms. Instead, on or about December 15, 2005, respondent consulted with Solutions
22 Pharmacy, the facility that supplied the Sottopelle pellets, for advice on how to treat the
23 patient's symptom. The Solutions Pharmacy's representative recommended Letrozole, a
24 drug used to block estrogen production in women with breast cancer. Respondent ordered

25 ⁶ Respondent obtained the Sottopelle pellets from Solutions Pharmacy, an entity located in
26 Chattanooga, Tennessee, that supplies bioidentical pellets.

27 ⁷ During her interview on or about July 23, 2009, respondent stated she did not consult
28 D.L. about patient L.K.'s symptoms because D.L. did not have any experience with pellet
hormone therapy.

1 the Letrozole medication under D.L.'s name and prescribed it to the patient. Respondent
2 failed to consult with D.L. about the Letrozole medication and prescribed the medication to
3 the patient without D.L.'s authorization. The patient picked up the Letrozole medication
4 from Millennium on or about December 16, 2005. The bottle containing the Letrozole
5 medication was not labeled and there were no instructions on dosage or how often to take
6 the Letrozole medication. On or about December 19, 2005, patient L.K. had a telephone
7 conversation with respondent during which the patient repeatedly requested a consultation
8 with D.L. Respondent failed to arrange the requested consultation for the patient.

9 I. On or about December 20, 2005, patient L.K. made a visit to the medical
10 offices of K.S., M.D., for management of the patient's symptoms. On or about
11 December 22, 2005, Dr. K.S. ordered a blood test. The results of the blood test showed the
12 patient's Estrogen had increased to 124 pg/mL and the Testosterone had increased to 305
13 ng/dL. Dr. K.S. opined that the patient's symptoms were the result of the implantation of
14 excessively high dosages of Estradiol and Testosterone pellets.

15 J. On or about November 18, 2008, the Board received the medical records of
16 patient L.K. from respondent. Respondent certified under penalty of perjury, that the
17 medical records were true and complete copies of the patient's medical records in her
18 possession. Among the medical records was a two-page consent form signed by patient
19 L.K. for the Sottopelle pellet procedure respondent performed on December 8, 2005.
20 During her interview on or about July 23, 2009, respondent admitted that the informed
21 consent form purportedly signed by the patient was a forged document but claimed she did
22 not know who created it and how it became part of the patient's medical records.

23 14. Respondent engaged in gross negligence in the care and treatment of patient L.K.
24 which included, but were not limited to, the following:

25 A. In her treatment and care of patient L.K., respondent engaged in the
26 unauthorized practice of a physician assistant in that she performed a Sottopelle pellet
27 procedure (on the patient), a surgical procedure which was not consistent with the specialty
28 of her supervising physician and which was not authorized by her supervising physician.

1 B. In her treatment and care of patient L.K., respondent failed to consult with her
2 supervising physician before ordering and prescribing Letrozole (for the patient), a
3 medication which was not in a formulary protocol.

4 C. Respondent performed Sottopelle pellet procedure on patient L.K. without
5 obtaining and/or documenting she obtained the informed consent of the patient.

6 D. Respondent performed a Sottopelle pellet procedure on patient L.K. without
7 performing and/or documenting she performed a physical examination of the patient.

8 E. In performing Sottopelle pellet procedure on patient L.K., respondent
9 negligently implanted excessively high dosages of Estradiol and Testosterone pellets
10 causing the patient to suffer nausea, extreme fatigue, pain and swelling in her breasts and
11 inability to sleep or move her left foot.

12 F. In her care and treatment of patient L.K., respondent created a false medical
13 record in that the patient's medical records included an informed consent form for
14 Sottopelle pellet procedure containing the patient's signature, when in truth and in fact, the
15 patient never signed any such informed consent form.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Repeated Negligent Acts)**

18 15. Respondent Deirdre Sue Tuntland, P.A., is further subject to disciplinary action under
19 sections 3527, subdivision (a) and 2234, as defined by section 2234, subdivision (c), of the Code
20 in that she committed repeated negligent acts in her treatment and care of patient L.K. as more
21 particularly alleged hereafter.

22 A. Paragraphs 13 and 14, above, are incorporated by reference as though fully set
23 forth herein.

24 B. In her treatment and care of patient L.K., respondent engaged in the unauthorized
25 practice of a physician assistant in that she performed a Sottopelle pellet procedure (on the
26 patient), a surgical procedure which was not consistent with the specialty of her supervising
27 physician and which was not authorized by her supervising physician.
28

1 C. In her treatment and care of patient L.K., respondent failed to consult with her
2 supervising physician before ordering and prescribing Letrozole (for the patient), a
3 medication not in a formulary protocol.

4 D. Respondent performed Sottopelle pellet procedure on patient L.K. without
5 obtaining and/or documenting she obtained the informed consent of the patient.

6 E. Respondent performed a Sottopelle pellet procedure on patient L.K. without
7 performing and/or documenting she performed a physical examination of the patient.

8 F. In performing Sottopelle pellet procedure on patient L.K., respondent
9 negligently implanted excessively high dosages of Estradiol and Testosterone pellets into
10 the patient which caused the patient to suffer nausea, extreme fatigue, pain and swelling in
11 her breasts and inability to sleep or move her left foot.

12 G. In her care and treatment of patient L.K., respondent created a false medical
13 record in that the patient's medical records included an informed consent form for
14 Sottopelle pellet procedure containing the patient's signature, when in truth and in fact, the
15 patient never signed any such consent form.

16 H. On or after December 9, 2005, respondent failed to inform or consult with
17 D.L. about patient L.K.'s symptoms.

18 I. On or after December 9, 2005, respondent failed to consult with a gynecologist
19 or an appropriate specialist about the patient L.K.'s symptoms.

20 J. In spite of patient L.K.'s repeated requests for a consultation with D.L.,
21 respondent failed to arrange such a consultation.

22 K. Respondent prescribed and furnished Letrozole medication for patient L.K. in
23 an unlabeled bottle with no instructions as to dosage and how often to take the medication.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Knowingly Making or Creating a False Medical Record)**

26 16. Respondent Deirdre Sue Tuntland, P.A., is further subject to disciplinary action under
27 sections 3527, subsection (a) and 2234, as defined by section 2261 of the Code, in that,
28 respondent made a false record by creating an informed consent document that falsely indicated

1 she obtained patient L.K.'s informed consent for the Sottopelle pellet procedure she performed on
2 December 8, 2005, when truth and in fact, the patient's informed consent was not obtained and
3 the patient never signed any informed consent form, as more particularly alleged in paragraphs 13
4 through 15, above, which are hereby incorporated by reference and realleged as if fully set forth
5 herein.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Acts Involving Dishonesty and Corruption)**

8 17. Respondent Deirdre Sue Tuntland, P.A., is further subject to disciplinary action under
9 sections 3527, subsection (a) and 2234, as defined by section 2234, subdivision (e) of the Code,
10 in that she committed acts involving dishonesty or corruption substantially related to the
11 qualifications, functions, or duties of a physician assistant, by creating an informed consent
12 document that falsely indicated she obtained patient L.K.'s informed consent for the Sottopelle
13 pellet procedure she performed on December 8, 2005, when truth and in fact, the patient's
14 informed consent was not obtained and the patient never signed any informed consent form, as
15 more particularly alleged in paragraphs 13 through 16, above which are hereby incorporated by
16 reference and realleged as if fully set forth herein.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Functioning Outside the Scope of Delegated Authority)**

19 18. Respondent Deirdre Sue Tuntland, P.A., is further subject to disciplinary action under
20 sections 3527, subsection (a) and 2234 of the Code, as defined by sections 3502 and 3502.1 of
21 the Code, and by Title 16 of California Code of Regulation sections 1399.540 and 1399.545, in
22 that she functioned outside the scope of her delegated authority by: (1) performing Sottopelle
23 pellet procedure (on patient L.K.), a surgical procedure that was neither in a formulary protocol
24 nor was the specialty of her supervising physician; (2) performing Sottopelle pellet procedure
25 without the authorization of her supervising physician; and (3) prescribing and furnishing
26 Letrozole, a drug not in her formulary protocol, without the authorization of her supervising
27 physician, as more particularly alleged in paragraphs 13 through 15, above which are hereby
28 incorporated by reference and realleged as if fully set forth herein.

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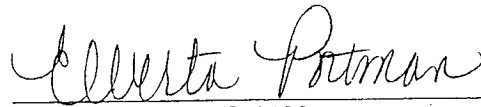
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PRAYER

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

1. Revoking or suspending Physician Assistant License Number PA 13, issued to respondent Deirdre Sue Tuntland, P.A.;
2. Ordering respondent Deirdre Sue Tuntland, P.A. to pay the Committee the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: December 17, 2010



ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
State of California
Complainant

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