

Reginald Low, M.D., Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 PEGGIE BRADFORD TARWATER
Deputy Attorney General
4 State Bar No. 169127
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 620-6068
Facsimile: (213) 897-9395
7 E-mail: Peggie.Tarwater@doj.ca.gov
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 ATSUKO REES, M.D.,
14 Physician's and Surgeon's Certificate No. C
41745
15
16 Respondent.

Case No. 08-2009-203165

OAH No. 2012050760

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
22 California, Department of Consumer Affairs (Board). She brought this action solely in her
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, by Peggie Bradford Tarwater, Deputy Attorney General.

25 2. Respondent Atsuko Rees, M.D. (Respondent) is represented in this proceeding by
26 attorney David L. Fisher, Esq., of Fisher Law Offices, whose address is 1322 Morro Street
27 San Luis Obispo, California 93401.
28

3. On or about February 19, 1985, the Board issued Physician's and Surgeon's Certificate No. C 41745 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 08-2009-203165 and will expire on September 30, 2014, unless renewed.

JURISDICTION

4. Accusation No. 08-2009-203165 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 24, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 08-2009-203165 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 08-2009-203165. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

///

///

///

1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation
3 No. 08-2009-203165, if proven at a hearing, constitute cause for imposing discipline upon her
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and Respondent hereby gives up her right to contest those
8 charges.

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

12 RESERVATION

13 12. The admissions made by Respondent herein are only for the purposes of this
14 proceeding, or any other proceedings in which the Medical Board of California or other
15 professional licensing agency is involved, and shall not be admissible in any other criminal or
16 civil proceeding.

17 CONTINGENCY

18 13. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or her counsel. By signing the
22 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.
28

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 41745 issued to Respondent Atsuko Rees, M.D. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the practice of medicine for 45 days beginning the sixteenth day after the effective date of this decision.

2. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education requirements for renewal of licensure.

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

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

3. 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 equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education requirements for renewal of licensure.

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

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

4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified

1 by the program, but no later than one year after attending the classroom component. The
2 professionalism program shall be at Respondent's expense and shall be in addition to the
3 Continuing Medical Education requirements for renewal of licensure.

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

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

12 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
13 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
14 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
15 licenses are valid and in good standing, and who are preferably American Board of Medical
16 Specialties certified. A monitor shall have no prior or current business or personal relationship
17 with Respondent, or other relationship that could reasonably be expected to compromise the
18 ability of the monitor to render fair and unbiased reports to the Board, including but not limited to
19 any form of bartering, shall be in Respondent's field of practice, and must agree to serve as
20 Respondent's monitor. Respondent shall pay all monitoring costs.

21 The Board or its designee shall provide the approved monitor with copies of the Decision
22 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the
23 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement
24 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,
25 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the
26 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed
27 statement for approval by the Board or its designee.

28 Within 60 calendar days of the effective date of this Decision, and continuing throughout

1 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
2 make all records available for immediate inspection and copying on the premises by the monitor
3 at all times during business hours and shall retain the records for the entire term of probation.

4 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
5 date of this Decision, Respondent shall receive a notification from the Board or its designee to
6 cease the practice of medicine within three calendar days after being so notified. Respondent
7 shall cease the practice of medicine until a monitor is approved to provide monitoring
8 responsibility.

9 The monitor shall submit a quarterly written report to the Board or its designee which
10 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
11 are within the standards of practice of medicine, and whether Respondent is practicing medicine
12 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
13 that the monitor submits the quarterly written reports to the Board or its designee within 10
14 calendar days after the end of the preceding quarter.

15 If the monitor resigns or is no longer available, Respondent shall, within five calendar days
16 of such resignation or unavailability, submit to the Board or its designee, for prior approval, the
17 name and qualifications of a replacement monitor who will be assuming that responsibility within
18 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
19 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
20 notification from the Board or its designee to cease the practice of medicine within three calendar
21 days after being so notified. Respondent shall cease the practice of medicine until a replacement
22 monitor is approved and assumes monitoring responsibility.

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

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

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

10 7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
11 prohibited from supervising physician assistants.

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

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

19 10. GENERAL PROBATION REQUIREMENTS.

20 Compliance with Probation Unit

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

23 Address Changes

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

1 Place of Practice

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

5 License Renewal

6 Respondent shall maintain a current and renewed California physician's and surgeon's
7 license.

8 Travel or Residence Outside California

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

12 In the event Respondent should leave the State of California to reside or to practice
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
14 departure and return.

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

18 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
21 defined as any period of time Respondent is not practicing medicine in California as defined in
22 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
23 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
24 time spent in an intensive training program which has been approved by the Board or its designee
25 shall not be considered non-practice. Practicing medicine in another state of the United States or
26 Federal jurisdiction while on probation with the medical licensing authority of that state or
27 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
28 not be considered as a period of non-practice.

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

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

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

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

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

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

21 15. LICENSE SURRENDER. Following the effective date of this Decision, if
22 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
23 the terms and conditions of probation, Respondent may request to surrender her license. The
24 Board reserves the right to evaluate Respondent's request and to exercise its discretion in
25 determining whether or not to grant the request, or to take any other action deemed appropriate
26 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
27 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
28 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject

1 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

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

8
9 ACCEPTANCE

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

15
16 DATED: 1/2/13

Atsuko Rees MD
ATSUKO REES, M.D.
Respondent

17
18 I have read and fully discussed with Respondent Atsuko Rees, M.D. the terms and
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
20 I approve its form and content.

21 DATED: 1-2-13

David L. Fisher, Esq.
David L. Fisher, Esq.
Attorney for Respondent

22
23
24 ///

25 ///

26 ///

27 ///

28 //

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: 1/18/13

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

LA2012601705
60908502.doc

Exhibit A

Accusation No. 08-2009-203165

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 PEGGIE BRADFORD TARWATER
Deputy Attorney General
4 State Bar No. 169127
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 620-6068
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO APR 24 2012
BY *[Signature]* ANALYST

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:

Case No. 08-2009-203165

13 ATSUKO EUBANK REES, M.D.

14 1890 Diablo Drive
San Luis Obispo, CA 93405

A C C U S A T I O N

15 Physician's and Surgeon's Certificate No. C
16 41745,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 19, 1985, the Medical Board of California issued Physician's
24 and Surgeon's Certificate Number C 41745 to Atsuko Eubank Rees, M.D. (Respondent). The
25 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on September 30, 2012, unless renewed.
27
28

JURISDICTION

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

4. Business and Professions Code section 2227¹ provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code states:

"The Division of Medical Quality² shall take action against any licensee who is charged with unprofessional conduct. 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) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the

¹ Unless otherwise noted, all statutory references are to the Business and Professions Code.

² 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 (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.

1 applicable standard of care, each departure constitutes a separate and distinct breach of the
2 standard of care.

3 "(d) Incompetence.

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

6 "..."

7 6. Section 2261 of the Code states:

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

11 7. Section 2272 of the Code states: "Any advertising of the practice of medicine in
12 which the licensee fails to use his or her own name or approved fictitious name constitutes
13 unprofessional conduct."

14 8. Section 2273 of the Code states:

15 "(a) Except as otherwise allowed by law, the employment of runners, cappers, steerers, or
16 other persons to procure patients constitutes unprofessional conduct.

17 "(b) A licensee shall have his or her license revoked for a period of 10 years upon a second
18 conviction for violating any of the following provisions or upon being convicted of more than one
19 count of violating any of the following provisions in a single case: Section 650 of this code,
20 Section 750 or 1871.4 of the Insurance Code, or Section 549 or 550 of the Penal Code. After the
21 expiration of this 10-year period, an application for license reinstatement may be made pursuant
22 to Section 2307."

23 9. Section 650, subdivision (a), of the Code states: "Except as provided in Chapter 2.3
24 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery,
25 receipt, or acceptance by any person licensed under this division . . . of any rebate, refund,
26 commission, reference, patronage dividend, discount, or other consideration, whether in the form
27 of money or otherwise, as compensation or inducement for referring patients, clients, or
28

1 customers to any person, irrespective of any membership, proprietary interest, or coownership in
2 or with any person to whom these patients, clients, or customers are referred is unlawful.”

3
4 FIRST CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 10. Respondent is subject to disciplinary action under section 2234, subdivision (b), in
7 that Respondent was grossly negligent in the care and treatment of patients. The circumstances
8 are as follows:

9 **Factual Allegations re Patient R.S.**

10 11. On or about December 5, 2009, Board Investigator R.C., posing as patient R.S.,
11 conducted an undercover visit at Respondent’s medical office, a residence in Porterville,
12 California, for the purpose of obtaining a medical marijuana recommendation.³

13 12. R.S. entered the residence and was greeted by “Carol”. Carol introduced R.S. to
14 another female who collected one hundred and fifty dollars in cash and asked R.S. to fill out
15 paperwork. R.S. filled out a one-page document with her name, address, and telephone number.

16 13. Respondent called R.S. into a separate room. Respondent introduced herself and
17 explained that the R.S.’s medical records would be retained in her San Louis Obispo office.

18 14. R.S. asked Respondent whether her primary care physician would be provided with
19 the records of the visit. Respondent stated that the primary care physician would not be provided
20 the records, and R.S. did not need to tell her primary care physician about the marijuana
21 recommendation because “it doesn’t really matter.”

22 15. When R.S. was asked her reasons for wanting the marijuana recommendation, R.S.
23 explained to Respondent that she was stressed with work and with caring for her four children.
24 R.S. said she wanted the marijuana to calm her down and help her relax. Respondent asked R.S.
25 if she had trouble sleeping, and R.S. responded that she had trouble calming down to go to sleep.

26
27 ³ Medical marijuana refers to marijuana grown, recommended, or used for medical
28 purposes under Proposition 215, also known as the Compassionate Use Act of 1996. (Health &
Saf. Code, § 11362.5.)

1 R.S. did not complain of difficult sleeping, mention the duration of any insomnia, or mention the
2 duration of her stress complaint. Respondent asked her no questions about the details of the sleep
3 issues.

4 16. Respondent did not obtain the name of R.S.'s primary care physician, did not
5 coordinate care with R.S.'s primary care physician or any other physician, and did not obtain
6 and/or review prior medical records.

7 17. The medical record from the visit reflects "a lot of anxiety that affects home and
8 work." It also reflects that R.S. had been suffering from insomnia for a long time and that it made
9 her "cranky and fatigued."

10 18. Although the medical record reflects a well-developed, well-nourished white female
11 in no acute distress, a grossly normal nervous system, and a heart and extremity examination,
12 Respondent did not physically examine R.S. No vital signs, height or weight measurements were
13 taken. There was no review of systems, no medical history, no notation of drug or other allergies
14 noted, and no questionnaire addressing these areas.

15 19. Respondent provided a marijuana recommendation to R.S. and advised her to return
16 annually for follow-up appointments.

17 **Allegations of Gross Negligence as to Patient R.S.**

18 20. Respondent was grossly negligent in the care and treatment of R.S. when she failed to
19 perform a physical examination prior to providing a medical marijuana recommendation.

20 21. Respondent was grossly negligent in the care and treatment of R.S. when she falsified
21 the medical record in support of the marijuana recommendation.

22 22. Respondent was grossly negligent in the care and treatment of R.S. when she
23 diagnosed anxiety and insomnia without a sufficient medical basis.

24 23. Respondent was grossly negligent in the care and treatment of R.S. when she failed to
25 conduct a medical record review, failed to coordinate care with R.S.'s primary care provider, or
26 failed to refer R.S. to a consultant for proper evaluation of her complaints.

1 24. Respondent was grossly negligent in the care and treatment of R.S. when she failed to
2 evaluate R.S. to rule out medical issues that may have been masked or worsened by medical
3 marijuana use.

4 **Factual Allegations re Patient R.M.**

5 25. On or about October 7, 2009, Porterville Police Detective R.M. conducted a visit at
6 Respondent's medical office, a residence in Porterville, California, for the purpose of obtaining a
7 medical marijuana recommendation.

8 26. Respondent called R.M. into a separate room. Respondent sat behind a desk in the
9 room. There were no medical examination tools present.

10 27. Respondent asked R.M. why he wanted a recommendation for medical marijuana.
11 R.M. explained that he was stressed at home and suffered anxiety attacks during which he felt his
12 blood pressure was rising. He said he had smoked "pot" with friends, and it seemed to calm him
13 down. Respondent questioned whether the marijuana helped with relaxation and caused him not
14 to be angry or agitated, and R.M. responded that it did. R.M. said he did not want to turn to
15 alcohol because that brings out the "bad" in him. Respondent asked whether R.M. took any
16 medication, and R.M. told her he uses Protonix for acid reflux. She asked him whether he
17 smoked cigarettes and whether he drank alcohol. R.M. stated he smoked cigarettes and rarely
18 drank alcohol. Respondent asked R.M. if the anxiety affected his sleep, and he responded that he
19 occasionally had choking dreams, but that those were rare. No questions about other current or
20 past drug use were asked.

21 28. The medical record reflects the following: R.M. has complaints of stress affecting
22 home and work and anxiety attacks; R.M. rarely uses alcohol but did smoke; R.M. takes Protonix;
23 he is a well-developed, well-nourished white male in no acute distress; his nervous system is
24 grossly normal; heart examination is normal; abdominal examination is benign; and a lung
25 examination indicates the lungs are clear. No vital signs, height or weight were documented. The
26 assessment is anxiety, and there is no review of systems, no medical history, no notation of drug
27 or other allergies, no name of a primary care provider noted, and no questionnaire reflecting
28 responses in these areas.

1 29. Respondent handed R.M. a recommendation for medical marijuana. She asked R.M.
2 if he would be growing his own marijuana. R.M. said he did not yet know how to do so and
3 asked if he could use the service provided at the office. Respondent said, "right." She had R.M.
4 sign the bottom of the recommendation, and she explained how much marijuana he could possess
5 and grow. She then added a notation to the recommendation to include "edibles," which would
6 exceed amounts permitted by Senate Bill 420.⁴ She informed R.M. that it would be his
7 responsibility to explain the reason for the excessive amount.

8 30. Respondent gave R.M. a form explaining the health risks of smoking marijuana. She
9 told R.M. that she thought marijuana plants contained tar, and he could ask Carol about a
10 vaporizer that would burn "cleaner" and also about "edibles." She provided another form
11 advising R.M. to see his doctor for any other health issues, and told R.M. he did not need to
12 notify his doctor about the medical marijuana.

13 31. In spite of the notations in the medical record, Respondent did not examine R.M.
14 prior to recommending medical marijuana.

15 32. Respondent began writing a recommendation for marijuana in under three minutes
16 from the start of the visit. R.M.'s entire visit with Respondent lasted less than six minutes.

17 **Allegations of Gross Negligence as to Patient R.M.**

18 33. Respondent was grossly negligent in the care and treatment of R.M. when she failed
19 to perform a physical examination prior to providing a medical marijuana recommendation.

20 34. Respondent was grossly negligent in the care and treatment of R.M. when she
21 falsified the medical record supporting the marijuana recommendation.

22 35. Respondent was grossly negligent in the care and treatment of R.M. when she
23 diagnosed anxiety without a sufficient medical basis.

24 36. Respondent was grossly negligent in the care and treatment of R.M. when she failed
25 to conduct a medical record review, failed to coordinate care with R.M.'s primary care provider,
26 or failed to refer R.M. to a consultant for proper evaluation of her complaints.

27 _____
28 ⁴ These limits are set forth in Health & Safety Code section 11362.77.

1 37. Respondent was grossly negligent in the care and treatment of R.M. when she failed
2 to evaluate R.M. to rule out medical issues that may have been masked or worsened by medical
3 marijuana use.

4 **Factual Allegations re Patient A.D.**

5 38. On or about October 8, 2010, San Luis Obispo Police Officer A.D, posing as patient
6 A.D., conducted an undercover visit at Respondent's medical office, Rees Family Medical, in San
7 Luis Obispo, California, for the purpose of obtaining a medical marijuana recommendation.

8 39. A.D. was called into a room to see Physician Assistant M.E. The progress note from
9 the visit indicates pulse and blood pressure numbers and a notation that A.D. is taking no
10 medications. It indicates that A.D. has back pain in the lower thoracic and upper lumbar area
11 from a bicycle accident and that the pain bothers her at the end of the day. The note reflects that
12 A.D. is a student. Her pain is aggravated by sitting, and using medical marijuana allows her to
13 relax, sleep better, and have a more productive day. According to the physical examination notes,
14 the heart has a normal sinus rhythm without murmur or gallop, and lungs are clear. A.D. is
15 setting and walking normally. The assessment is back pain, and there is a remark that A.D.
16 understands the protocol and will comply with the responsibility and follow up as needed. The
17 note is signed by M.E. and initialed by Respondent. There are no notations relating to what A.D.
18 had done in the past to reduce pain, other than the use of marijuana, and there are no suggestions
19 of what she might try, other than marijuana, for her problem. There is no drug allergy history,
20 review of systems, or medical history in the medical record.

21 40. Neither Respondent nor M.E. obtained information relating to A.D.'s medical history
22 from A.D.'s primary care physician, neither coordinated care with A.D.'s primary care physician
23 or any other physician, and neither reviewed or obtained prior medical records.

24 **Allegations of Gross Negligence as to Patient A.D.**

25 41. Respondent was grossly negligent in the care and treatment of A.D. when she
26 recommended medical marijuana without conducting a medical record review, coordinating care
27 with A.D.'s primary care provider, or referring A.D. to a consultant for proper evaluation of her
28 complaints.

1 42. Respondent was grossly negligent in the care and treatment of A.D. when she
2 recommended medical marijuana without ruling out medical issues that may have been masked or
3 worsened by medical marijuana use.

4 43. Respondent was grossly negligent in the care and treatment of A.D. when she
5 delegated to M.E. the responsibility of conducting A.D.'s physical examination, evaluation, and
6 granting of the medical marijuana recommendation without providing direct supervision.

7 **Factual Allegations re Patient R.R.**

8 44. In 2008, patient R.R., a physician, was placed on probation for a period of five years
9 with terms and conditions that included abstention from use of controlled substances and
10 requiring R.R. to notify the Board upon receiving any lawful prescription medications.

11 45. On or about May 14, 2010, R.R. presented at Respondent's medical office, Rees
12 Family Medical, in San Luis Obispo, California, for the purpose of obtaining a medical marijuana
13 recommendation.

14 46. At the time of his visit, R.R. provided a prescription pad sheet from G.B., M.D., dated
15 May 5, 2010, on which G.B. indicated that R.R. had a diagnosis of lumbo-sacral disc disease and
16 noted "pt appropriate Disease for Medical Marijuana." R.R. also provided a copy of MRI reports,
17 dated October 16, 2001 and June 20, 2001, which revealed disc protrusions, foraminal stenosis
18 facet disease and subluxation, and severe central stenosis at L4-5. R.R. included a copy of a
19 previous medical marijuana recommendation, which had expired on January 29, 2009.

20 47. R.R. was seen by Physician Assistant M.E. The progress note from the visit indicates
21 R.R.'s age of 58 years and indicates that he was sent by G.B. for degenerative disc disease
22 unresponsive to surgery. The office visit notes the use of Coumadin, Vytoran, Flomax, and
23 Imiprimine as current medications. The remainder of the note states that the pain involves the
24 entire back, it is worse at the lumbo-sacral area, and the pain is felt with flexion and extension. It
25 notes there is a positive straight leg raising test on both sides, that the neurologic examination was
26 "intact," and that the patient provided records. The assessment is "chronic pain syndrome – legs
27 and back."
28

1 48. G.B.'s note does not contain a list of current medications used by R.R. There is no
2 notation in the patient record of any pain or sleep medication used by R.R. currently or in the
3 past. There are no forms or documentation that include past medical, surgical, social, or drug
4 dependency or abuse issues.

5 49. No vital signs were obtained or documented in the chart, and no physical examination
6 was performed on R.R. during his visit at Rees Family Medical.

7 50. Respondent signed and reviewed R.R.'s chart, but not until after R.R. received the
8 recommendation for medical marijuana.

9 **Allegations of Gross Negligence as to Patient R.R.**

10 51. Respondent was grossly negligent in the care and treatment of R.R. when she
11 recommended medical marijuana without conducting a general physical examination.

12 52. Respondent was grossly negligent in the care and treatment of R.R. when she
13 recommended medical marijuana without conducting a sufficient evaluation to rule out medical
14 issues that may have been masked or worsened by medical marijuana use.

15 53. Respondent was grossly negligent in the care and treatment of R.R. when she
16 delegated the entire process of making the medical marijuana recommendation to a physician
17 assistant without directly supervising the physician assistant or reviewing the medical record prior
18 to issuance of the recommendation.

19 54. Respondent was grossly negligent in the care and treatment of R.R. when she failed to
20 discuss with R.R. the potential risks of the use of marijuana in conjunction with Coumadin.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 SECOND CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts)

3 55. Respondent is subject to disciplinary action under section 2234, subdivision (c), in
4 that Respondent committed repeated acts of negligence in the care, treatment and management of
5 patients. The circumstances are as follows:

6 **Factual Allegations re Patient R.S.**

7 56. The facts and circumstances alleged in paragraphs 11 through 19 are incorporated
8 here as if fully set forth.

9 **Allegations of Negligence re Patient R.S.**

10 57. Respondent was negligent in the care and treatment of R.S. when she failed to
11 perform a physical examination prior to providing a medical marijuana recommendation.

12 58. Respondent was negligent in the care and treatment of R.S. when she falsified the
13 medical record in support of the marijuana recommendation.

14 59. Respondent was negligent in the care and treatment of R.S. when she diagnosed
15 anxiety and insomnia without a sufficient medical basis.

16 60. Respondent was negligent in the care and treatment of R.S. when she failed to
17 conduct a medical record review, failed to coordinate care with R.S.'s primary care provider, or
18 failed to refer R.S. to a consultant for proper evaluation of her complaints.

19 61. Respondent was negligent in the care and treatment of R.S. when she failed to
20 evaluate R.S. to rule out medical issues that may have been masked or worsened by medical
21 marijuana use.

22 **Factual Allegations re Patient R.M.**

23 62. The facts and circumstances alleged in paragraphs 25 through 32 are incorporated
24 here as if fully set forth.

25 **Allegations of Negligence re Patient R.M.**

26 63. Respondent was negligent in the care and treatment of R.M. when she failed to
27 perform a physical examination prior to providing a medical marijuana recommendation.
28

64. Respondent was negligent in the care and treatment of R.M. when she falsified the medical record supporting the marijuana recommendation.

65. Respondent was negligent in the care and treatment of R.M. when she diagnosed anxiety without a sufficient medical basis.

66. Respondent was negligent in the care and treatment of R.M. when she failed to conduct a medical record review, failed to coordinate care with R.M.'s primary care provider, or failed to refer R.M. to a consultant for proper evaluation of her complaints.

67. Respondent was negligent in the care and treatment of R.M. when she failed to evaluate R.M. to rule out medical issues that may have been masked or worsened by medical marijuana use.

Factual Allegations re Patient A.D.

68. The facts and circumstances alleged in paragraphs 38 through 40 are incorporated here as if fully set forth.

Allegations of Negligence re Patient A.D.

69. Respondent was negligent in the care and treatment of A.D. when she recommended medical marijuana without a medical record review, coordinating care with A.D.'s primary care provider, or referring A.D. to a consultant for proper evaluation of her complaints.

70. Respondent was negligent in the care and treatment of A.D. when she recommended medical marijuana without ruling out medical issues that may have been masked or worsened by medical marijuana use.

71. Respondent was negligent in the care and treatment of A.D. when she delegated to M.E. the responsibility of conducting A.D.'s physical examination, evaluation, and granting of the medical marijuana recommendation without providing direct supervision.

Factual Allegations re Patient R.R.

72. The facts and circumstances alleged in paragraphs 44 through 50 are incorporated here as if fully set forth.

///

///

1 **Allegations of Negligence re Patient R.R.**

2 73. Respondent was negligent in the care and treatment of R.R. when she recommended
3 medical marijuana without conducting a general physical examination.

4 74. Respondent was negligent in the care and treatment of R.R. when she recommended
5 medical marijuana without conducting a sufficient evaluation to rule out medical issues that may
6 have been masked or worsened by medical marijuana use.

7 75. Respondent was negligent in the care and treatment of R.R. when she delegated the
8 entire process of making the medical marijuana recommendation to a physician assistant without
9 directly supervising the physician assistant or reviewing the medical record prior to issuance of
10 the recommendation.

11 76. Respondent was negligent in the care and treatment of R.R. when she failed to discuss
12 with R.R. the potential risks of the use of marijuana in conjunction with Coumadin.

13
14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Incompetence)**

16 77. Respondent is subject to disciplinary action under section 2234, subdivision (d), in
17 that Respondent exhibited incompetence in the care and treatment of patients. The circumstances
18 are as follows.

19 **Factual Allegations re Patient R.S.**

20 78. During her December 5, 2009 appointment with Respondent, R.S. inquired whether
21 her primary care physician would be given the records of her visit with Respondent. Respondent
22 stated that he would not receive the documents, and that R.S. did not need to tell her primary
23 physician that she obtained a medical marijuana recommendation unless she wanted to tell him
24 because, "it doesn't really matter."

25 **Allegation of Incompetence as to Patient R.S.**

26 79. Respondent displayed a lack of knowledge and experience when she failed to
27 encourage R.S. to notify her primary care physician regarding her use of medical marijuana.

28 ///

1 **Factual Allegations re Patient R.M.**

2 80. During his October 7, 2009 appointment with Respondent, R.M. inquired whether he
3 should notify his physician about the medical marijuana recommendation, and Respondent
4 answered, "no."

5 **Allegation of Incompetence as to Patient R.M.**

6 81. Respondent displayed a lack of knowledge and experience when she advised R.M.
7 that he did not need to notify his primary care physician regarding his recommendation for the
8 use of medical marijuana.

9
10 FOURTH CAUSE OF ACTION

11 (Creation of a False Medical Record)

12 82. Respondent is subject to disciplinary action under section 2261 in that Respondent
13 created false medical records. The circumstances are as follows:

14 83. Respondent created a false medical record as to R.S. when Respondent noted a
15 physical examination of R.S. without having actually completed a physical examination.

16 84. Respondent created a false medical record as to R.M. when Respondent noted a
17 physical examination of R.M. without having actually completed a physical examination.

18 FIFTH CAUSE FOR DISCIPLINE

19 (Employment of Person to Procure Patients)

20 85. Respondent is subject to disciplinary action under section 2273, subdivision (a), in
21 that Respondent employed a person to procure patients. The circumstances are as follows:

22 86. From approximately November 2009, through the year 2010, Respondent employed
23 C.A. to place advertisements relating to medical marijuana recommendations and to send out
24 cards to notify people of the dates and locations of clinics run for the purpose of recommending
25 medical marijuana.

26 87. Respondent paid C.A. for the costs of advertising and for the patient referrals.
27 Respondent paid C.A. approximately fifteen to twenty-five dollars per patient.

28 ///

1 SIXTH CAUSE FOR DISCIPLINE

2 (Rebates for Patient Referrals)

3 88. Respondent is subject to disciplinary action under section 650 in that Respondent
4 offered rebates for patient referrals. The circumstances are as follows:

5 89. The facts and circumstances alleged in paragraphs 85 and 86 are incorporated here as
6 if fully set forth.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Failure to use Name in Advertising)

9 90. Respondent is subject to disciplinary action under section 2272 in that Respondent
10 advertised the practice of medicine without using her own name or an approved fictitious name.
11 The circumstances are as follows:

12 91. Respondent advertised medical marijuana services in the Porterville, California
13 "Save-A-Buck" newspaper, dated November 5, 2009. The advertisement does not contain either
14 Respondent's name or a fictitious name permitted for Respondent's use.

15 92. Respondent advertised medical marijuana services in the San Luis Obispo "New
16 Times" newspaper, Volume 25, Number 33 for March 17 through 24, 2011. The advertisement
17 does not contain either Respondent's name or a fictitious name permitted for Respondent's use.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

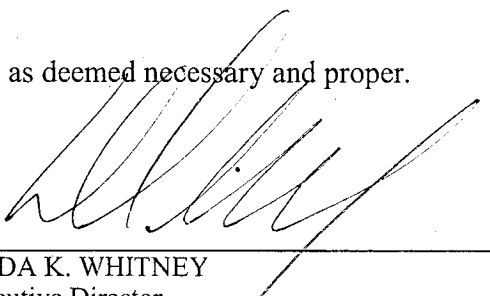
28 ///

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 41745, issued to Atsuko Rees, M.D.
2. Revoking, suspending or denying approval of her authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. If placed on probation, ordering her to pay the Medical Board of California the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: April 24, 2012



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California,
Complainant

LA2012601705
60731920.doc