

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

In the Matter of the Accusation	)	
Against:	)	Case No. D-4994
	)	
RONALD P. GRUBER, M.D.	)	OAH No. N 41960
3318 Elm Street	)	
Oakland, CA 94609	)	
	)	
Physician and Surgeon's	)	
Certificate No. A22597	)	
	)	
Respondent.	)	
	)	

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before Ruth S. Astle, Administrative Law Judge of the Office of Administrative Hearings, State of California, in San Francisco, California, on October 18, 19, 20, and 21, 1993.

Isa R. Rodriguez, Deputy Attorney General, represented the complainant.

Respondent Ronald P. Gruber, M.D., ("respondent") was present and represented by Kenneth L. Freeman, Attorney at Law. Oral and documentary evidence was presented and the matter was argued.

ALJ Astle's proposed decision was submitted to the Division of Medical Quality of the Medical Board of California on November 5, 1993.

On January 13, 1994, the Division of Medical Quality of the Medical Board of California issued a Notice of Non-adoption of Proposed Decision.

Subsequent to the receipt of the transcript, the parties were given the opportunity to submit argument to the Division. Written argument dated April 14, 1994, was received from the complainant's attorney, Deputy Attorney General Isa R. Rodriguez. Respondent's attorney, Kenneth L. Freeman, submitted written argument dated April 14, 1994.

On May 5, 1994, respondent and his attorney, Kenneth L. Freeman, and Deputy Attorney General Isa R. Rodriguez, presented oral argument to the Division of Medical Quality.

After consideration of all oral and documentary evidence, including the transcript of the October 18, 19, 20 and 21, 1993, hearing, and the written and oral argument after nonadoption of the proposed decision, the Division of Medical Quality of the Medical Board of California, with Dr. Jacquelyn Trestrail, M.D., recusing herself from participation, hereby renders its own decision in this matter.

#### FINDINGS OF FACT

##### I

Kenneth J. Wagstaff made the accusation in his official capacity as Executive Director of the Medical Board of California (Board) and not otherwise.

##### II

On April 14, 1967, Ronald P. Gruber, M.D. (respondent) was issued physician and surgeon's certificate No. A22597. The certificate is presently in full force and effect and will expire on April 30, 1995 unless otherwise renewed.

##### III

Demerol, a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance and a dangerous drug as designated by the Health and Safety Code.

Cocaine is a Schedule II controlled substance and a dangerous drug as defined by the Health and Safety Code.

##### IV

The parties stipulated to the facts set forth below in Findings V through XII.

##### V

On October 26, 1990, respondent wrote a prescription for Demerol, 50 mg, #24 tablets to be dispensed to L.J. without prior physical examination and medical indication therefor, but for the purpose of obtaining oral Demerol for his wife. After L.J. filled the prescription at respondent's request, respondent

assumed possession and control of the Demerol, but made no record of the transaction.

VI

On November 2, 1990, respondent wrote a prescription for Demerol, 50 mg, #30 tablets to be dispensed to B.G. without prior physical examination and medical indication therefor, but for the purpose of obtaining oral Demerol for his wife. After B.G. filled the prescription at respondent's request, respondent assumed possession or control of the Demerol, but made no record of the transaction.

VII

In 1990, respondent wrote three prescriptions for injectible Demerol for patients T.H., C.G., and M.I on November 12, 19, and 23, 1990 respectively. Each prescription was for 20 cc at 100m/cc. Respondent's purpose for writing the prescriptions initially was in anticipation of scheduled surgeries for the identified patient. The Demerol was not used on the patients, but instead was used for his wife. After the prescriptions were filled at respondent's request, respondent assumed possession and control of the Demerol but failed to keep a controlled substance inventory for the Demerol.

VIII

In 1989, respondent wrote prescriptions for cocaine to be dispensed to patients L.C. and J.V. on 8/25/89 and 12/27/89 respectively. Each prescription was for 2 - 4ml vials of 4%. These prescriptions were not filled by the pharmacy for these patients. Pursuant to these prescriptions however, the cocaine was dispensed directly to the respondent or one of his employees rather than directly to the patients. Respondent failed to keep a controlled substance inventory for the cocaine.

IX

From July 26, 1989 to March 20, 1991, 72 - 20ml vials of Demerol, 100mg/ml from PRN, a national drug wholesaler, were ordered and received on respondent's DEA number, but he failed to keep a controlled substance inventory for the Demerol.

X

On November 12, 1990, respondent obtained injectible Demerol from the Surgery Center in Oakland, California, by representing

that it was needed for emergency surgery on a patient and failed to make a record of the transaction.

XI

Beginning October of 1990 through February of 1991, respondent furnished, provided and administered Demerol to his wife. She was addicted to Demerol at the time, but respondent was attempting to detoxify her.

XII

Respondent did not maintain a controlled substance inventory or adequate records regarding his prescribing, dispensing, administering and furnishing of Schedule II controlled substances--Demerol and cocaine.

XIII

Respondent gave information to the Medical Board of California investigator regarding the prescribing, dispensing and administering of Schedule II controlled substances by reconstructing a controlled substance inventory. Initially he represented to the investigator that this was an inventory taken contemporaneously to the matters set forth in the document, but very shortly thereafter contacted the investigator on his own and indicated that the document was a reconstruction. Respondent had not maintained such an inventory at the time he prescribed, dispensed and administered the Schedule II controlled substances.

XIV

It was not established that respondent's failure to maintain an inventory log of Schedule II controlled substances which he prescribed, dispensed, administered or furnished constituted gross negligence, negligence, and/or incompetence. The Board's expert stated that the failure to keep such records "might be considered negligence." Information regarding maintaining a log of controlled substances is provided by the Drug Enforcement Administration, and the prescription forms themselves contain information relating to the required maintenance of records.

XV

Respondent began treating his wife as a patient at least as early as 1974 for, among other things, disabling headaches. His treatment included the appropriate historical information and periodic referrals to neurologists for evaluation and treatment. The Board's expert found respondent's early treatment of his wife

to be appropriate. In June of 1983, respondent began treating his wife's headaches with intramuscular Demerol and Vistaril. This treatment was undertaken after a headache had been successfully treated this way in an emergency setting. This treatment continued through 1988. Respondent's wife received 3 to 4 injections of Demerol per month for her headaches. Dr. Gruber kept a chart for his wife where he made notes of his treatment and referrals.

In April of 1989, respondent's wife had what was diagnosed as a cerebral vascular accident related to the headaches. She lost a total of 50% of her vision in two separate incidents. She was under the care of a neurologist who knew and approved of respondent's treatment of his wife with Demerol.

XVI

Respondent incorrectly used triplicate prescriptions to obtain Demerol instead of using special "222" forms that allow a doctor to order Schedule II drugs without designating a specific patient. Respondent was unaware of the correct procedure, but as a licensed physician and surgeon who prescribes, dispenses and administers controlled substances, he has a responsibility to be aware of the correct procedure.

XVII

Respondent's wife of more than 20 years is inextricably involved in the circumstances that have led up to his disciplinary matter. She met her husband in New York when he was an intern there. They have four children together. She is an attorney and graduated from Boalt Hall in 1972. She does not actively practice law at this time although she does volunteer her time regularly. She began having debilitating headaches when she was a teenager. She and respondent moved to California after respondent finished his military service. She continued to have several headaches a month except while she was pregnant. The birth of her last child was difficult and resulted in spinal headaches. She was treated with Demerol at that time and found it a successful treatment of her other headaches as well. She did not abuse Demerol from 1980 to 1989.

XVIII

Respondent and his wife had a niece (respondent's wife's sister's child) who was diagnosed with Hodgkins' Disease. They took care of their niece and saw her through her illness as if she were one of their own children. Mrs. Gruber's sister was either unwilling or unable to take on the responsibility of this

child's care. Her illness went up and down for several years. The niece went through two sets of chemotherapy treatments and finally died in September of 1989 after a lung transplant. This was devastating to respondent's wife. She had recently suffered the loss of a significant portion of her sight and the loss of her niece was too much pain to take.

XIX

On her own, after the death of her niece, respondent's wife began medicating herself with Demerol. She ordered the Demerol directly from the wholesalers and took the drugs home without her husband's knowledge or consent. She was working as the office manager at her husband's office at the time and had complete access to all records and supplies. In October of 1990, respondent began to get suspicious because his wife had drooping eyelids and fell asleep at inappropriate times. When he confronted her, she confessed and begged him to help her detoxify without getting anyone else involved. She wanted to keep her addiction a secret from the community and her children. Respondent, after he got over his initial anger, took pity on his wife and attempted to decrease her dependence on Demerol by decreasing the daily dose. At that time he also tried oral Demerol which did not work. After about six weeks, respondent discovered that his wife had been supplementing the doses of Demerol and he insisted she seek outside professional help to become drug free.

XX

At the end of 1990, respondent's wife began a program that would allow her to detoxify without hospitalization. It involved treating her psychological issues (specifically the death of her niece and the loss of her vision) as well as her drug addiction. She was kept on a maintenance dose until the treating physician determined detoxification could take place. She was considered a medically complicated and difficult case because of the headaches and loss of vision. This was accomplished in February of 1991. She is no longer dependent upon Demerol. Respondent no longer treats his wife even for routine medical matters.

XXI

Respondent terminated his wife as the office manager immediately upon learning of her addiction and diversion of drugs from his office. Respondent failed to recognize his wife's addiction to Demerol, and his poor record keeping may have enabled his wife to divert drugs. Respondent does not use Schedule II drugs any longer and no longer keeps any in his office. Respondent now has his Scheduled drugs in a locked

cabinet and he has the only key. However, this could well prevent those drugs from being appropriately accessible by responsible staff for true emergency situations. Respondent now keeps a log of the scheduled drugs as required by law.

XXII

Dr. Gruber was described by the Board's expert as a resource for the medical community. He is extremely well thought of both as a doctor, plastic surgeon and human being. Respondent graduated from the University of California, School of Medicine in San Francisco in 1966. He did his Residency in Plastic Surgery at Stanford University Medical Center and was Chief Resident in 1973074. He is Board-certified in plastic and reconstructive surgery. He has continued to contribute to the education of doctors and recently published a book on open rhinoplasty in order to teach a technique he developed and perfected. Respondent has given his time generously to his profession, including service on the Ethics Committee as a representative for the Western United States. He has also generously devoted his time to community service, including giving of his time to an organization devoted to plastic surgery in Third World countries. He has won the approval of his colleagues for his compassion and willingness to help patients regardless of whether or not he will be paid for his services. His hobby is the physics of time and he is also well published in this unrelated area.

XXIII

Respondent has been very remorseful about what has happened. He has not denied his responsibility. After his initial attempt to pass off the reconstructed log to the investigators (out of fear for the serious consequences of his past record keeping practices), respondent was cooperative with the investigation. Respondent did not do any of these acts for personal gain or personal advantage. Respondent recognizes he used bad judgment where his wife is concerned. He is a truly committed family man, husband and father. However, his bad judgment must be viewed not only in the context of his family, but also in the context of his duties and responsibilities as a licensed physician and surgeon. He mixed his role of compassionate husband with that of responsible physician and surgeon. Respondent considers being a physician as a privilege.

XXIV

Respondent trusted his wife. She had access to everything in the office as the office manager. None of his employees ever

told him anything was wrong or indicated that there was a problem.

XXV

Respondent has taken it upon himself to develop a seminar to help other doctors avoid the same and similar problems. Respondent contends he has done all he can to assure that there will be no future repetition. However, the public interest will best be served if respondent is placed on probation with terms and conditions directly related to violations committed by respondent.

DETERMINATION OF ISSUES

I

By reason of the matters set forth in Findings V, VI, VII, and XIII, cause for disciplinary action exists pursuant to Business and Professions Code section 2234 (unprofessional conduct--acts involving dishonesty).

II

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, XI, and XII, cause for disciplinary action exists pursuant to Business and Professions Code section 2238 (violation of the statutes regulating controlled substances).

III

By reason of the matters set forth in Finding XI, cause for disciplinary action exists pursuant to section 2241 of the Business and Professions Code and section 11156 of the Health and Safety Code (improper procedures for administering controlled substances to an addict).

IV

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, and XII, cause for disciplinary action exists pursuant to section 2242 of the Business and Professions Code (prescribing inappropriately).

V

By reason of the matters set forth in Findings V and VI, cause for disciplinary action exists pursuant to sections 2261 (false certification), 4390 of the Business and Professions Code

(false prescription), and section 11173 of the Health and Safety Code (prescription by the concealment of a material fact).

VI

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, XII, and XIII, cause for disciplinary exists pursuant to section 11190 of the Health and Safety Code and Title 21, Code of Federal Regulations, section 1304.21 (drug records).

VII

By reason of the matters set forth in Finding XIII, cause for disciplinary action does not exist pursuant to section 2234 (unprofessional conduct--gross negligence, repeated acts of negligence or incompetence).

VIII

By reason of the matters set forth in Finding XXII, cause for disciplinary action does not exist pursuant to section 2262 (altering a record with fraudulent intent).

IX

The matters in mitigation, extenuation and rehabilitation as set forth in Findings XIV through XXIV have been considered in making the following order.

ORDER

The physician and surgeon's certificate No. A 22597 issued to respondent Ronald P. Gruber, M.D., shall be revoked. However, such revocation is stayed, and respondent is placed on probation for three (3) years, subject to the following terms and conditions:

(1) Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

(2) Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

(3) Respondent shall comply with the Division's probation surveillance program.

(4) Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

(5) The period of probation shall be tolled 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, respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

(6) Respondent's use of Schedule II controlled substances shall be restricted to in-hospital, in-patient use only.

(7) Respondent shall maintain a record of controlled substances used, in accordance with state and federal requirements.

(8) Within ninety (90) days after the effective date of this decision, respondent shall take and pass an oral examination in the subject of controlled substances, required record-keeping systems, and appropriate office practices relating to controlled substances. If respondent fails this examination, respondent shall take and pass a re-examination. The waiting period between repeat examinations shall be at three month intervals until such success is achieved. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation. The Division shall pay the cost of the first examination and respondent shall pay the cost of any subsequent re-examinations.

(9) Within ninety (90) days after the effective date of this decision, respondent shall submit to the Division for its prior approval a course in Ethics, which respondent shall complete no later than the end of the first year of probation.

(10) If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary penalty that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

(11) Upon successful completion of probation, respondent's certificate will be fully restored.

This decision shall become effective June 20, 1994.

DATE: MAY 20, 1994

Alan E. Gumbel MD

FOR THE MEDICAL BOARD OF CALIFORNIA

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

In the Matter of the Accusation	)	
Against:	)	
	)	
Ronald Gruber, M.D.	)	No. D-4994
Certificate # A-22597	)	
	)	
Respondent.	)	NOTICE OF NON-ADOPTION OF
_____	)	PROPOSED DECISION

NOTICE TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, 501 J Street, Suite 230, Sacramento CA 95814, phone # (916) 445-4926.

After the transcript has been prepared, the Division will send you notice of deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on why a different decision should not be made.

In addition to written argument, oral argument may be scheduled if any party files with the Division within 20 days from the date of this notice, a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place of hearing. Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality  
MEDICAL BOARD OF CALIFORNIA  
1426 Howe Avenue  
Sacramento, CA 95825  
(916) 263-2525

Dated: January 13, 1994

DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
BY John Lancara  
John Lancara  
Chief of Enforcement

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

In the Matter of the Accusation	)	
Against:	)	Case No. D-4994
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RONALD P GRUBER, M.D.	)	OAH No. N 41960
3318 Elm Street	)	
Oakland, CA 94609	)	
	)	
Physician and Surgeon's	)	
Certificate No. A22597	)	
	)	
Respondent.	)	
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PROPOSED DECISION

On October 18, 19, 20, and 21, 1993, in San Francisco, California, Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Isa R. Rodriguez, Deputy Attorney General, represented the complainant.

Kenneth L. Freeman, Attorney at Law, Freeman & Galie, 507 Polk Street, Suite 350, San Francisco, California 94102 represented respondent who was present.

Evidence was received, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Kenneth J. Wagstaff made the accusation in his official capacity as Executive Director of the Medical Board of California (Board) and not otherwise.

## II

On April 14, 1967, Ronald P. Gruber, M.D. (respondent) was issued physician and surgeon's certificate No. A22597. The certificate is presently in full force and effect and will expire on April 30, 1995 unless otherwise renewed.

## III

Demerol, a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance and a dangerous drug as designated by the Health and Safety Code.

Cocaine is a Schedule II controlled substance and a dangerous drug as defined by the Health and Safety Code.

## IV

The parties stipulated to the facts set forth below in Findings V through XII.

## V

On October 26, 1990, respondent wrote a prescription for Demerol, 50 mg, #24 tablets to be dispensed to L.J. without prior physical examination and medical indication therefor, but for the purpose of obtaining oral Demerol for his wife. After L.J. filled the prescription at respondent's request, respondent assumed possession and control of the Demerol, but made no record of the transaction.

## VI

On November 2, 1990, respondent wrote a prescription for Demerol 50 mg, #30 tablets to be dispensed to B.G. without prior physical examination and medical indication therefor, but for the purpose of obtaining oral Demerol for his wife. After B.G. filled the prescription at respondent's request, respondent assumed possession or control of the Demerol, but made no record of the transaction.

## VII

In 1990, respondent wrote three prescriptions for injectable Demerol for patients T.H., C.G., and M.I. on November 12, 19, and 23, 1990 respectively. Each prescription was for 20 cc at 100m/cc. Respondent's purpose for writing the prescriptions initially was in anticipation of scheduled surgeries for the identified patient. The Demerol was not used on the patients, but instead it was used for his wife. After

the prescriptions were filled at respondent's request, respondent assumed possession and control of the Demerol but failed to keep a controlled substance inventory for the Demerol.

#### VIII

In 1989, respondent wrote prescriptions for cocaine to be dispensed to patients L.C. and J.V. on 8/25/89 and 12/27/89 respectively. Each prescription was for 2 - 4ml vials of 4%. These prescriptions were not filled by the pharmacy for these patients. Pursuant to these prescriptions however, the cocaine was dispensed directly to the respondent or one of his employees rather than directly to the patients. Respondent failed to keep a controlled substance inventory for the cocaine.

#### IX

From July 26, 1989 to March 20, 1991, 72 - 20ml vials of Demerol, 100mg/ml from PRN, a national drug wholesaler, were ordered and received on respondent's DEA number, but he failed to keep a controlled substance inventory for the Demerol.

#### X

On November 12, 1990, respondent obtained injectable Demerol from the Surgery Center in Oakland, California, by representing that it was needed for emergency surgery on a patient and failed to make a record of the transaction.

#### XI

Beginning October of 1990 through February of 1991, respondent furnished, provided and administered Demerol to his wife. She was addicted to Demerol at the time, but respondent was attempting to detoxify her.

#### XII

Respondent did not maintain a controlled substance inventory or adequate records regarding his prescribing, dispensing, administering and furnishing of Schedule II controlled substances--Demerol and cocaine.

#### XIII

Respondent gave information to the Medical Board of California investigator regarding the prescribing, dispensing and administering of Schedule II controlled substances by reconstructing a controlled substance inventory. Initially he represented to the investigator that this was an inventory

taken contemporaneously to the matters set forth in the document, but very shortly thereafter contacted the investigator on his own and indicated that the document was a reconstruction. Respondent had not maintained such an inventory at the time he prescribed, dispensed and administered the Schedule II controlled substances.

#### XIV

It was not established that respondent's failure to maintain an inventory log of Schedule II controlled substances which he prescribed, dispensed, administered or furnished constituted gross negligence and/or repeated acts of negligence, and/or incompetence. The Board's own expert stated that the failure to keep such records "might be considered negligence." His hesitancy was based on the fact that nowhere in the medical education of a doctor nor in continuing education courses is how to keep these types of records taught. This certainly does not give rise to a finding even of one act of simple negligence when the standard is "clear and convincing."

#### XV

Respondent began treating his wife as a patient at least as early as 1974 for, among other things, disabling headaches. His treatment included the appropriate historical information and periodic referrals to neurologists for evaluation and treatment. The Board's expert found respondent's early treatment of his wife to be appropriate. In June of 1983, respondent began treating his wife's headaches with intramuscular Demerol and Vistaril. This treatment was undertaken after a headache had been successfully treated this way in an emergency setting. This treatment continued through 1988. Respondent's wife received 3 to 4 injections of Demerol per month for her headaches. Dr. Gruber kept a chart for his wife where he made notes of his treatment and referrals.

In April of 1989, respondent's wife had what was diagnosed as a cerebral vascular accident related to the headaches. She lost a total of 50% of her vision in two separate incidents. She was under the care of a neurologist who knew and approved of respondent's treatment of his wife with Demerol.

#### XVI

Respondent incorrectly used triplicate prescriptions to obtain the Demerol instead of using special "222" forms that allow a doctor to order Schedule II drugs without designating a specific patient. Respondent was unaware of the correct procedure.

XVII

Respondent's wife of more than 20 years is inextricably involved in the circumstances that have led up to his disciplinary matter. She met her husband in New York when he was an intern there. They have four children together. She is an attorney and graduated from Boalt Hall in 1972. She does not actively practice law at this time although she does volunteer her time regularly. She began having debilitating headaches when she was a teenager. She and respondent moved to California after respondent finished his military service. She continued to have several headaches a month except while she was pregnant. The birth of her last child was difficult and resulted in spinal headaches. She was treated with Demerol at that time and found it a successful treatment of her other headaches as well. She did not abuse Demerol from 1980 to 1989.

XVIII

Respondent and his wife had a niece (respondent's wife's sister's child) who was diagnosed with Hodgkins' Disease. They took care of this niece and saw her through her illness as if she were one of their own children. Mrs. Gruber's sister was either unwilling or unable to take on the responsibility of this child's care. Her illness went up and down for several years. The niece went through two sets of chemotherapy treatments and finally died in September of 1989 after a lung transplant. This was devastating to respondent's wife. She had recently suffered the loss of a significant portion of her sight and the loss of her niece was too much pain to take.

XIX

On her own, after the death of her niece, respondent's wife began medicating herself with Demerol. She ordered the Demerol directly from the wholesalers and took the drugs home without her husband's knowledge or consent. She was working as the office manager at her husband's office at the time and had complete access to all the records and supplies. Respondent had no reason to doubt his wife. She specifically was keeping it a secret from him. In October of 1990, respondent began to get suspicious because his wife had drooping eyelids and fell asleep at inappropriate times. When he confronted her, she confessed and begged him to help her detoxify without getting anyone else involved. She wanted to keep her addiction a secret from the community and her children. Respondent, after he got over his initial anger, took pity on his wife and attempted to decrease her dependence

on Demerol by decreasing the daily dose. At that time he also tried oral Demerol which did not work. After about six weeks, respondent discovered that his wife had been supplementing the doses of Demerol and he insisted she seek outside professional help to become drug free.

XX

At the end of 1990, respondent's wife began a program that would allow her to detoxify without hospitalization. It involved treating her psychological issues<sup>1</sup> as well as her drug addiction. She was kept on a maintenance dose until the treating physician determined that detoxification could take place. She was considered a medically complicated and difficult case because of the headaches and loss of vision. This was accomplished in February of 1991. She is no longer dependent on Demerol. Respondent no longer treats his wife even for routine medical matters.

XXI

Respondent terminated his wife as the office manager immediately upon learning of her addiction and diversion of drugs from his office. While his poor record keeping may have enabled his wife to divert drugs, respondent in no way contributed to her increase in use or her addiction. Respondent does not use Schedule II drugs any longer and no longer keeps any in his office. Respondent now has his Scheduled drugs in a locked cabinet and he has the only key. He now keeps a log of the Scheduled drugs as required by law.

XXII

Dr. Gruber was described by the Board's expert as a resource for the medical community. He is extremely well thought of both as a doctor, plastic surgeon and human being. Respondent graduated from the University of California, School of Medicine in San Francisco in 1966. He did his Residency in Plastic Surgery at Stanford University Medical Center and was Chief Resident in 1973-1974. He is Board certified in plastic and reconstructive surgery. He has continued to contribute to the education of doctors and recently published a book on open rhinoplasty in order to teach a technique that he developed and perfected. Respondent has given his time generously to his profession including through service on the Ethics Committee as a representative for the Western United States. He has also generously devoted his time to community service including giving of his time to an organization devoted to plastic surgery in Third World countries. He has won the approval of

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<sup>1</sup> Specifically the death of her niece and the loss of her vision.

his colleagues for his compassion and willingness to help patients regardless of whether or not he will be paid for his services. Respondent's teaching, writing and speaking engagements are awesome. He is clearly an outstanding person as well as an outstanding doctor. His hobby is the physics of time and he is also well published in this unrelated area.

#### XXIII

Respondent is very remorseful about what has happened. He has not denied his responsibility and has taken every step humanly possible to assure that this will never happen again. After his initial attempt (out of fear for the serious consequences of his past record keeping practices) to pass off the reconstructed log to the investigators, respondent was cooperative with the investigation. Respondent did not do any of these acts for personal gain or personal advantage. Respondent recognizes he used bad judgment where his wife was concerned. However, he is a truly committed family man, husband and father. His poor judgment must be viewed in the context of his family and their understandable needs and concerns. He considers being a physician as a privilege and has conducted himself with his patients to the highest standards of the medical profession.

#### XXIV

Respondent trusted his wife. He had no reason not to trust her. She had access to everything in the office as the office manager. None of his employees ever told him anything was wrong or indicated that there was a problem.

#### XXV

It is extremely unlikely that anything like this will ever happen again. Respondent has taken it upon himself to develop a seminar to help other doctors avoid the same and similar problems. The public interest is fully served by a letter of public reprimand. Probation on terms and conditions would serve no useful purpose in this case. Respondent has done all he can do to assure that there will be no future repetition. The Board can check respondent's records without the necessity of a probationary order.

### DETERMINATION OF ISSUES

#### I

By reason of the matters set forth in Findings V, VI, VII, and XIII, cause for disciplinary action exists pursuant to

Business and Professions Code section 2234 (unprofessional conduct--acts involving dishonesty).

II

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, XI, and XII, cause for disciplinary action exists pursuant to Business and Professions Code section 2238 (violation of the statutes regulating controlled substances).

III

By reason of the matters set forth in Finding XI, cause for disciplinary action exists pursuant to section 2241 of the Business and Professions Code and section 11156 of the Health and Safety Code (improper procedures for administering a controlled substance to an addict).

IV

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, and XII, cause for disciplinary action exists pursuant to section 2242 of the Business and Professions Code (prescribing inappropriately).

V

By reason of the matters set forth in Findings V and VI, cause for disciplinary action exists pursuant to sections 2261 (false certification), 43900 of the Business and Professions Code (false prescription) and section 11173 of the Health and Safety Code (prescription by the concealment of a material fact).

VI

By reason of the matters set forth in Findings V, VI, VII, VIII, IX, X, XII, and XIII, cause for disciplinary action exists pursuant to sections 11190 of the Health and Safety Code and Title 21, Code of Federal Regulations, section 1304.21 (drug records).

VII

By reason of the matters set forth in Finding XIII, cause for disciplinary action does not exist pursuant to section 2234 (unprofessional conduct--gross negligence, repeated acts of negligence or incompetence).

VIII

By reason of the matters set forth XXII, cause for disciplinary action does not exist pursuant to section 2262 (altering a record with fraudulent intent). Fraudulent intent would require respondent to have acted for personal gain or advantage. That was never his motive.

IX

The matters in mitigation, extenuation and rehabilitation as set forth in Findings XIV through XXIV have been considered in making the following order.

ORDER

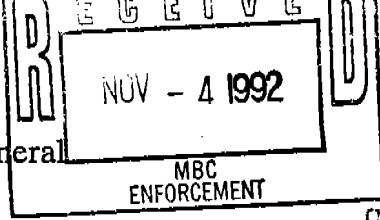
The physician and surgeon's certificate No. A22597 issued to Ronald P. Gruber, M.D., shall be publicly reprimanded. This public reprimand shall be in the form of a letter from the Medical Board or its designee.

DATED: November 5, 1963



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RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings



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MEDICAL BOARD  
OF CALIFORNIA

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1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 ISA R. RODRIGUEZ  
Deputy Attorney General  
3 BAR NO. 104838  
455 Golden Gate Avenue  
4 San Francisco, California 94102  
Telephone: (510) 464-4042

5 Attorneys for Complainant

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7  
8 BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

No. D-4994

11 **RONALD P. GRUBER, M.D.**  
12 3318 Elm Street  
Oakland, CA 94609

**FIRST AMENDED ACCUSATION**

13 Physician and Surgeon's Certificate No. A22597

14  
15 Respondent.

16  
17 Kenneth J. Wagstaff, complainant herein, charges and alleges as follows:

18 1. Complainant is the Executive Director of the Medical Board of  
19 California (hereinafter "Board") and files this Accusation in his official capacity as such  
20 and not otherwise.

21 2. On or about August 14, 1967, respondent RONALD P. GRUBER,  
22 M.D. (hereinafter "respondent") was issued physician and surgeon's certificate number  
23 A22597 under the laws of the State of California. The certificate is presently in full  
24 force and effect and will expire on April 30, 1993 unless renewed.

25 //

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27 //





FIRST CAUSE FOR DISCIPLINE

16. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 2234, 2238, 2242, 2261, and 4390, and Health and Safety Code sections 11173 and 11190, and Title 21, Code of Federal Regulations, section 1304.21, as more particularly alleged hereafter.

A. On or about October 26, 1990, respondent wrote a prescription for Demerol tablets to be dispensed to L.J.<sup>2/</sup> without a prior physical examination and medical indication therefor, but for the purpose of obtaining Demerol for G.G., a close family member who was the office manager at the time. After L.J. filled the prescription at respondent's request, respondent assumed possession or control of the Demerol, but made no record of the transaction.

B. On or about November 2, 1990, respondent wrote a prescription for Demerol tablets to be dispensed to B.G. without a prior physical examination and medical indication therefor, but for the purpose of obtaining Demerol for G.G., a close family member who was the office manager at the time. After B.G. filled the prescription at respondent's request, respondent assumed possession or control of the Demerol, but made no record of the transaction.

C. In or about 1990, respondent wrote the below-listed prescriptions for injectable Demerol for the below-listed patients:

<u>DATE</u>	<u>PATIENT</u>	<u>PRESCRIPTION</u>	<u>AMOUNT</u>
3/3/90	S.S.	623363	20cc at 100m/cc
11/12/90	T.H.	279346	"
11/19/90	C.G.	280513	"
11/23/90	M.I.	281353	"

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2. To protect patient privacy, patients are referred to by initials. Disclosure of the full names will be provided to respondent pursuant to a timely request for discovery.

1 Respondent's purpose for writing the prescriptions was to obtain Demerol for G.G., a  
2 close family member who was the office manager at the time. After the prescriptions  
3 were filled at respondent's request, respondent assumed possession or control of the  
4 Demerol but failed to keep a controlled substance inventory for the Demerol.

5 D. In or about 1989, respondent wrote the below-listed prescriptions  
6 for cocaine to be dispensed to the below-listed patients:

<u>DATE</u>	<u>PATIENT</u>	<u>PRESCRIPTION</u>	<u>AMOUNT</u>
8 8/25/89	L.C.	631094	2 - 4ml vials of 4%
9 12/23/89	J.V.	637832	2 - 4ml vials of 4%

10 These prescriptions were not received or filled by the listed patients. Pursuant to the  
11 listed prescriptions however, the cocaine was dispensed directly to the respondent or  
12 one of his employees. Respondent failed to keep a controlled substance inventory for  
13 the cocaine.

14 E. From on or about July 26, 1989, to on or about March 20, 1991,  
15 respondent ordered and received 88 - 20 ml vials of Demerol, 100 mg/ml from PRN, a  
16 national drug wholesaler, but failed to keep a controlled substance inventory for the  
17 Demerol.

18 **SECOND CAUSE FOR DISCIPLINE**

19 17. Respondent is subject to disciplinary action pursuant to section  
20 2234(e) in that his conduct in issuing prescriptions as set forth in paragraph A., B., and  
21 C. constituted dishonest or corrupt acts.

22 **THIRD CAUSE FOR DISCIPLINE**

23 18. Respondent is subject to disciplinary action pursuant to Business  
24 and Professions Code sections 2234(e) and 2238, and Health and Safety Code sections  
25 11173 and 11190, and Title 21, Code of Federal Regulations, section 1304.21, in that  
26 on or about November 12, 1990, respondent obtained injectable Demerol from the  
27 Surgery Center in Oakland, California, by falsely representing that it was needed for

1 emergency surgery on a patient, and failing to make a record of the transaction.

2 **FOURTH CAUSE FOR DISCIPLINE**

3 19. Respondent is subject to disciplinary action pursuant to Business  
4 and Professions Code sections 2234 and 2241, and Health and Safety Code section  
5 11156, in that in 1990 through to a date unknown to complainant, respondent  
6 furnished, provided and/or administered Demerol to G.G., a close family member who  
7 was the office manager at the time and who was addicted to Demerol.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 20. Respondent is subject to disciplinary action pursuant to Business  
10 and Professions Code section 2234(e) in that he falsely and knowingly stated to the  
11 Medical Board of California investigator the he did not know G.G., a close family  
12 member who was the office manager at the time, was addicted to Demerol until  
13 February 1991, when in truth he knew of her addiction to Demerol prior to February  
14 1991.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 21. Respondent is subject to disciplinary action pursuant to Business  
17 and Professions Code sections 2234, 2238 and 2261, and Health and Safety Code  
18 section 11190, and Title 21, Code of Federal Regulations, section 1304.21, in that he  
19 did not maintain a controlled substance inventory or adequate records regarding his  
20 prescribing, dispensing, administering and/or furnishing of Schedule II controlled  
21 substances Demerol or cocaine.

22 **SEVENTH CAUSE FOR DISCIPLINE**

23 22. Respondent is subject to disciplinary action pursuant to Business  
24 and Professions Code sections 2234(e), 2238, 2261 and 2262, in that he produced to the  
25 Medical Board of California investigator falsified information regarding the prescribing,  
26 dispensing, and/or administering of Schedule II controlled substances by fabricating a  
27 controlled substance inventory when in truth he had not maintained such inventory.

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EIGHTH CAUSE FOR DISCIPLINE

23. Respondent is subject to disciplinary action pursuant to Business and Professions Code section 2234(b) and/or (c), and/or (d) in that respondent's failure to maintain an inventory log of Schedule II controlled substances which he prescribed, dispensed, administered or furnished constituted gross negligence and/or repeated acts of negligence, and/or incompetence.

PRAYER

WHEREFORE, complainant prays that the Division of Medical Quality hold a hearing on the matters alleged herein and following the hearing issue a decision:

- 1. Suspending or revoking the physician and surgeon's certificate No. A22597 issued to respondent Ronald P. Gruber, M.D.;
  - 2. Prohibiting respondent from supervising any physician assistants;
- and
- 3. Taking such other and further action as may be proper.

DATED: *October 30, 1992*

*ISA R. RODRIGUEZ*

ISA R. RODRIGUEZ for  
KENNETH J. WAGSTAFF  
Executive Director  
Medical Board of California

Complainant

C:\ISA\MBC\GRUBER.AMD  
03573180SF02AD0585

1 Kenneth L. Freeman, Esq.  
2 FREEMAN & GALIE  
3 507 Polk Street, Suite 310  
4 San Francisco, California 94102  
5 Telephone: (415) 885-5728

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7 Attorney for Respondent  
8 Ronald P. Gruber, M.D.

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BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Accusation )  
Against: ) No. D-4994  
)  
Ronald P. Gruber, M.D. )  
37 Bellevue Avenue )  
Piedmont, CA 94611 ) SPECIAL NOTICE  
) OF DEFENSE  
Physician and Surgeon' Certificate )  
No. A22597 )  
)  
Respondent. )

15 In addition to the Notice of Defense previously filed,  
16 Respondent Ronald P. Gruber, M.D., files this Special Notice  
17 of Defense, and objects and affirmatively alleges as follows:

18 FIRST CAUSE FOR DISCIPLINE

19 1. Objects to the First Cause for Discipline on the  
20 ground that it does not state acts or omissions upon which  
21 the Board may proceed under Business & Professions Code  
22 Sections 2234, 2242, or 4390, nor under Title 21 CFR Section  
23 1304.21.

24 2. Objects to paragraph 16.C. on the grounds that it  
25 is so indefinite and uncertain that he cannot prepare his  
26 defense, in that, the legal meaning of "controlled substance

1 inventory" cannot be discerned from the pleading.

2 3. Alleges as an affirmative defense to the  
3 allegations in paragraph 16.C. that he accounted for virtually  
4 all of the Demerol used in his practice when audited by  
5 investigators of the Board on April 17, 1991.

6 4. Objects to paragraph 16.D. on the grounds that it  
7 is so indefinite and uncertain that he cannot prepare a  
8 defense, in that, the legal meaning of "controlled substance  
9 inventory" cannot be discerned from the pleading.

10 5. Alleges as an affirmative defense to paragraph 16.  
11 D. that he accounted for all of the Cocaine used in his  
12 practice when audited by investigators of the Board on April  
13 17, 1991.

14 6. Objects to paragraph 16.E. on the grounds that it  
15 is so indefinite and uncertain that he cannot prepare his  
16 defense, in that, the legal meaning of "controlled substance  
17 inventory" cannot be discerned from the pleading.

18 7. Alleges as an affirmative defense to paragraph 16.  
19 E. that he accounted for virtually all of the Demerol used in  
20 his practice when audited by investigators of the Board on  
21 April 17, 1991.

22 SECOND CAUSE FOR DISCIPLINE

23 8. Alleges as an affirmative defense to paragraph 17  
24 that his conduct was neither dishonest nor corrupt and  
25 Respondent had no intention to deceive or mislead in regard  
26 to the treatment he provided to a close family member.

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THIRD CAUSE FOR DISCIPLINE

9. Objects to paragraph 18 on the ground that it does not state acts or omissions upon which the Board may proceed under Title 21 CFR Section 1304.21.

FOURTH CAUSE FOR DISCIPLINE

10. Objects to paragraph 19 on the grounds that it does not state acts or omissions upon which the Board may proceed under Business & Professions Code Sections 2234 or 2241, nor under Health & Safety Code Section 11156.

11. Objects to paragraph 19 on the grounds that it is so indefinite and uncertain as to the specific time in 1990 being referred to that he cannot prepare his defense.

12. Alleges as an affirmative defense to paragraph 19 that in the time frame alleged, Respondent only administered Demerol to a close family member, on occassion, and only for purposes of treating documented migraine headaches, for which Respondent had sought consultation from numerous neurologists; and that this treatment for migraines did not cause addiction, however when a problem developed at a later time, Respondent upon learning of the problem immediatedly sought treatment for this family member and assisted in the detoxification only after consultation with and upon the advice of other professionals.

FIFTH CAUSE FOR DISCIPLINE

13. Alleges as an affirmative defense to paragraph 20 that any statement by Respondent referred to therein was made

1 while under the duress and stress of an audit being conducted  
2 in his office by three investigators who were asserting their  
3 legal authority over him; was not made with any intent to  
4 provide false information or knowingly mislead; and Respondent  
5 shortly after the audit voluntarily and openly provided  
6 accurate information to the Board's investigator.  
7

8 SIXTH CAUSE FOR DISCIPLINE

9 14. Objects to paragraph 21 on the ground that it is  
10 so indefinite and uncertain that he cannot prepare his  
11 defense, in that, the legal meaning of "controlled substance  
12 inventory or adequate records" cannot be discerned from the  
13 pleading.

14 15. Objects to paragraph 21 on the grounds that it  
15 does not state acts or omissions upon which the Board may  
16 proceed under Business & Professions Code Sections 2234, 2238  
17 or 2261, Health & Safety Code Section 11190, or Title 21 CFR  
18 Section 1304.21.

19 16. Alleges as an affirmative defense to paragraph  
20 21 that he did maintain patient records by which he was able  
21 to account for his use of Demerol and Cocaine used in his  
22 practice when audited by investigators of the Board on April  
23 17, 1991.

24 SEVENTH CAUSE FOR DISCIPLINE

25 17. Objects to paragraph 22 on the grounds that it is  
26 so indefinite and uncertain that he cannot prepare his  
defense, in that, the legal meaning of "controlled substance

1 inventory" cannot be discerned from the pleading; and on the  
2 additional ground that Respondent cannot discern which  
3 "Scheduled II controlled substances" are being referred to and  
4 at issue in paragraph 22.

5 18. Alleges as an affirmative defense to the matters  
6 alleged in paragraph 22 that he did not falsify information to  
7 investigators of the Board; and did not fabricate information  
8 provided to them, which information was compiled from patient  
9 records regularly kept in Respondent's office and which  
10 accounted for Demerol and Cocaine used in his practice when  
11 audited by the investigators of the Board on April 17, 1991.

12 EIGHTH CAUSE FOR DISCIPLINE

13 19. Objects to paragraph 23 on the ground that it is  
14 so indefinite and uncertain that he cannot prepare his  
15 defense, in that, the legal meaning of "inventory log" cannot  
16 be discerned from the pleading, especially when juxtaposed on  
17 the repeated use of the ambiguous term "controlled substance  
18 inventory" throughout the pleading.

19 20. Objects to paragraph 23 on the ground that it  
20 is so indefinite and uncertain that he cannot prepare his  
21 defense, in that, he cannot discern from paragraph 23 which  
22 "Schedule II controlled substances" are being referred to and  
23 at issue in paragraph 23.

24 21. Objects to the Accusation on the grounds that it  
25 does not state acts or omissions upon which the Board may  
26 proceed under Business & Professions Code Section 2234(b),

1 2234(c), or 2234(d).

2  
3 22. Alleges as an affirmative defense to paragraph 23  
4 that he did account for virtually all of the Demerol and all  
5 of the Cocaine used in his practice when audited by  
6 investigators of the Board on April 17, 1991.

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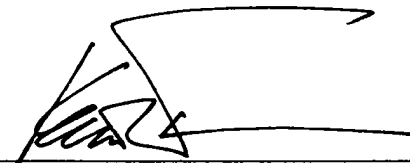
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ALL CAUSES FOR DISCIPLINE

23. Alleges as an affirmative defense to the entire Accusation that Respondent never personally used or abused Demerol or Cocaine or any other controlled substances, nor was any controlled substance to diverted to his patients or to the street; used Demerol and Cocaine in his practice with proper medical indication and within the standard of care; only administered Demerol to a close family member for medically indicated migraine headaches which had been documented for many years and for which Respondent and this member had sought numerous neurological consultations; did not cause his family member to become addicted to Demerol and sought immediate treatment for that member upon learning of the problem; and failed to comply with certain requirements of the law regarding controlled substances because of an ignorance about those requirements and not because of any intent or purpose to deceive, mislead or defraud.

Dated: October 30, 1992

  
Kenneth L. Freeman, Esq.  
Attorney for Respondent  
Ronald P. Gruber, M.D.