

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

In the Matter of the Accusation Against:

GARO Z. PEHLEVANIAN, M.D.

Case No. 17-2000-106409

Physician's and Surgeon's Certificate
No. A 38617,

OAH No. L2002010313

Respondent.

DECISION AFTER REMAND

The administrative law judge's proposed decision submitted on December 26, 2002, was adopted by the board on January 28, 2003, to become effective on February 27, 2003.

Thereafter, respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 03CS00244, which was heard and granted by the court on July 20, 2004.

The Superior Court of the State of California, pursuant to its Order Granting Petition for Peremptory Writ of Administrative Mandamus dated October 22, 2004, commanded this board to vacate and set aside its decision in the above matter dated January 28, 2003, to reconsider the penalty imposed in light of the court's order and the entire administrative record.

The board then reconsidered the matter in light of the court's order, vacated and set aside its decision and on August 24, 2007, issued its Decision after Remand from the Superior Court in which it modified the penalty to remove the 30-day suspension and the cost recovery.

Thereafter, respondent again filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 07CS01275. That petition was denied on January 25, 2008, except that the court ordered the twelve months of community service to be stricken. (Exhibit A).

The board therefore affirms its decision (attached as Exhibit B) with the following modification:

Term and Condition No. 2 (requiring community service) is stricken.

The board recognizes that respondent has been on probation since September 24, 2007, and accordingly, time already served on probation shall be credited toward completion of the probationary period.

This decision shall become effective on June 23, 2008.

IT IS SO ORDERED May 23, 2008

MEDICAL BOARD OF CALIFORNIA

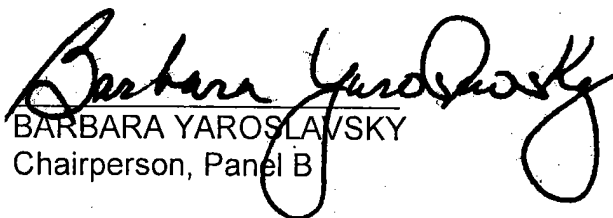
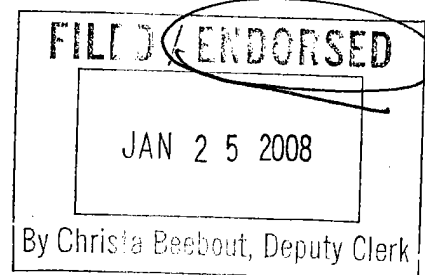

BARBARA YAROSLAVSKY
Chairperson, Panel B

EXHIBIT A

COPY



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

GARO Z. PEHLEVANIAN, M.D.,

Case No.: 07CS01275

Petitioner,

**JUDGMENT DENYING IN PART AND
GRANTING IN PART PETITION FOR
WRIT OF ADMINISTRATIVE
MANDATE**

v.

MEDICAL BOARD OF CALIFORNIA,

Respondent. Dept: 33

The petition for writ of administrative mandate in the above-entitled matter was heard in Department 33 of the Superior Court of California for the County of Sacramento, on December 28, 2007, by the Honorable Lloyd G. Connelly, Judge of the Superior Court. Petitioner appeared by his counsel, Jerry Marshak, Esq. and Richard Moss, Esq.; Respondent appeared by its counsel, Edmund G. Brown Jr., Attorney General of the State of California, by Esther P. Kim, Deputy Attorney General. The record of the administrative proceedings, which was the subject matter of the action, was received in evidence and read by the Court. The Court read all the pleadings on file in the action, and the matter was orally argued and submitted. Exercising its independent judgment, the Court, hereby grants the petition for writ of administrative mandate in part and denies the petition in part.

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It is thereby, ORDERED, ADJUDGED AND DECREED that:

1. The petition for writ of administrative mandate is granted insofar as it relates to the twelve (12) month community service portion of the penalty imposed by the Board in its Decision After Remand from Superior Court. The Board's imposition of twelve (12) month community service is stricken; and

2. The petition for writ of administrative mandate is otherwise denied in all other respects. With the exception of the twelve (12) month community service, there was no abuse of discretion in the Board's Decision After Remand from Superior Court.

Dated: JAN 25 2008

LLOYD G. CONNELLY

JUDGE OF THE SUPERIOR COURT

EXHIBIT B

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

In the Matter of the Accusation Against:

GARO Z. PEHLEVANIAN, M.D.

Physician and Surgeon's Certificate
No. A 38617,

Respondent.

Case No. 17-2000-106409

OAH No. L2002010313

DECISION AFTER REMAND FROM SUPERIOR COURT

On December 26, 2002, the Administrative Law Judge submitted his proposed decision to the Medical Board of California. The Board adopted that decision on January 28, 2003, to become effective February 27, 2003.

Thereafter, respondent filed a Petition for Writ of Mandate in Sacramento County Superior Court, Case No. 03CS00244. The Board's decision was stayed and has not taken effect. The court's ruling denying the peremptory writ of administrative mandamus except as to penalty and remanding the matter to the Board "for reconsideration of penalty only" ultimately took effect on or about April 21, 2005. However, the Board was not apprised until March 2007 of the remand order and the court's instructions that it reconsider the penalty imposed in this matter.

Having reconsidered the penalty pursuant to the court's decision in the Notice of Ruling and Order, the Board now makes a modified decision in compliance with the Order dated

October 21, 2004. A copy of the Notice of Ruling and Order dated October 21, 2004, is attached as Exhibit "A," and incorporated herein by reference.

The thrust of the court's order is that "the nature of disciplinary actions taken against others such as Dr. Bode, so closely situated on the facts appearing from the new evidence, is a factor which the Board should reconsider in determining the appropriate discipline to be imposed upon Petitioner." Dr. Bode worked for the same unlicensed person as respondent, but had been issued a public reprimand for his activities in connection therewith. (In the Matter of the Accusation against David Fain Bode, M.D.; Case No. 17 - 1999-98331; OAH No. L2002010301.)

The Board has compared the facts in this matter with those found in the case of Dr. Bode, and finds that there are significant differences between the two that warrant different penalties.

Dr. Bode worked for Rosmar as an independent contractor for approximately 16 months, beginning January 1998 and ending June 1999. He ceased work before ever being notified of the unlawful nature of the practice. The Administrative Law Judge found that Dr. Bode was now very attentive to the need for vigilance in all matters relating to practice, including any business associations.

Respondent began his association with Rosmar in May 1999. Respondent was placed on notice by the Board's investigators in May 2000 and again in January 2001 that he was in violation of the law. Yet he did nothing to rectify the violation, and made no inquiries to the Board as to whether his corrective actions addressed the Board's concerns. Instead, he knowingly continued to violate the law for a substantial period of time after being directly told of the violation by Board staff.

The Administrative Law Judge, who observed respondent's demeanor at the hearing, found that respondent still believes he did nothing wrong, even in light of the disciplinary proceeding against him and the litigation against Rosmar and Bagdassarian that resulted in the termination of respondent's relationship with Rosmar.

The factors cited above weigh in favor of a penalty that exceeds a public reprimand. The Board finds it disturbing that two visits from investigators and an administrative disciplinary proceeding were not sufficient to bring respondent to an awareness of the unlawful nature of his conduct. It cannot be sanguine about respondent's ability in the future to comport himself in compliance with the law. Thus, the period of probation and monitoring and the terms and conditions of probation prescribed in the original Order are appropriate for public protection even though less than the minimum penalty called for by the Board's disciplinary guidelines. The Board hereby affirms that Order with the following modifications:

1. The thirty day suspension (Term No. 1) is stricken; and
2. As required by changes in Business and Professions Code section 125.3 that took effect January 1, 2006, prohibiting the Board from obtaining cost recovery after that date, the cost recovery order (Term No. 12) is stricken.

This decision shall become effective at 5:00 p.m. on September 24, 2007.

IT IS SO ORDERED this 24 day of August, 2007.

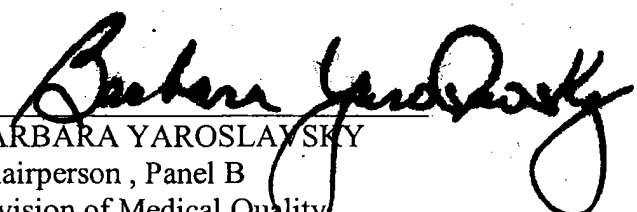

BARBARA YAROSLAVSKY
Chairperson, Panel B
Division of Medical Quality
Medical Board of California

EXHIBIT - A

1 **LAW OFFICES OF RICHARD A. MOSS**

Richard A. Moss, SBN 42329

2 Jerry B. Marshak, SBN 202214

255 South Marengo Avenue

3 Pasadena, California 91101-2719

Telephone: (626) 796-7400

4 Telecopier: (626) 786-7789

5 Attorneys for Petitioner,

6 GARO Z. PEHLEVANIAN, M.D.

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO—DOWNTOWN COURTHOUSE**

10 GARO Z. PEHLEVANIAN, M.D.,

11 Petitioner,

12 v.

13 MEDICAL BOARD OF CALIFORNIA,

14 Respondent.

CASE NO.: 03CS00244

[Hon. Trena H. Burger-Plavan]

15 **NOTICE OF RULING AND**
16 **[PROPOSED] ORDER**

Hrng: October 8, 2004

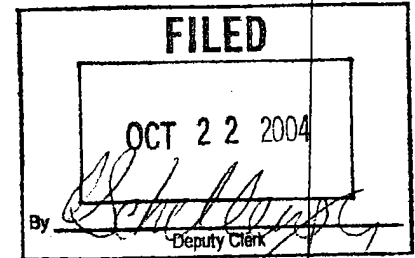
Time: 3:00 p.m.

Dept.: 26

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19 **TO THE COURT ABOVE AND TO RESPONDENT MEDICAL BOARD OF**
20 **CALIFORNIA AND TO ITS ATTORNEYS OF RECORD:**

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23 **PLEASE TAKE NOTICE** that Respondent's Motion for Reconsideration of this
24 Court's Order of July 20, 2004 came on regularly for hearing on October 8, 2004 at 3:00
25 p.m. Petitioner was represented by Jerry B. Marshak, Esq. and Richard A. Moss, Esq.
26 Respondent was represented by DAG Richard Avila. After careful consideration and the
27 stipulation of the parties, Respondent's Motion for Reconsideration was **GRANTED IN**
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ORIGINAL



1 **PART** by this Court *only to the extent* that the second sentence of this Court's Order of
2 July 20, 2004 shall be deemed stricken from the final Order. The full and correct text of
3 that Order follows this Notice.

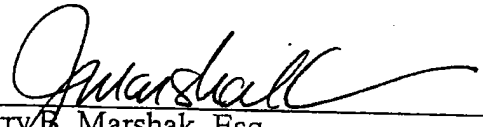
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6 Respectfully submitted,

7 Dated: October 21, 2004

LAW OFFICES OF RICHARD A. MOSS

Richard A. Moss, Esq.

Jerry B. Marshak, Esq.

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10 By: 

Jerry B. Marshak, Esq.

Attorneys for Petitioner
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ORDER

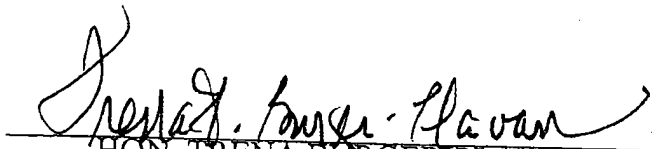
Petitioner's Motion for Reconsideration meets the requirements of Code of Civil Procedure section 1008. The Court admits the evidence (Exhibits B and C to Dec. of Moss in support of Motion for Reconsideration) pursuant to Code of Civil Procedure 1094.5(e), and remands the matter to Respondent Board for reconsideration of the penalty.

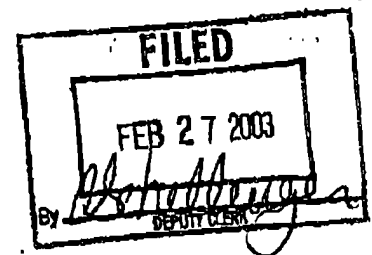
Respondent's decision and penalty in the *Bode* matter require that Respondent reconsider the penalty in Petitioner's matter. "Generally speaking, '[in] a mandamus proceeding to review an administrative order, the determination of the penalty by the administrative body will not be disturbed unless there has been an abuse of its discretion. (*Magit v. Board of Medical Examiners* (1961) 57 Cal.2d 74, 87; see also *Nightingale v. State Personnel Board* (1972) 7 Cal.3d 507, 514-516; *Harris v. Alcoholic Bev. etc., Appeals Bd.* (1965) 62 Cal.2d 589, 594). Nevertheless, while the administrative body has a broad discretion in respect to the imposition of a penalty or discipline, "it does not have absolute and unlimited power. It is bound to exercise legal discretion, which is, in the circumstances, judicial discretion' (*Harris, supra*, citing *Martin, supra*, and *Bailey v. Taaffe*, (1866) 29 Cal. 422, 424.)." *Skelly v. State Personnel Board*, 15 Cal.3d 194, 217-218 (Cal. 1975). Based upon such authorities, the court finds that the nature of disciplinary actions taken against others such as Dr. Bode, so closely situated on the facts appearing from the new evidence, is a factor which the Board should reconsider in determining the appropriate discipline to be imposed upon Petitioner. Where the Legislature has provided that Respondent's highest priority in prosecuting disciplinary actions against its licensees is the protection and safety of the public, the difference in the penalties imposed on these two physicians raises questions that the danger to the public and other considerations of level of discipline were not analyzed in light of each other.

1 Having reconsidered its ruling on the Petition of Mandate in light of the new evidence,
2 the Court **DENIES IN PART** and **GRANTS IN PART** the Petition to the extent that the
3 matter is hereby **REMANDED** to the Board for reconsideration of penalty only. In all
4 other respects, the Court finds that the decision of the Board is supported by the evidence.

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6 **IT IS SO ORDERED.**

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9 Dated: October 22, 2004

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11 HON. TRENA BURGER-PLAVAN
12 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

GARO Z. PEHLEVANIAN, M.D.,
Petitioner,

Department Number: 26

Case Number: 03CS00244

vs.

ORDER GRANTING TEMPORARY
STAY

MEDICAL BOARD OF CALIFORNIA,
Respondent.

A hearing was held on Petitioner's application for a stay order in this proceeding on February 27, 2003, at 9:30 a.m., Richard A. Moss appearing in person for Petitioner Garo Z. Pehlevanian and Deputy Attorney General Mia Perez-Argote appearing by telephone for Respondent Medical Board of California. Having considered the arguments of the parties and the standards pursuant to Code of Civil Procedure section 1094.5(h),

IT IS ORDERED that Respondent stay the operation of its decision of January 28, 2003 pending the entry of the judgment of the court in this proceeding.

Date: February 27, 2003 *Trena H. Burger-Plavan*
Honorable TRENA H. BURGER-PLAVAN,
Judge of the Superior Court of California,
County of Sacramento

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

In the Matter of the Accusation)
Against:)

Garo Z. Pehlevanian, M.D.)

File No. 17-2000-106409

Physician's and Surgeon's)
Certificate No. A 38617)

Respondent)
_____)

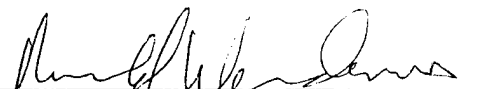
DECISION

The attached **Proposed Decision** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 27, 2003

IT IS SO ORDERED January 28, 2003

MEDICAL BOARD OF CALIFORNIA

By: 
Ronald Wender, M.D.,
Chair
Panel B
Division of Medical Quality

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

In the Matter of the Accusation Against:

GARO Z. PEHLEVANIAN, M.D.,
11649 Paso Robles Avenue
Granada Hills, CA 91344

Physician and Surgeon's Certificate No.
A 38617,

Respondent.

Case No. 17-2000-106409

OAH No. L2002010313

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 12-14, 2002, in Los Angeles, California.

Mia Perez-Argote, Deputy Attorney General, represented complainant.

Richard A. Moss, Esq., and Jerry B. Marshak, Esq., represented respondent, who also appeared each day of trial.

Oral and documentary evidence was presented and argument given. The record was closed and the matter submitted on November 14, 2002.

The below order restricting respondent's license, including 30 days suspension, 12 months community service, an ethics class, and 3 years probation, is based on the following Factual Findings and Legal Conclusions:

FACTUAL FINDINGS

The Parties & Jurisdiction

1. Ron Joseph (complainant) brought the Accusation in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On June 28, 1982, the Board issued Physician and Surgeon's Certificate No. A 38617 to Garo Z. Pehlevanian, M.D. (respondent).

3. The certificate was in full force and effect at all times relevant and will expire on December 31, 2003, unless renewed. Respondent has no record of prior disciplinary action on his certificate. Respondent is not currently a physician assistant supervisor.

4. The Accusation alleges respondent aided and abetted in the unlicensed practice of medicine by providing medical services to an incorporated diagnostic clinic not owned by a physician or other licensed health care professional. Based on those core allegations, the Accusation contains the following four causes of action for discipline: Aiding and Abetting the Unlicensed Practice of Medicine [Business and Professions Code ("B&P Code") section 2264], Knowingly Practicing Medicine with a Business Organization Owned by a Layperson [B&P Code section 2417], Aiding and Abetting the Violation of the Moscone-Knox Professional Corporation Act [B&P Code section 2286], and General Unprofessional Conduct [B&P Code section 2234].

Respondent filed a Notice of Defense that denied the Accusation and requested a hearing, which ensued. Respondent contends the diagnostic clinic for which he performed medical services did not itself practice medicine and therefore respondent did not, and could not, aid or abet the unauthorized practice of the same. Respondent also contends the way in which he and the diagnostic clinic provided services were within accepted medical standards and were also sanctioned by the California Medi-Cal program. Finally, even if respondent technically violated the law, he contends at no time did he knowingly do so.

Respondent's Background Information

5. Respondent is a 59-year-old physician who immigrated to this country from the former Soviet Union, through Lebanon, in 1973. While in the Soviet Union, respondent obtained his physician's credentials in 1967. He spent the next three years at the Armenian Academy of Sciences, Institute of Physiology, where he undertook a detailed study of electrophysiology, including human brain impulses and equilibrium. His postgraduate work was three months short of completion when he emigrated. While in the Soviet Union, respondent obtained extensive experience in echocardiography, which at the time, was more advanced there than in the United States.

6. Within three days of arriving in the United States, respondent found his way to Southern California. While he was in the process of obtaining physician credentials and licensure in California, he worked for several years (until 1980) at the St. Vincent Medical Center's Cardiology Department as an echocardiography technician. As alluded to above, respondent was more advanced in echocardiography than many of his colleagues due to the advanced experience in this field he obtained in the Soviet Union.

7. Respondent finally received his American physician's credentials as follows:

A. He obtained his ECFMG Certification in 1979, and completed the FLEX program in 1980.

B. Respondent did his residency in internal medicine in Fresno from 1981 through 1984.

C. He returned to Southern California in the summer of 1984 and did a two-year cardiology fellowship at the Hospital of the Good Samaritan in Los Angeles, until 1986.

8. Respondent was promoted in 1986 to Chief of Noninvasive Cardiology at Good Samaritan, and served in that position until 1988. In that capacity, respondent, amongst other things, supervised the echocardiogram program. Respondent left for private practice in 1988, where he has remained to the present. Respondent's private practice focuses primarily on non-invasive cardiology (80%), though he also practices internal medicine for his cardiology patients with those needs (20%).

Respondent Becomes Involved with Rosmar Imaging Center

9. Doing business as Rosmar Imaging Center ("Rosmar") in Glendale, California, Rosmar Medical Diagnostic, Inc. ("Rosmar Inc."), offered to the public an assortment of diagnostic radiology services, including, but not limited to: MRI, CT-Scan, Mammography, Ultrasound, X-ray, and Cardiovascular diagnostics including echocardiograms.

Rosmar obtained a Certificate of Use and Occupancy from the city of Glendale in May of 1997. The stated "use" in the certificate was "medical diagnostics." The application for the certificate stated that the intended business activity was "medical diagnostics, ultrasound, cardiovascular, c-scan [sic] x-ray."

Rosmar advertised and offered to the public full service radiology, i.e. not simply performing the radiological process to obtain radiology studies, but also providing medical opinions interpreting their results. For example, echocardiogram studies are meaningless, unless interpreted by a qualified medical doctor.

10. Rosmar Inc. was solely owned and operated at all times relevant by Petr Ter Bagdassarian ("Bagdassarian"), an individual who has never been licensed to practice as a physician, or any other health profession, within the State of California. Bagdassarian is listed on the Statement by Domestic Stock Corporation as the chief executive officer and sole director of Rosmar Inc.

11. The public was not informed that physicians interpreting the radiological studies, including echocardiograms, were not owners or employees of Rosmar, nor was the public informed Rosmar was ultimately owned by an unlicensed layperson.

12. Respondent knew of Bagdassarian for a period not established, but before they first met. Their first meeting was in the spring of 1999, and shortly thereafter, Bagdassarian, acting through his corporation, asked respondent if he would be interested in interpreting echocardiograms for Rosmar's Medi-Cal patients, as an independent contractor.

13. Bagdassarian led respondent to believe such an arrangement was approved by Medi-Cal. For example, Bagdassarian told respondent Medi-Cal only required the doctor who signed an echocardiogram report to have a Medi-Cal authorization number (which respondent had). Bagdassarian also showed respondent a portion of the California Department of Health Services ("DHS") Medi-Cal provider manual (exhibit M) relative to "Radiology." This excerpt defined "split billing" as: "facility and physician each bill for their respective component of the service (for example, technical vs. professional)." The excerpt also defined "full-fee billing" as: "physician bills for both the professional and technical components and subsequently reimburses the facility for the technical component per their mutual agreements." Full-fee billing is also known as "global billing." Respondent was also told that under the federal Medi-Care system, Bagdassarian's proposed arrangement was not only proper but common. Respondent would only have to supervise the technicians performing the echocardiogram tests.

14. As a result of this conversation, respondent believed the arrangement outlined by Bagdassarian was valid, so long as he was paid only for his interpretation of the echocardiograms and Rosmar was paid only for the technical preparation of the studies. Respondent also believed his only other obligation legally was to supervise the Rosmar technicians performing the echocardiograms. However, respondent also knew that Bagdassarian was not a licensed health-care professional, and that no part of Rosmar or Rosmar Inc. was owned by such a person.

Respondent also explicitly knew Bagdassarian was only contracting for his services because without a licensed physician to sign an echocardiogram report: (a) Rosmar would be unable to bill Medi-Cal for any of its services; and (b) the echocardiogram studies Rosmar technicians prepared would be meaningless and therefore of no value to the public.

Respondent undertook no effort to verify whether the arrangement Bagdassarian proposed was in fact legal, such as contacting knowledgeable personnel at DHS or the Board, or retaining counsel.

15. Soon after this conversation, respondent and Bagdassarian entered into a written agreement. Under the terms of the contract, all echocardiograms for Medi-Cal patients done by Rosmar, as of May 1999, were to be interpreted by respondent and billed under his Medi-Cal provider number. Reimbursements from DHS payable to respondent for those echocardiograms were to be deposited in a joint checking account held by respondent and Bagdassarian. Respondent was to be compensated monthly from the account for his services at a flat rate of \$ 30 per echocardiogram, with the remaining balance of money belonging to Rosmar. The parties later amended the contract to increase respondent's compensation per echocardiogram to \$ 40, as of October 1999.

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16. Patients were generally referred to Rosmar by a wide array of independent physicians, who prescribed for their patients an imaging service that Rosmar was able to provide as advertised. The patient would then use that prescription at Rosmar to obtain the necessary imaging service; one of Rosmar's technicians performed the imaging procedure.

17. After the imaging was complete, the videotaped echocardiogram studies were reviewed by respondent, who then prepared and signed a report interpreting them. Respondent never relied solely on the preliminary measurement data indicated by Rosmar technicians on the accompanying forms. Respondent personally reviewed the videotaped echocardiograms frame by frame for accuracy, and noted his own measurements. He compared his measurements with those noted by the technicians. When he occasionally found a problem with a particular study, he requested a new study. In particularly serious cases that needed prompt medical attention, respondent would immediately contact the referring physicians to discuss the patients' medical conditions.

18. It was not established that anyone other than respondent examined the finished Rosmar echocardiogram images and/or diagnosed ailments therefrom while respondent performed on the contract with Bagdassarian. Nobody interfered with the manner in which respondent interpreted the echocardiograms. As noted above, Respondent was eminently qualified to interpret the echocardiogram studies.

19. No evidence indicated any deficiencies with the quality or care used by respondent in interpreting the echocardiograms or his diagnoses thereof. It was not established that any patient or referring physician made a complaint regarding the same.

20. Respondent never owned any part of Rosmar or Rosmar Inc., nor did he control either. Respondent agreed only to serve as one of two "medical directors" for Rosmar; the other "medical director" was also an independent contractor like respondent.

21. Respondent had very little to do with the Rosmar facility. Both Rosmar and Rosmar Inc. were totally dominated by Bagdassarian, as follows:

A. Rosmar was fully operational at the time respondent started performing on the contract. Very little, if any, change occurred after respondent began. He essentially walked into an on-going medical facility controlled by someone other than himself.

B. Although a private medical office at the Rosmar facility was provided for respondent, he never used it. In fact, as of May of 2000, respondent had never set foot in the Rosmar facility. He was never physically present when Rosmar technicians performed any of the echocardiograms he interpreted. Respondent interpreted the echocardiograms submitted to him by Rosmar at his own private office. He had no set work schedule at Rosmar and only interpreted echocardiograms as he received them from Rosmar.

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C. Respondent played no role in the hiring or firing of Rosmar's employees and did not pay their salaries. Respondent was not involved in any billing or advertising activities. Bagdassarian hired all Rosmar staff and was solely responsible for all staffing matters. The only interaction respondent had with Rosmar personnel was initially instructing them how he wanted the echocardiogram studies performed, and occasional subsequent criticism of problems he observed with their echocardiogram studies he reviewed. According to respondent, once he spotted such an irregularity he would review it with the involved Rosmar technician at his private office and provide corrective feedback.

D. Bagdassarian purchased all the equipment for Rosmar, including all the equipment used in performing the echocardiogram studies respondent interpreted. However, respondent approved of the equipment Rosmar used and believed it to be "state-of-the-art." Once respondent requested transducers be replaced; though they were very expensive, Bagdassarian did so. Respondent played no role in supplies used by Rosmar.

E. Respondent exercised no dominion or control over patient records. All such records were maintained exclusively by and at Rosmar, although respondent kept at his private office a copy of his echocardiogram reports. Respondent had access to Rosmar's records, however, inasmuch as he could request pertinent documents be immediately faxed to his private medical office for his review. However, Rosmar had the ultimate control of those records, at its facility.

F. It was not established respondent participated in setting medical protocols for Rosmar, other than as described in 21.C. above.

22. This arrangement became quite lucrative for both respondent and Bagdassarian. In 1999, the DHS reimbursed respondent \$ 228,992.01, of which respondent personally retained \$44,490.00; the rest went to Rosmar Inc.

23. Bagdassarian is not a "licensed person" as required by B&P Code section 2408. Rosmar Inc. was incorporated as a general corporation but had been in the business of operating a diagnostic medical facility for the purpose of offering medical services to the public. It did not qualify to practice medicine under the provisions of the Moscone-Knox Professional Corporation Act, however, because Bagdassarian who was not a "licensed person" as defined by Corporate Code section 13401.5 owned one-hundred percent of its shares. Because Rosmar Inc. did not meet the requirements of a medical corporation practicing pursuant to the provisions of the Moscone-Knox Professional Corporation Act, it was prohibited from engaging in the practice of medicine, either directly or indirectly.

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Facts Related to Respondent's Defenses

24. During all times relevant, Rosmar was a federally sanctioned independent diagnostic testing facility (also known as an "IDTF"), certified under Title 42, Code of Federal Regulations, section 410.33, to perform diagnostic testing under the auspices of one or more supervisory physicians. Federal law permits IDTFs to obtain their own provider numbers for use in billing directly to Medi-Care or Medicaid for services they render that should be so billed. However, 42 CFR section 410.33(f) indicates such is still subject to state law: "[a]n IDTF must comply with the applicable laws of any State in which it operates."

25. Respondent did not establish the state Medi-Cal program legally sanctioned his relationship with Rosmar for purposes of this case.

A. The above-described portion of the DHS Medi-Cal provider manual (exhibit M) did not so establish. Although it defined global billing to be where an approved physician bills for both his "professional" services and the "technical components" for which the facility is reimbursed by the physician pursuant to mutual agreement, it is not at all clear on the face of this excerpt that this particular billing protocol was intended to cover relationships such as respondent's with Rosmar. To the contrary, the only testimony presented from DHS personnel at the trial indicated this part of the manual applied to relationships between hospitals and physicians; it did not apply to a relationship between a physician in private practice and an independent diagnostic facility, like respondent's relationship with Rosmar.

B. Nowhere does this Medi-Cal manual excerpt specifically sanction radiological facilities to be owned by laypersons.

26. Respondent's designated expert witness, Dr. Jay Schapira, testified. His practice areas are similar to respondent's, and he has also served as a consultant to the Board since 1988 on various disciplinary cases against other physicians. Dr. Schapira's expert opinions established the following:

A. The standard in the Southern California medical community is that physicians need not be present when properly trained and certified technicians perform videotaped echocardiogram studies.

B. The standard in the Southern California medical community is that physicians interpreting echocardiograms review the videotaped studies personally to do their own measurements and visually observe the heart images.

C. There is no standard in the Southern California medical community requiring physicians to perform the billing for their echocardiogram services.

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D. "Global" or "full-fee" billing is a standard billing protocol in the Southern California medical community, where the technical component of echocardiogram studies and professional component of the same are separately stated but placed on the same bill containing the billing physician's provider number.

E. Arrangements such as respondent's with radiological facilities owned by non-licensed people are not uncommon in the Southern California medical community. However, Dr. Schapira admittedly was not fully familiar with the laws regarding corporate medical practice, i.e. ownership requirements and exemptions therefrom. His testimony was also vague on the particulars regarding the ownership structure of the radiological facilities to which he referred as being common. Those deficiencies prevent the trier of fact from determining if those facilities were truly like Rosmar or instead fit within a valid legal exemption regarding lay ownership. Thus, Dr. Schapira's testimony on this topic is limited for these reasons.

F. In the isolated review of the echocardiogram process in a vacuum: interpreting echocardiogram studies involves the practice of medicine because it requires making a diagnosis of the image reviewed; but simply performing a videotaped echocardiogram study (as done by Rosmar technicians) is not practicing medicine because no diagnosis is involved.

27. Dr. Schapira's ultimate opinion, that in this case respondent practiced medicine but Rosmar did not, was not accepted. The reasoning supporting his opinion was too narrow. His opinion was expressed in the empty vacuum of the acts Rosmar technicians undertook in performing videotaped echocardiograms versus those done by respondent interpreting them. Dr. Schapira did not rely on many other factors of which controlling legal authority on this topic consider, such as advertising, patient intake and scheduling, purchase of equipment and supplies, staff hiring and scheduling, etc. Dr. Schapira's opinion is also flatly inconsistent with the controlling legal authority on this topic, as discussed in Legal Conclusion 2 below. His opinion and its reasoning did not account for or satisfactorily respond to important public policy considerations such as those depicted above in Factual Findings 9 and 11. Interestingly, Dr. Schapira has before expressed opinions on quality of care problems related to the division of duties between hospital administrative staff and physicians, a problem seemingly magnified exponentially by a relationship like respondent's with Rosmar. He also did not account for the fact that such a relationship simply and unnecessarily creates a productive auger for cultures of fraud and/or mismanagement. His failure to account for these problems therefore additionally undercut the value of his opinion. Finally, his opinion on this mixed issue of fact and law, while interesting, is not binding.

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Complaint & Investigation of Respondent's Relationship with Rosmar Imaging Center

28. On a date not established, the DHS became aware of information identifying respondent with unusual Medi-Cal claim patterns. Therefore, on January 11, 2000, DHS auditor Julie Chung conducted an unannounced visit and audit of Rosmar's facility. The audit covered billings for September through December of 1999. During the course of her audit, Ms. Chung became aware of the above-described relationship between respondent and Rosmar. Since the audit discovered no improper Medi-Cal billings or overpayments, the audit was closed and DHS took no direct action against either respondent or Rosmar.

29. Though the DHS was troubled by respondent's relationship with Rosmar, DHS staff believed the issue solely within the jurisdiction of the Board. It was therefore decided to refer that matter to the Board. In a letter dated February 3, 2000, Refugio M. Garcia, Chief of the Medical Review Southern Section I, DHS, notified the Board of the results of respondent's Medi-Cal audit, and concluded that DHS "discovered (respondent) is involved in the unlicensed corporate practice of medicine." Mr. Garcia requested the Board review the case and take appropriate action.

30. Board Investigator Gabriel Sanchez was assigned to investigate the DHS referral in February of 2000. In May of 2000, Investigator Sanchez interviewed respondent during the course of his investigation. Respondent was initially candid and cooperative with Investigator Sanchez. Respondent essentially explained to Investigator Sanchez the above facts regarding his relationship with Rosmar and Bagdassarian.

Respondent further stated he knew Bagdassarian did not have a medical license, and noted if Bagdassarian had a license, he would not need respondent's involvement to bill DHS for Medi-Cal patients. Respondent admitted therefore that Bagdassarian was using respondent's medical license to do something Bagdassarian himself could not do.

At the end of the interview, Investigator Sanchez accused respondent of aiding and abetting the unlicensed practice of medicine by virtue of his relationship with Rosmar. Respondent immediately and vehemently denied the same. At this point, respondent became upset with Investigator Sanchez. Respondent told the investigator that because he was not an employee of Rosmar, but instead an independent contractor, he was not violating the law. Respondent also told the investigator he knew the federal Medi-Care system allowed lay people to own medical practices and that there was a conflict between federal law and California law.

Respondent then asked the investigator "what was he was supposed to do?" Investigator Sanchez responded that he "could not tell him." Respondent admitted he did not know the particular laws involved in these issues and stated he would contact Bagdassarian immediately and stop performing on the Rosmar contract because he did not want any further problems with either the Board or DHS.

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31. At a time not established, respondent provided Investigator Sanchez with documents indicating information described in Factual Finding 22 above.

32. In response to this initial Board contact, respondent did not seek further clarification from higher Board or DHS authorities. Neither did he retain an attorney or seek an opinion on this issue from any other expert.

Instead, respondent simply told Bagdassarian about his contact from the Board, closed the joint checking account between he and Bagdassarian, and opened a new account solely in his name and control. At no time did respondent contact the Board to confirm if his actions remedied the Board's concern.

33. On January 18, 2001, Board Investigator Allan Irish contacted respondent by telephone to determine if he was still associated with Rosmar. Respondent said he was. Respondent also said he was still angry with Investigator Sanchez for accusing him of breaking the law.

34. Respondent still believes he did nothing wrong, even in light of this disciplinary proceeding and the litigation against Rosmar and Bagdassarian described below that resulted in the termination of his relationship with Rosmar.

Other Relevant Facts

35. The Board ultimately sought to and did prohibit Rosmar from continuing to operate as described above, as follows:

A. On June 22, 2001, the Board, through its counsel in the instant case, filed a complaint in the Los Angeles Superior Court in case number BC252914, which named as defendants Bagdassarian, Rosmar, and Rosmar Inc. ("Rosmar defendants"). Amongst other things, the complaint sought injunctive relief and civil penalties for the unauthorized practice of medicine. Respondent's lead trial counsel defended the Rosmar defendants in that case.

B. On July 2, 2001, Superior Court Judge David P. Yaffe issued a temporary restraining order against the Rosmar defendants.

C. On August 27, 2001, Judge Yaffe issued a preliminary injunction against the Rosmar defendants which prohibited them from, amongst other things:

(1) holding themselves out to the public as being capable and competent to practice medicine by diagnosing physical conditions through radiological procedures; and

(2)(a) engaging licensed physicians for the purpose of providing medical services to the public as part of a diagnostic radiology facility, including but not limited to: performing diagnostic tests, interpreting diagnostic images or films, making a diagnosis, and/or indicating a report of the findings; (b) determining the type and quality of medical

facilities, equipment, and supplies to provide to contracted physicians and technical staff; (c) setting physician fees and billing procedures; (d) establishing medical protocol; (e) regulating patient referrals; and (f) exercising dominion over patient records.

D. As a result of these court orders, the Board and the Rosmar defendants entered into a settlement agreement, whereby they stipulated to entry of a judgment to include the terms and conditions described in 35.C. above, as well as the Rosmar defendants paying \$ 5,000.00 cost to the Board and its counsel. A final judgment and permanent injunction pursuant to the stipulation was entered on April 23, 2002.

36. After the preliminary injunction was obtained, but before the final judgment was entered, the Board filed the instant Accusation in this case against respondent. It was not established the time in which respondent stopped performing on the contract with Bagdassarian as described above, though he had at some point before the instant hearing.

37. The Board incurred costs, including attorney fees, in the total sum of \$ 10,267.77 in connection with the investigation and prosecution of this case. Included in that sum are the Board's investigative costs of \$ 1,923.77, and Deputy Attorney General fees of \$ 8,344.00. The costs are deemed just and reasonable, and respondent presented no evidence to the contrary.

LEGAL CONCLUSIONS

Burden & Standard of Proof

1. The burden of proof is on complainant, and the standard of proof is to establish clear and convincing evidence to a reasonable certainty. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856. Factual Findings 1-4.

Cause for Discipline

2. *First Cause of Action for Aiding and Abetting the Unlicensed Practice of Medicine.* Respondent is subject to disciplinary action under B&P Code section 2264 in that he contracted with an unlicensed individual and an unlicensed corporation to provide medical services, which constituted aiding and abetting the unlicensed practice of medicine in violation of B&P Code sections 2052 and 2400. Factual Findings 9-36.

Generally, it is unlawful to practice or attempt to practice medicine without a license, except as otherwise provided by law. B&P Code §§ 2052, 2054. California has "a strong long-standing public policy against permitting lay persons to practice any of the medical arts or to exercise control over decisions made by healing arts practitioners." *California Assn. Of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, at 427. As such, California law prohibits any person from practicing medicine in this state without a valid certificate of licensure. B&P Code § 2052.

The term "practicing" medicine is defined broadly under this section to include among other things the "diagnosis" of ailments, diseases, injuries, or the physical condition of any person. *Id.* This prohibition not only applies to lay individuals but, with limited exceptions, also to corporations and other artificial entities which have "no professional rights, privileges or powers" under this state's Medical Practice Act. B&P Code §2400.

More specifically, this case is controlled by *Steinsmith v. Medical Board* (2000) 85 Cal.App.4th 458. Dr. Steinsmith was a Board-licensed physician who was cited by the Board for working at a medical clinic partially owned by two non-physicians who performed administrative work at the clinic. A California licensed physician living out of state had obtained the fictitious name permit for the clinic. Dr. Steinsmith was aware the two owners were not licensed to practice medicine, but was unaware B&P Code section 2415(b) required medical practices to be owned by licensed physicians. With respect to his medical practice, Dr. Steinsmith worked with what he termed complete "clinical autonomy."

The *Steinsmith* court flatly rejected Dr. Steinsmith's arguments similar to respondent's, as follows:

"Steinsmith contends that [the owners] did not practice medicine because they merely owned the Clinic and administered its business affairs. A similar argument was rejected long ago in *Painless Parker v. Board of Dental Exam.* (1932) 216 Cal. 285. In that case, a licensed dentist was found to have aided and abetted the unlicensed practice of dentistry by a corporation he formed to own and operate dental offices. (*Id.* at pp. 289, 298.) The dentist argued, as Steinsmith does here, that the licensing requirements for the provision of professional services did not apply to 'the purely business side of the practice.' (*Id.* at p. 295.) Our Supreme Court rejected that argument, holding: 'The law does not assume to divide the practice of dentistry into such departments. Either one may extend into the domain of the other in respects that would make such a division impractical if not impossible. The subject is treated as a whole. If the contention of [the dentist] be sound, then the proprietor of the business may be guilty of gross misconduct in its management and violate all standards which a licensed dentist would be required to respect and stand immune from any regulatory supervision whatsoever. His employee, the licensed dentist, would also be immune from discipline upon the ground that he was but a mere employee and was not responsible for his employer's misconduct, whether the employer be a corporation or a natural person.' (*Id.* at p. 296.) The opinion also referred to the basic rationale of the corporate practice prohibition: the potential for 'a secondary and divided loyalty to the patient.' (*Id.* at p. 297.)

"Although the *Painless Parker* case involved dentistry rather than medicine, its reasoning and holding apply equally to medical practice. (Citations.) The unlicensed practitioner in *Painless Parker* was a corporation, but it has long been 'well settled' that 'any other unlicensed person or entity' is subject to the same sanctions for unlawful practice as an unlicensed corporation. (Citation.) Accordingly, the *Painless Parker* case disposes of Steinsmith's argument that there was no unlicensed practice he could have aided."

Using the context of a medical corporation, the court in *Marik v. Superior Court* (1987) 191 Cal.App.3d 1136, reached the same conclusion and explained:

[T]he prospective purchase of a piece of radiological equipment could be impacted by business considerations (cost, gross billings to be generated, space and employee needs), practice, skill levels required by operators of the equipment, medical ethics, or by an amalgam of factors emanating from both business and medical areas. The interfacing of these variables may also require medical training, experience, and judgment. (*Id.* at 1401, fn. 4.)

More recently, in July of 2000, the California Attorney General's office was asked to render an opinion regarding whether a non-professional corporation, known as a management services organization, may enter into an agreement with a labor union to select, schedule, secure, and pay for radiology diagnostic services ordered by the union's physician for union members, and charge the union a fee for its management services. 83 Ops.Cal.Atty.Gen 171. Citing *Marik*, the Attorney General found such a contractual agreement to be unlawful because it would require the non-professional corporation to engage in the unlawful practice of medicine if it were to perform such duties. *Id.* at 171.

That opinion is consistent with a prior California Attorney General opinion from 1975, where the Attorney General concluded if a non-professional corporate laboratory contracted with a hospital to supervise operation of the hospital laboratory and furnished one of its pathologists to be director of the hospital laboratory, the corporate laboratory would be unlawfully engaged in the practice of medicine if the pathologist as director practiced medicine, such as diagnosing and prescribing. 58 Ops.Cal.Atty.Gen 883.

It was this legal reasoning the Superior Court relied upon in finding the Rosmar defendants violated the law and enjoined them from engaging in the unauthorized practice of medicine by virtue of their relationship with physicians, such as its with respondent.

Noticeably absent is citation by respondent to any case, statute or other legal authority contradicting the above to any degree.

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In light of the great weight of authority cited above, respondent clearly aided and abetted the unlicensed practice of medicine. Respondent knowingly worked for an unlicensed individual and corporation who ran a diagnostic radiology facility. Rosmar was engaged in the business of providing diagnostic medical services to the general public. Its patients were not referred to Rosmar to only obtain a "picture" of their heart as respondent contends, but the entire echocardiogram process, including interpretation of the heart images. The public was never apprised Rosmar could only take "pictures" of the heart without also providing a diagnosis. To the contrary, Rosmar held itself out to the public as a full-service radiology facility capable of providing "medical diagnostics." Rosmar did just that.

Respondent and Rosmar's unlicensed owners were intertwined in ways that cannot be neatly unbraided for purposes of analyzing the unlicensed practice of medicine, as respondent suggests. Each needed the other for the ultimate product forged by their relationship, i.e. the diagnosis of a patient's echocardiogram. Bagdassarian needed respondent's medical license so Rosmar could bill for its services, since nobody would pay for a "picture" of the heart without an interpretation of it (nor would Medi-Cal). Respondent needed a source of echocardiograms to interpret. That source could only be made from ingredients including patient referral and scheduling, trained and knowledgeable technicians and staff, equipment and supplies necessary to perform echocardiograms, confidential patient medical record storage, design of medical protocols, etc. These are all decisions normally made by a physician, which can and do dramatically impact the practice of medicine, as the controlling legal authorities advise. Those decisions impact not only business considerations (costs and potential revenue), but also medical considerations (e.g. which physicians, technicians and equipment are best suited for the performance of specific diagnostic tests). The above-cited legal authority clearly requires consideration of all these factors. In this case, an unlicensed person clearly dominated those decisions, which by definition impacted the ultimate service Rosmar offered. Thus, Rosmar engaged in the practice of medicine by virtue of its own actions, as well as hiring respondent to perform acts of which a license is required but Rosmar was not able to perform.

Respondent also argued he did not knowingly aid and abet the unlicensed practice of medicine because he never knew what he was doing was illegal or that Rosmar was practicing medicine. This argument is easily dispatched.

First, "it is an emphatic postulate of both civil and criminal law that ignorance of the law is no excuse for a violation thereof." *People v. Snyder* (1982) 32 Cal.3d 590, 593. "[T]he crucial question is whether the defendant was aware that he was engaging in the conduct proscribed by that [statute]." *Id.* In this case, even if respondent was not aware of the statutes prohibiting his conduct, he clearly knew he contracted to provide medical services to a facility owned by an unlicensed person. Most starkly, respondent admitted to the Board that the only reason Bagdassarian contracted with him was because Bagdassarian needed respondent to sign the echocardiogram reports.

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Second, and in any event, respondent was placed on direct notice of his violation when initially confronted by the Board in May of 2000, and again in January of 2001. Respondent essentially ignored these two Board contacts, doing nothing in response other than closing his joint checking account with Bagdassarian. So respondent knowingly violated the law for a substantial period after being directly apprised of the same by the Board.

3. *Second Cause of Action for Knowingly Practicing Medicine with a Business Organization Owned by a Layperson.* Respondent is subject to disciplinary action under B&P Code section 2417 in that he knowingly practiced medicine with a lay owned corporation that held itself out to the public as an organization practicing medicine, i.e. providing "medical diagnostics," including interpreted echocardiogram studies. Factual Findings 9-36, and Legal Conclusion 2.

4. *Third Cause of Action for Aiding or Abetting the Violation of the Moscone-Knox Professional Corporation Act.* Respondent is subject to disciplinary action under B&P Code section 2286 in that he contracted with an unlicensed individual and an unlicensed corporation to provide medical services, which constituted aiding or abetting the unlicensed corporate practice of medicine in violation of the Moscone-Knox Professional Corporation Act. Factual Findings 9-36, and Legal Conclusion 2.

5. *Fourth Cause of Action for General Unprofessional Conduct.* Respondent is subject to disciplinary action under B&P Code section 2234, in that he engaged in multiple acts of unprofessional conduct by aiding and abetting an unlicensed lay person and corporation practice medicine through "medical diagnostics" including echocardiogram studies and interpretations. Factual Findings 9-36, and Legal Conclusion 2.

Discipline Imposed

6. B&P Code section 2227 provides that a licensee found to have violated 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 disciplinary action deemed proper.

Given the facts in this case, outright revocation of respondent's certificate would be overly harsh and punitive. Respondent has no other history of discipline and is a competent practitioner with much to offer the public by way of his long expertise in non-invasive cardiology and echocardiogram interpretations. His misconduct in this case did not result in deficient quality of care to patients or improper medical billings. His continued practice, subject to probationary terms, would therefore not be a threat to the public. In addition, respondent was honest, candid and cooperative with Board investigators. He never attempted to mislead them. Though he continued to aid and abet the unlicensed practice of medicine for several months after initial Board contact, this fact alone does not negate respondent's potential for rehabilitation through appropriate probationary terms.

There were also mitigating circumstances that led respondent's conduct. For example, the law in this area is not immediately apparent to a layperson. Respondent had access to ambiguous information from the Medi-Care and Medi-Cal programs that could have generated some doubt in his mind. An expert witness opined relationships like respondent's with Rosmar were common in the Southern California medical community. Under these circumstances, respondent's violations were not outrageous or in bad faith. Factual Findings 5-36.

An appropriate period of probation, coupled with other meliorative measures such as an ethics course, should adequately serve to protect the public interest. Since respondent's misconduct allowed an unlicensed person and corporation to practice medicine and profit greatly by virtue of extensive Medi-Cal billings, respondent should be required to provide free community service. This will also allow the lessons to be learned from this case to congeal while he repays his debt to the public. Given respondent's very strong belief he did nothing wrong, a suspension is necessary to allow respondent time to reflect on his misconduct and appropriately acclimate himself to the concept that he in fact violated the law. A suspension period less than the guideline minimum is appropriate here, however, since respondent long since terminated his relationship with Bagdassarian, no evidence established he has since repeated his misconduct, and the community service requirement will sufficiently re-emphasize the lessons to be learned. Since respondent knowingly aided and abetted the unlicensed practice of medicine, he should not be allowed to supervise physician assistants during his probation.

Under these probationary conditions, the period of probation should be the guideline minimum of three (3) years. This will allow respondent sufficient time to comply with the other terms, rehabilitate himself, and demonstrate the same to the Board. Since respondent has long since abandoned assisting the unlicensed practice of medicine, additional probation time would not appear to further any productive purpose in this case.

7. Cause exists to order respondent pay costs of \$ 10,267.77, pursuant to B&P Code section 125.3. This section provides for a licentiate found to have violated the licensing act to pay the reasonable costs of the investigation and enforcement of the case. Complainant established this amount was reasonable, and respondent did not present any evidence to the contrary. Factual Finding 37.

ORDER

Physician and Surgeon's Certificate No. A 38617, issued to respondent Garo Z. Pehlevanian, M.D., is REVOKED. However, the revocation is STAYED and respondent is placed on PROBATION for THREE (3) YEARS upon the following terms and conditions:

1. Actual Suspension

As part of probation, Respondent is suspended from the practice of medicine for *thirty (30) days* beginning the sixteenth (16th) day after the effective date of this decision.

2. Community Services - Free Services

Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval a community service program in which respondent shall provide free medical services on a regular basis to a community or charitable facility or agency for at least *8 hours a month for 12 consecutive months* of probation. If respondent requests and is granted early termination of probation, the probation will not terminate unless the total minimum number of free community service hours of the original probationary order have been satisfactorily completed.

3. Ethics Course

Within 60 days of the effective date of this decision, respondent shall enroll in a course in *Ethics* approved in advance by the Division or its designee, and shall successfully complete the course during the first year of probation.

4. Supervision of Physicians Assistants

During probation, respondent is prohibited from supervising physician assistants.

5. Obey All Laws

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

6. Quarterly Reports

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.

7. Probation Surveillance Program Compliance

Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his or her addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code Section 2021(b).

Respondent shall, at all times, maintain a current and renewed physician and surgeon license. Respondent shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

8. Interview with the Division, its designee or its designated physician(s)

Respondent shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.

9. Tolling of Probation

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. A Board ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary order.

10. Completion of Probation

Upon successful completion of probation, respondent's certificate shall be fully restored.

11. Violation of Probation

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 order 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.

12. Cost Recovery

The respondent is hereby ordered to reimburse the Division the amount of \$ 10,267.77 *within 90 days* from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Division's cost of these costs shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his/her responsibility to reimburse the Division for its investigative costs.

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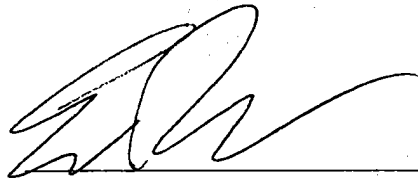
13. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

14. Probation Monitoring Costs

The respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Division of Medical Quality and delivered to the designated probation surveillance monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

DATED: December 26, 2002

A handwritten signature in black ink, appearing to read 'Eric Sawyer', is written over a horizontal line.

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 26 2001
BY Brenda Allen ANALYST

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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. 17-2000-106409

GARO Z. PEHLEVANIAN, M.D.,
11649 Paso Robles Avenue
Granada Hills, CA 91344

OAH No.

A C C U S A T I O N

Physician and Surgeon's Certificate No. A 38617

Respondent.

Complainant alleges:

PARTIES

1. Ron Joseph (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about June 28, 1982, the Medical Board of California issued Physician and Surgeon's Certificate Number A 38617 to Garo Z. Pehlevanian, M.D. (Respondent). The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2003, unless renewed.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California ("Division"), under the authority of the following sections of the

1 Business and Professions Code ("Code").

2 4. Section 2227 of the Code provides that a licensee who is found guilty
3 under the Medical Practice Act may have his or her license revoked, suspended for a period not
4 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
5 such other action taken in relation to discipline as the Division deems proper.

6 5. Section 2417 of the Code states:

7 “(a) Any type of business organization that holds itself out to the public as an
8 organization practicing medicine, or that a reasonably informed person would believe is
9 engaged in the practice of medicine, shall be owned and operated only by one or more
10 licensed physicians and surgeons. This section does not apply to hospitals, or private,
11 nonprofit medical clinics licensed pursuant to Chapter 1 (commencing with Section 1200)
12 of Division 2 of the Health and Safety Code or entities exempt from licensure pursuant to
13 Section 1206 of the Health and Safety Code. The Director of the State Department of
14 Health Services may exempt other business organizations from the requirements of this
15 section, upon application to the director and upon submission of evidence that it is in the
16 public interest to provide that exemption, as determined by the director.

17 “(b) A physician and surgeon who knowingly practices medicine with a business
18 organization not owned or operated in compliance with subdivision (a) shall have his or
19 her license to practice permanently revoked.”

20 6. Section 2234 of the Code states:

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

24 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or
25 abetting the violation of, or conspiring to violate, any provision of this chapter [Chapter
26 5, the Medical Practice Act].

27 “(b) Gross negligence.

28 “(c) Repeated negligent acts.

1 “(d) Incompetence.

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

4 “(f) Any action or conduct which would have warranted the denial of a
5 certificate.”

6 7. Section 2264 of the Code states:

7 “The employing, directly or indirectly, the aiding, or the abetting of any
8 unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the
9 practice of medicine or any other mode of treating the sick or afflicted which requires a
10 license to practice constitutes unprofessional conduct.”

11 8. Section 2052 of the Code states:

12 “Any person who practices or attempts to practice, or who advertises or holds
13 himself or herself out as practicing, any system or mode of treating the sick or afflicted in
14 this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish,
15 deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
16 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
17 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without
18 being authorized to perform such act pursuant to a certificate obtained in accordance with
19 some other provision of law, is guilty of a misdemeanor.”

20 9. Section 2400 of the Code states:

21 “Corporations and other artificial legal entities shall have no professional rights,
22 privileges, or powers. However, the Division of Licensing may in its discretion, after
23 such investigation and review of such documentary evidence as it may require, and under
24 regulations adopted by it, grant approval of the employment of licensees on a salary basis
25 by licensed charitable institutions, foundations, or clinics, if no charge for professional
26 services rendered patients is made by any such institution, foundation, or clinic.”

27 10. Section 2406 of the Code states:

28 “A medical or podiatry corporation is a corporation which is authorized to render

1 professional services, as defined in Sections 13401 and 13401.5 of the Corporations
2 Code, so long as that corporation and its shareholders, officers, directors and employees
3 rendering professional services who are physicians, psychologists, registered nurses,
4 optometrists, podiatrists or, in the case of a medical corporation only, physician
5 assistants, are in compliance with the Moscone-Knox Professional Corporation Act
6 [Corporations Code section 13400 et seq.], the provisions of this article and all other
7 statutes and regulations now or hereafter enacted or adopted pertaining to the corporation
8 and the conduct of its affairs.

9 “With respect to a medical corporation or podiatry corporation, the governmental
10 agency referred to in the Moscone-Knox Professional Corporation Act is the Division of
11 Licensing.”

12 11. Section 2408 of the Code states:

13 “Except as provided in Sections 13401.5 and 13403 of the Corporations Code,
14 each shareholder, director and officer of a medical or podiatry corporation, except an
15 assistant secretary or an assistant treasurer, shall be a licensed person as defined in
16 Section 13401 of the Corporations Code. Notwithstanding the provisions of this section
17 or Sections 13401.5, 13403, 13406, and 13407 of the Corporations Code, a shareholder of
18 a medical corporation which renders professional services may be a medical corporation
19 which has only one shareholder who shall be a licensed person as defined in Section
20 13401 of the Corporations Code. The shareholder of the latter corporation may be an
21 officer or director of the former corporation.

22 “Nothing in this section shall be construed as prohibiting a nonlicensed person
23 from using the business titles of executive vice president, chief executive officer,
24 executive secretary, or any other title denoting an administrative function within the
25 professional corporation.”

26 12. Section 2286 of the Code states:

27 “It shall constitute unprofessional conduct for any licensee to violate, to attempt to
28 violate, directly or indirectly, to assist in or abet the violation of, or to conspire to violate

1 any provision or term of Article 18 (commencing with Section 2400), of the Moscone-
2 Knox Professional Corporation Act (Part 4 commencing with Section 13400) of Division
3 3 of Title 1 of the Corporations Code), or of any rules and regulations duly adopted under
4 those laws.”

5 13. Corporation Code section 13401.5. provides for the conditions of the
6 “licensed persons” who may be shareholders, officers, directors or professional employees. It
7 state, in pertinent part:

8 “Notwithstanding subdivision (d) of Section 13401 and any other provision of
9 law, the following licensed persons may be shareholders, officers, directors, or
10 professional employees of the professional corporations designated in this section so long
11 as the sum of all shares owned by those licensed persons does not exceed 49 percent of
12 the total number of shares of the professional corporation so designated herein, and so
13 long as the number of those licensed persons owning shares in the professional
14 corporation so designated herein does not exceed the number of persons licensed by the
15 governmental agency regulating the designated professional corporation:

16 (a) Medical corporation.

- 17 (1) Licensed doctors of podiatric medicine.
18 (2) Licensed psychologists.
19 (3) Registered nurses.
20 (4) Licensed optometrists.
21 (5) Licensed marriage, family, and child counselors.
22 (6) Licensed clinical social workers.
23 (7) Licensed physician assistants.
24 (8) Licensed chiropractors.
25 (9) Licensed acupuncturists.”

26 14. Section 125.3 of the Code provides, in pertinent part, that the Board may
27 request the administrative law judge to direct a licentiate found to have committed a violation or
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

15 15. Section 14124.12 of the Welfare and Institutions Code states:

16 (a) Upon receipt of written notice from the Medical Board of California, the
17 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,

1 that a licensee's license has been placed on probation as a result of a disciplinary action,
2 the department may not reimburse any Medi-Cal claim for the type of surgical service or
3 invasive procedure that gave rise to the probation, including any dental surgery or
4 invasive procedure, that was performed by the licensee on or after the effective date of
5 probation and until the termination of all probationary terms and conditions or until the
6 probationary period has ended, whichever occurs first. This section shall apply except in
7 any case in which the relevant licensing board determines that compelling circumstances
8 warrant the continued reimbursement during the probationary period of any Medi-Cal
9 claim, including any claim for dental services, as so described. In such a case, the
10 department shall continue to reimburse the licensee for all procedures, except for those
11 invasive or surgical procedures for which the licensee was placed on probation.

12 (b) The Medical Board of California, the Osteopathic Medical Board of California, and
13 the Board of Dental Examiners of California, shall work in conjunction with the State
14 Department of Health Services to provide all information that is necessary to implement this
15 section. These boards and the department shall annually report to the Legislature by no later than
16 March 1 that number of licensees of these boards, placed on probation during the immediately
17 preceding calendar year, who are:

18 (1) Not receiving Medi-Cal reimbursement for certain surgical services or
19 invasive procedures, including dental surgeries or invasive procedures, as a result
20 of subdivision (a).

21 (2) Continuing to receive Medi-Cal reimbursement for certain surgical or
22 invasive procedures, including dental surgeries or invasive procedures, as a result
23 of a determination of compelling circumstances made in accordance with
24 subdivision (a).

25 (c) This section shall become inoperative on July 1, 2003, and, as of January 1,
26 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004,
27 deletes or extends the dates on which it becomes inoperative and is repealed.

28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Aiding and Abetting the Unlicensed Practice of Medicine)

3 16. Respondent is subject to disciplinary action under section 2264 of the
4 Code in that his contracting with an unlicensed individual and an unlicensed corporation to
5 provide medical services constitutes aiding and abetting the unlicensed practice of medicine in
6 violation of Code sections 2052 and 2400. The circumstances are as follows:

7 a. Doing business as Rosmar Imaging Center in Glendale,
8 Rosmar Medical Diagnostic, Inc., offers the public an assortment of diagnostic radiology
9 services, including, but not limited to: MRI, CT-Scan, Mammography, Ultrasound, X-ray,
10 Cardiovascular diagnostics; and the review and interpretation of the diagnostic test results. The
11 corporation is owned by Petr Ter Bagdassarian, an individual who has never been licensed to
12 practice as a physician and surgeon or any other health profession within the State of California.

13 b. Bagdassarian, acting through his corporation, engaged Respondent
14 to provide diagnostic medical services to the public at Rosmar Imaging Center as an independent
15 contractor. In 1997, he went to Respondent's private medical office and asked if he would be
16 willing to interpret echocardiograms as a self contractor for a fee. Under the terms of the
17 contractual agreement with Rosmar Medical Diagnostic, Inc., all echocardiograms for Medi-Cal
18 patients done by Rosmar Imaging Center are to be interpreted by Respondent and billed under his
19 Medi-Cal provider number established for Rosmar Imaging Center. Reimbursements from the
20 Department of Health Services payable to Respondent are to be deposited in a joint checking
21 account held by Respondent and Bagdassarian. He is to be compensated monthly from the
22 account for his services at a flat rate per case. Respondent works at the medical facility only on a
23 part-time basis.

24 c. Respondent has never owned or controlled the medical facility. In
25 fact, he maintains no offices at Rosmar Imaging Center or the building itself. He has no set
26 work schedule but only comes to the facility as needed. Respondent plays no role in the hiring or
27 firing of the facility's employees and does not pay their salaries. Except when actually present at
28 the facility, Respondent exercises no control over of the support staff. He exercises no dominion

1 or control over patient records. Respondent also has no influence over the type of equipment or
2 medical supplies used at the facility.

3 d. At all times relevant to the charges brought herein, Respondent has
4 been aware that Bagdassarian is not a licensed physician and surgeon.

5 SECOND CAUSE FOR DISCIPLINE

6 (Knowingly Practicing Medicine With a Business Organization Owned by a Layperson)

7 17. Respondent is subject to disciplinary action under section 2417 of the
8 Code in that he knowingly practices medicine with a lay owned corporation that holds itself out
9 to the public as an organization practicing medicine. The circumstances are as follows:

10 a The facts and circumstances alleged in paragraph 16
11 inclusive are incorporated herein by reference.

12 b. Bagdassarian generates business for Rosmar Medical Diagnostic,
13 Inc., by advertising Rosmar Imaging Center in the yellow pages, in the Glendale and Armenian
14 community newspapers, and by word of mouth. Listings for Rosmar Imaging Center have also
15 been found on the Internet. Rosmar Imaging Center is currently listed both on the Internet and
16 in an Armenian community phone directory under sections entitled "Physicians-Medical Clinics.

17 c. Rosmar Medical Diagnostic, Inc., is owned and operated by
18 Bagdassarian who is not a licensed physician and surgeon.

19 d. At all times relevant to the charges brought herein, Respondent has
20 been aware that Rosmar Medical Diagnostic, Inc., is not owned and operated by a licensed
21 physician and surgeon.

22 THIRD CAUSE FOR DISCIPLINE

23 (Aiding or Abetting the Violation of the Moscone-Knox Professional Corporation Act)

24 18. Respondent is subject to disciplinary action under section 2286 of the
25 Code in that his contracting with an unlicensed individual and an unlicensed corporation to
26 provide medical services constitutes aiding or abetting the unlicensed corporate practice of
27 medicine in violation of the Moscone-Knox Professional Corporation Act. The circumstances
28 are as follows:

1 a. The facts and circumstances alleged in paragraph 16 inclusive are
2 incorporated herein by reference.

3 b. Bagdassarian is listed on the Statement by Domestic Stock
4 Corporation as a director of Rosmar Medical Diagnostic, Inc. He is not a "licensed person,"
5 however, as required by Code section 2408.

6 c. Rosmar Medical Diagnostic, Inc. was incorporated as a general
7 corporation but has been in the business of operating a diagnostic medical facility for the purpose
8 of offering medical services to the public. It does not qualify to practice medicine under the
9 provisions of the Moscone-Knox Professional Corporation Act, however, because one-hundred
10 percent of its shares are held by Bagdassarian who is not a "licensed person" as defined by
11 Corporate Code Section 13401.5. Because Rosmar Medical Diagnostic, Inc., does not meet the
12 requirements of a medical corporation practicing pursuant to the provisions of the Moscone-
13 Knox Professional Corporation Act, it is prohibited from engaging in the practice of medicine
14 either directly or indirectly.

15 d. Respondent is aware that Rosmar Medical Diagnostic, Inc. is
16 owned by a lay individual. He nevertheless contracts with the corporation to provide medical
17 services on its behalf. Respondent also allows the corporation to use his Medi-Cal billing
18 provider number to bill for its medical services.

19 FOURTH CAUSE FOR DISCIPLINE

20 (General Unprofessional Conduct)

21 19. Respondent is subject to disciplinary action under section 2234 of the
22 Code, in that he has engaged in multiple acts of unprofessional conduct. The circumstances are
23 as follows:

24 a. The facts and circumstances stated in above numbered paragraphs 16
25 through 18 are incorporated by reference herein as if fully set forth.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

4 A. Permanently revoking or suspending Physician and Surgeon's Certificate
5 Number A 38617, issued to Garo Z. Pehlevanian, M.D.;

6 B. Revoking, suspending or denying approval of Garo Z. Pehlevanian, M.D.'s
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

8 C. Ordering Garo Z. Pehlevanian, M.D. to pay the Division of Medical
9 Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on
10 probation, the costs of probation monitoring;

11 D. Taking such other and further action as deemed necessary and proper.

12 DATED: November 26, 2001.

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15 
16 RON JOSEPH
17 Executive Director
18 Medical Board of California
Department of Consumer Affairs
State of California
Complainant

19 03573160-LA00 1928
20 2Accusation.wpt 9/28/00
21 MPC 11/02/01
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