

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

**In the Matter of the Accusation and
Petition to Revoke Probation Against:**)
)
)
)
GILBERT EMILE FAUSTINA, M.D.)
)
Physician's and Surgeon's)
Certificate No. C 26359)
)
Respondent.)
_____)

File No. D1-1997-72138

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 July 10, 2006.

IT IS SO ORDERED June 9, 2006.

MEDICAL BOARD OF CALIFORNIA

By: Cesar A. Aristeiguieta, M.D.
Cesar A. Aristeiguieta, M.D., Chair
Panel A
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 RICHARD D. MARINO, State Bar No. 90471
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-8644
5 Facsimile: (213) 897-9395
6 Attorneys for Complainant

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

11 In the Matter of the Accusation and Petition to
Revoke Probation Against:
12
13 GILBERT EMILE FAUSTINA, M.D.
14 30920 Ocean Grove Drive
Rancho Palos Verdes, CA 90275
15
16 Physician and Surgeon's Certificate No.
C 26359
17 Respondent.

Case No. D1-1997-72138
OAH No. 12003020017

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the
20 public interest and the responsibility of the Medical Board of California, the parties hereby agree
21 to the following Stipulated Settlement and Disciplinary Order which will be submitted to the
22 Board for approval and adoption as the final disposition of First Amended Accusation and
23 Petition to Revoke Probation No. D1-1997-72138.

24 **PARTIES**

25 1. David T. Thornton (Complainant) is the Executive Director of the
26 Medical Board of California, Department of Consumer Affairs. He brought this action solely in
27 his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
28 State of California, by Richard D. Marino, Deputy Attorney General.

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. C 26359
3 issued to Respondent Gilbert Emile Faustina, M.D. (Respondent) is suspended for six months..
4 However, the suspension remains stayed and Respondent's current order of probation shall be
5 extended for a period not greater than 18 months from the effective date of this Decision.

6 1. **ETHICS COURSE** Within 30 calendar days of the effective date of this
7 Decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved in
8 advance by the Division or its designee. Failure to successfully complete the course during the
9 period of probation is a violation of probation.

10 An ethics course taken after the acts that gave rise to the charges in the
11 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the
12 Division or its designee, be accepted towards the fulfillment of this condition if the course would
13 have been approved by the Division or its designee had the course been taken after the effective
14 date of this Decision.

15 Respondent shall submit a certification of successful completion to the Division
16 or its designee not later than 15 calendar days after successfully completing the course, or not
17 later than 15 calendar days after the effective date of the Decision, whichever is later. Upon
18 written notice from the Board, probation shall terminate upon the Respondent's successful
19 completion of this term and condition of probation provided all other terms and conditions of
20 probation likewise have been completed and any financial obligations (e.g., restitution and
21 probation costs) have been fulfilled.

22 2. **OBEY ALL LAWS** Respondent shall obey all federal, state and local
23 laws, all rules governing the practice of medicine in California, and remain in full compliance
24 with any court ordered criminal probation, payments and other orders.

25 3. **QUARTERLY DECLARATIONS** Respondent shall submit quarterly
26 declarations under penalty of perjury on forms provided by the Division, stating whether there
27 has been compliance with all the conditions of probation. Respondent shall submit quarterly
28 declarations not later than 10 calendar days after the end of the preceding quarter.

1 4. PROBATION UNIT COMPLIANCE Respondent shall comply with the
2 Division's probation unit. Respondent shall, at all times, keep the Division informed of
3 Respondent's business and residence addresses. Changes of such addresses shall be immediately
4 communicated in writing to the Division or its designee. Under no circumstances shall a post
5 office box serve as an address of record, except as allowed by Business and Professions Code
6 section 2021(b).

7 Respondent shall not engage in the practice of medicine in Respondent's place of
8 residence. Respondent shall maintain a current and renewed California physician's and
9 surgeon's license.

10 Respondent shall immediately inform the Division, or its designee, in writing, of
11 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
12 more than 30 calendar days.

13 5. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent
14 shall be available in person for interviews either at Respondent's place of business or at the
15 probation unit office, with the Division or its designee, upon request at various intervals, and
16 either with or without prior notice throughout the term of probation.

17 6. RESIDING OR PRACTICING OUT-OF-STATE In the event
18 Respondent should leave the State of California to reside or to practice, Respondent shall notify
19 the Division or its designee in writing 30 calendar days prior to the dates of departure and return.
20 Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is
21 not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions
22 Code.

23 All time spent in an intensive training program outside the State of California
24 which has been approved by the Division or its designee shall be considered as time spent in the
25 practice of medicine within the State. A Board-ordered suspension of practice shall not be
26 considered as a period of non-practice. Periods of temporary or permanent residence or practice
27 outside California will not apply to the reduction of the probationary term. Periods of temporary
28 or permanent residence or practice outside California will relieve Respondent of the

1 responsibility to comply with the probationary terms and conditions with the exception of this
2 condition and the following terms and conditions of probation: Obey All Laws and Probation
3 Unit Compliance.

4 Respondent's license shall be automatically canceled if Respondent's periods of
5 temporary or permanent residence or practice outside California total two years. However,
6 Respondent's license shall not be canceled as long as Respondent is residing and practicing
7 medicine in another state of the United States and is on active probation with the medical
8 licensing authority of that state, in which case the two year period shall begin on the date
9 probation is completed or terminated in that state.

10 Any Respondent disciplined under Business and Professions Code sections 141(a)
11 or 2305 (another state discipline) may petition for modification or termination of penalty: 1) if
12 the other state's discipline terms are modified, terminated or reduced; and 2) if at least one year
13 has elapsed from the effective date of the California discipline.

14 7. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

15 In the event Respondent resides in the State of California and for any reason
16 Respondent stops practicing medicine in California, Respondent shall notify the Division or its
17 designee in writing within 30 calendar days prior to the dates of non-practice and return to
18 practice. Any period of non-practice within California, as defined in this condition, will not
19 apply to the reduction of the probationary term and does not relieve Respondent of the
20 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
21 any period of time exceeding 30 calendar days in which Respondent is not engaging in any
22 activities defined in sections 2051 and 2052 of the Business and Professions Code.

23 All time spent in an intensive training program which has been approved by the
24 Division or its designee shall be considered time spent in the practice of medicine. For purposes
25 of this condition, non-practice due to a Board-ordered suspension or in compliance with any
26 other condition of probation, shall not be considered a period of non-practice.

27 Respondent's license shall be automatically canceled if Respondent resides in
28 California and for a total of two years, fails to engage in California in any of the activities

1 described in Business and Professions Code sections 2051 and 2052.

2 8. COMPLETION OF PROBATION Respondent shall comply with all
3 financial obligations (e.g., restitution and probation costs), if any, not later than 120 calendar
4 days prior to the completion of probation. Upon successful completion of probation,
5 Respondent's certificate shall be fully restored.

6 9. VIOLATION OF PROBATION Failure to fully comply with any term or
7 condition of probation is a violation of probation. If Respondent violates probation in any
8 respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke
9 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
10 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
11 the Division shall have continuing jurisdiction until the matter is final, and the period of
12 probation shall be extended until the matter is final.

13 10. LICENSE SURRENDER Following the effective date of this Decision, if
14 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
15 the terms and conditions of probation, Respondent may request the voluntary surrender of
16 Respondent's license. The Division reserves the right to evaluate Respondent's request and to
17 exercise its discretion whether or not to grant the request, or to take any other action deemed
18 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
19 Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the
20 Division or its designee and Respondent shall no longer practice medicine. Respondent will no
21 longer be subject to the terms and conditions of probation and the surrender of Respondent's
22 license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the
23 application shall be treated as a petition for reinstatement of a revoked certificate.

24 11. PROBATION MONITORING COSTS Respondent shall pay the costs
25 associated with probation monitoring each and every year of probation, as designated by the
26 Division. Such costs shall be payable to the Medical Board of California and delivered to the
27 Division or its designee no later than January 31 of each calendar year. Failure to pay costs
28 within 30 calendar days of the due date is a violation of probation, unless the Division agrees in

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

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ACCEPTANCE

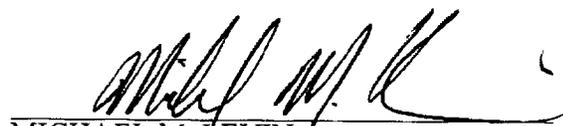
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael M. Levin. I understand the stipulation and the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order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

DATED: 5-17-06


GILBERT EMILE FAUSTINA, M.D.
Respondent

I have read and fully discussed with Respondent Gilbert Emile Faustina, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5-17-06


MICHAEL M. LEVIN
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: May 15, 2006.

BILL LOCKYER, Attorney General
of the State of California



RICHARD D. MARINO
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2002AD0632
50094238.wpd

Exhibit A

First Amended Accusation and Petition to Revoke Probation No. D1-1997-72138

1 BILL LOCKYER, Attorney General
of the State of California
2 ROBERT S. EISMAN, State Bar No. 175336
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6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO December 8, 2004
BY Valerie Moore ANALYST

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

12 In the Matter of the Accusation and Petition
to Revoke Probation Against:

13 GILBERT EMILE FAUSTINA, M.D.
14 30920 Ocean Grove Drive
15 Rancho Palos Verdes, California 90275-6138

16 Physician and Surgeon Certificate No.
C 26359,

17 Respondent.

Case No. D1-1997-72138
consolidated with 19-2001-126005

OAH No. L-2003020017

**FIRST AMENDED ACCUSATION
AND PETITION TO REVOKE
PROBATION**

18
19 Complainant alleges:

20 PARTIES

21 1. David T. Thornton (Complainant) brings this First Amended
22 Accusation solely in his official capacity as the Executive Director of the Medical Board
23 of California (Board). This First Amended Accusation and Petition to Revoke Probation
24 supplants in its entirety the Accusation and Petition to Revoke Probation filed in this
25 matter on June 7, 2002.

26 2. On or about August 6, 1964, the Board issued Physician and Surgeon
27 Certificate Number C 26359 to Gilbert Emile Faustina, M.D. (Respondent).

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1 2000] to furnish any information as it may deem necessary to enable it to compile the
2 directory.

3 "(b) Each licensee shall report to the board each and every change of
4 address within 30 days after each change, giving both the old and new address. If an
5 address reported to the board at the time of application for licensure or subsequently is a
6 post office box, the applicant shall also provide the board with a street address. If another
7 address is the licensee's address of record, he or she may request that the second address
8 not be disclosed to the public.

9 "(c) Each licensee shall report to the board each and every change of name
10 within 30 days after each change, giving both the old and new names."

11 7. Business and Professions Code section 2227 states:

12 "(a) A licensee whose matter has been heard by an administrative law judge
13 of the Medical Quality Hearing Panel as designated in Section 11371 of the Government
14 Code, or whose default has been entered, and who is found guilty, or who has entered into
15 a stipulation for disciplinary action with the division, may, in accordance with the
16 provisions of this chapter:

17 "(1) Have his or her license revoked upon order of the division.

18 "(2) Have his or her right to practice suspended for a period not to exceed
19 one year upon order of the division.

20 "(3) Be placed on probation and be required to pay the costs of probation
21 monitoring upon order of the division.

22 "(4) Be publicly reprimanded by the division.

23 "(5) Have any other action taken in relation to discipline as part of an order
24 of probation, as the division or an administrative law judge may deem proper.

25 "(b) Any matter heard pursuant to subdivision (a), except for warning
26 letters, medical review or advisory conferences, professional competency examinations,
27 continuing education activities, and cost reimbursement associated therewith that are
28 agreed to with the division and successfully completed by the licensee, or other matters

1 made confidential or privileged by existing law, is deemed public, and shall be made
2 available to the public by the board pursuant to Section 803.1."

3 8. Business and Professions Code section 2234 states, in pertinent part:
4 "The Division of Medical Quality shall take action against any licensee who
5 is charged with unprofessional conduct. In addition to other provisions of this article,
6 unprofessional conduct includes, but is not limited to, the following:

7 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
8 abetting the violation of, or conspiring to violate any provision of this chapter [chapter 5,
9 commencing with section 2000].

10

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

13 9. Business and Professions Code section 2261 states:

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

17 10. Business and Professions Code section 2264 states:

18 "The employing, directly or indirectly, the aiding, or the abetting of any
19 unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the
20 practice of medicine or any other mode of treating the sick or afflicted which requires a
21 license to practice constitutes unprofessional conduct."

22 11. Business and Professions Code section 2266 states:

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

26 12. Business and Professions Code section 2271 states: "Any advertising
27 in violation of Section 17500, relating to false or misleading advertising, constitutes
28 unprofessional conduct."

1 13. Business and Professions Code section 2272 states: "Any advertising
2 of the practice of medicine in which the licensee fails to use his or her own name or
3 approved fictitious name constitutes unprofessional conduct."

4 14. Business and Professions Code section 2285 states, in pertinent part:
5 "The use of any fictitious, false, or assumed name, or any name other than
6 his or her own by a licensee either alone, in conjunction with a partnership or group, or as
7 the name of a professional corporation, in any public communication, advertisement, sign,
8 or announcement of his or her practice without a fictitious-name permit obtained pursuant
9 to Section 2415 constitutes unprofessional conduct."

10 15. Business and Professions Code section 2286 states:
11 "It shall constitute unprofessional conduct for any licensee to violate, to
12 attempt to violate, directly or indirectly, to assist in or abet the violation of, or to conspire
13 to violate any provision or term of Article 18 (commencing with Section 2400), of the
14 Moscone-Knox Professional Corporation Act (Part 4 commencing with Section 13400) of
15 Division 3 of Title 1 of the Corporations Code), or of any rules and regulations duly
16 adopted under those laws."

17 16. Business and Professions Code section 2415 states, in pertinent part:
18 "(a) Any physician and surgeon or any doctor of podiatric medicine, as the
19 case may be, who as a sole proprietor, or in a partnership, group, or professional
20 corporation, desires to practice under any name that would otherwise be a violation of
21 Section 2285 may practice under that name if the proprietor, partnership, group, or
22 corporation obtains and maintains in current status a fictitious-name permit issued by the
23 Division of Licensing, or, in the case of doctors of podiatric medicine, the California
24 Board of Podiatric Medicine, under the provisions of this section.

25 "(b) The division or the board shall issue a fictitious-name permit
26 authorizing the holder thereof to use the name specified in the permit in connection with
27 his, her, or its practice if the division or the board finds to its satisfaction that:

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1 "(1) The applicant or applicants or shareholders of the professional
2 corporation hold valid and current licenses as physicians and surgeons or doctors of
3 podiatric medicine, as the case may be.

4 "(2) The professional practice of the applicant or applicants is wholly
5 owned and entirely controlled by the applicant or applicants.

6 "(3) The name under which the applicant or applicants propose to practice
7 is not deceptive, misleading, or confusing, and contains one of the following
8 designations: 'medical group,' 'medical clinic,' 'medical corporation,' 'medical associates,'
9 'medical center,' or 'medical office.'"

10 17. Business and Professions Code section 17500 states, in pertinent
11 part:

12 "It is unlawful for any person, firm, corporation or association, or any
13 employee thereof with intent directly or indirectly . . . to perform services, professional or
14 otherwise, or anything of any nature whatsoever or to induce the public to enter into any
15 obligation relating thereto, to make or disseminate or cause to be made or disseminated
16 before the public in this state, or to make or disseminate or cause to be made or
17 disseminated from this state before the public in any state, . . . any statement, concerning .
18 . . those services, professional or otherwise, . . . which is untrue or misleading, and which
19 is known, or which by the exercise of reasonable care should be known, to be untrue or
20 misleading"

21 18. California Code of Regulations, title 16, section 1350.2, subdivision
22 (c) states:

23 "No licensed person shall render professional services using a fictitious,
24 false or assumed name or any name other than his or her own unless and until a fictitious
25 name permit has been issued by the division."

26 19. California Code of Regulations, title 16, section 1399.545,
27 subdivision (c) states:

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1 "A supervising physician shall observe or review evidence of the physician
2 assistant's performance of all tasks and procedures to be delegated to the physician
3 assistant until assured of competency."

4 MEDI-CAL REIMBURSEMENT

5 20. Welfare and Institutions Code section 14124.12, subdivision (a),
6 states:

7 "Upon receipt of written notice from the Medical Board of California, the
8 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
9 that a licensee's license has been placed on probation as a result of a disciplinary action,
10 the department may not reimburse any Medi-Cal claim for the type of surgical service or
11 invasive procedure that gave rise to the probation, including any dental surgery or
12 invasive procedure, that was performed by the licensee on or after the effective date of
13 probation and until the termination of all probationary terms and conditions or until the
14 probationary period has ended, whichever occurs first. This section shall apply except in
15 any case in which the relevant licensing board determines that compelling circumstances
16 warrant the continued reimbursement during the probationary period of any Medi-Cal
17 claim, including any claim for dental services, as so described. In such a case, the
18 department shall continue to reimburse the licensee for all procedures, except for those
19 invasive or surgical procedures for which the licensee was placed on probation."

20 COST RECOVERY

21 21. Business and Professions Code section 125.3, subdivision (a), states,
22 in pertinent part:

23 "Except as otherwise provided by law, in any order issued in resolution of a
24 disciplinary proceeding before any board within the department . . . the board may request
25 the administrative law judge to direct a licentiate found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Aiding and Abetting Unlicensed Practice of Medicine)

3 22. Respondent is subject to disciplinary action under Business and
4 Professions Code section 2234, subdivision (a), in conjunction with sections 2264, 2286,
5 and 2415, as well as California Code of Regulations, title 16, section 1350.2, subdivision
6 (c), in that he violated or attempted to violate, directly and indirectly, and assisted or
7 abetted the unlicensed practice of medicine, in violation of the Medical Practice Act. The
8 circumstances are as follows:

9 Inglewood Urgent Care Medical Clinic (IUCMC)

10 23. A physician assistant, Anne Robinson, owned, operated, and
11 controlled the Inglewood Urgent Care Medical Clinic (IUCMC), located at 210 South
12 Locust Street, Inglewood, California. The business license issued by the City of
13 Inglewood showed Robinson as the owner. Employees at the clinic identified Robinson
14 as the owner and the person who paid the salaries at the clinic.

15 24. On or about July 1, 2001, Respondent commenced working part-time
16 at IUCMC. He was hired by Robinson to review her patient files. Robinson claimed that
17 Dr. Engeberg previously supervised her work as a physician assistant, but he retired from
18 practice effective June 30, 2001. Respondent never met Dr. Engeberg and had no
19 employment contract at the clinic. Robinson paid Respondent a salary; he received a
20 check written by Robinson.

21 25. Respondent did not own or control the clinic. He never invested
22 money in the clinic. Respondent admitted that he tried to negotiate a contract to obtain
23 ownership of the clinic but was unsuccessful.

24 26. In an Application to the Medical Board of California for a Fictitious
25 Name Permit, dated July 1, 2001, Respondent signed, under penalty of perjury, that he
26 was the individual (sole proprietor) who "wholly owned and entirely controlled" IUCMC.
27 It was noted on the first page of that Application that Respondent "want[s] to keep same
28 name as prev. M.D. retiring, see cancellation enclosed." The enclosed "Application for

1 Cancellation of a Fictitious Name Permit" indicated the reason for cancellation was
2 "Change in Ownership" effective June 30, 2001. Both forms indicated Anne Robinson,
3 Physician Assistant, was the Administrator to contact concerning the permit. In a
4 separately dated letter to Jeff Dickson, an analyst that handles the Board's fictitious name
5 permits, Ms. Robinson indicated Dr. William Engeberg retired effective 6/30/2001 and
6 "[o]ur new physician Dr. Gilbert Faustina will be the new Medical Director."

7 27. Two days before commencing work at IUCMC, Respondent signed a
8 "Delegation of Services Agreement Between Supervising Physician and Physician
9 Assistant (Title 16, CCR, Section 1399.540)." The Delegation authorized Robinson to
10 perform a wide variety of medical tasks and therapeutic procedures on her own, without
11 Respondent's assistance and in his absence.

12 28. On or about July 11, 2001, when Respondent was interviewed at the
13 Medical Board office, he failed to inform his probation monitor that he was working at
14 IUCMC, that he was supervising a physician assistant part time at that location, or that he
15 owned the clinic.

16 29. In a letter from the Medical Board, dated July 17, 2001, Respondent
17 was advised that his Fictitious Name Permit Application, received on July 12, 2001, had
18 been approved. He was further advised that he "was the legal and responsible party for
19 maintaining the permit and for all practice performed under the permit. If you dissolve
20 your practice or there is any change in owner(s), you must immediately notify the
21 Division of Licensing in writing at the above address. Such changes necessitate that the
22 permit be cancelled." Respondent was repeatedly advised, orally and in writing, by
23 Medical Board investigators, that he must cancel the Fictitious Name Permit if and when
24 he stopped working at, or being associated with, IUCMC.

25 30. Respondent did not cancel the Fictitious Name Permit at IUCMC
26 until December 6, 2001.

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1 **First Family Medical Clinic (FFMC)**

2 31. In or about June 2001, Respondent answered a classified
3 employment advertisement for a medical clinic entitled First Family Medical Clinic
4 (FFMC), located at 12914 Sherman Way, North Hollywood, California. He spoke to an
5 unknown male representative of FFMC, who was not a physician, and was immediately
6 offered a position as the clinic's full-time physician. When he started, Respondent had no
7 written contract with FFMC, he paid no money to obtain the position, and he brought no
8 patient files with him to the clinic.

9 32. On or about July 24, 2001, Respondent filed for and obtained a
10 business license from the City of Los Angeles to do business as "1st Family Medical
11 Center," located at 12914 Sherman Way. Respondent never filed an Application with the
12 Medical Board for a Fictitious Name Permit to use the name "First [or 1st] Family
13 Medical Clinic" while working at this location, although he was repeatedly advised to do
14 so, orally and in writing, by Medical Board investigators. Respondent used business
15 cards with the name "1st Family Medical Center " printed above his name.

16 33. On or about September 14, 2001, the Medical Board probation
17 monitor for Respondent received an incomplete "Quarterly Declaration Form" which
18 listed FFMC as an "additional location" in the Employment Information section, with the
19 notation at the bottom of the form "Notification of Change of Business Address."
20 Respondent purportedly signed the form on August 13, 2001.

21 34. On or about September 21, 2001, Medical Board investigators
22 Marquez and Chavez conducted a probationary interview with Respondent. At the
23 interview, and in a confirming letter, Respondent admitted that on or about July 24, 2001,
24 he took over a practice named FFMC; he provided a business card that used that
25 designation. On or about August 8, 2001, Respondent met with various representatives
26 about obtaining a sublease for the clinic, but he still did not have one at the time of the
27 probation interview.

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1 follows:

2 38. The facts and circumstances set forth above in paragraphs 22
3 through 36, inclusive, are incorporated here.

4 39. In addition, during a probationary interview at the Medical Board
5 office on July 11, 2001, Respondent provided a Quarterly Report for the period between
6 April 1, 2001, and June 30, 2001. He admitted that he was working part-time as a
7 surgeon at 7667 Winnetka Avenue, in Canoga Park. Respondent never informed the
8 Board when he started working at that location, nor did he disclose in the July 11
9 interview or on the three remaining Quarterly reports for 2001 (i.e., the reports covering
10 the periods 4/1 to 6/30/2001, 7/1 to 9/30/2001, and 10/1 to 12/31/2001) that the clinic
11 operated under the fictitious name of "Valley Medical Clinic."

12 40. "Valley Medical Clinic" does not have a Fictitious Business Permit
13 registered with the Medical Board or Department of Health Services, nor is it an
14 accredited outpatient surgery center. Respondent used a business card with the name
15 "Valley Medical Clinic" printed on it.

16 THIRD CAUSE FOR DISCIPLINE

17 (Dishonest Acts and False and Misleading Information)

18 41. Respondent is subject to disciplinary action under Business and
19 Professions Code section 2234, subdivisions (a) and (e), in conjunction with sections
20 2261, and 2271, in that he committed dishonest acts and provided false and misleading
21 information about his medical practice. The circumstances are as follows:

22 42. The facts and circumstances set forth above in paragraphs 22
23 through 40, inclusive, are incorporated here.

24 43. Respondent falsely stated, under penalty of perjury, that he was the
25 individual who "wholly owned and entirely controlled" IUCMC.

26 44. Respondent maintained this false and misleading Fictitious Business
27 Permit in his name at IUCMC from July 1, 2001, until December 6, 2001, even though he
28 said he stopped working there after a short period of time.

1 45. Respondent signed a Delegation of Services two days before
2 commencing work, part-time, at IUCMC. Respondent did not have the opportunity to
3 observe, review evidence, or assure himself of Robinson's competency before Respondent
4 signed this document that authorized her to perform a wide variety of medical tasks and
5 procedures without his assistance and in his absence.

6 46. Respondent withheld information from the Medical Board when he
7 was interviewed on July 11, 2001, by his probation monitors and he failed to disclose that
8 he was practicing medicine at both IUCMC and FFMC at that time. Respondent failed to
9 disclose to the Medical Board or to his probation monitors that he was practicing
10 medicine at FFMC until September 2001, when Respondent was interviewed by Medical
11 Board investigators, and the Board received an incomplete Quarterly Declaration with
12 this change in employment.

13 47. Respondent filed a false and misleading Fictitious Business Name
14 Statement with the City of Los Angeles on or about July 24, 2001, when he held himself
15 out as the individual who owed and/or was responsible for FFMC, even though
16 Respondent did not own or control that business, and he had not obtained a Fictitious
17 Name Permit from the Medical Board to lawfully practice under that name.

18 48. Respondent filed a false and misleading Quarterly Report for the
19 period between July 1, 2001, to September 30, 2001, which he signed on September 30,
20 2001, because Respondent failed to disclose that he worked at IUCMC during that time,
21 and still had a Fictitious Business Name Permit for that location.

22 49. While Respondent did disclose during the July 11, 2001, interview
23 and on the Quarterly Reports for the 2nd, 3rd, and 4th quarters in 2001, that he was
24 working as a surgeon in Canoga Park, he failed to disclose the business's name was
25 "Valley Medical Clinic." This omission was deceptive and meant Respondent had not
26 "complied with each and every term of probation," as he had indicated on his reports
27 under penalty of perjury, because the facility uses a fictitious name that has not been
28 granted a permit by either the Medical Board or Department of Health Services, nor is the

1 location a certified outpatient surgery center.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Failure to Maintain Medical Records)

4 50. Respondent is subject to disciplinary action under Business and
5 Professions Code section 2234, subdivision (a), in conjunction with section 2266, in that
6 he failed to maintain adequate and accurate records pertaining to the provision of services
7 rendered to patients at FFMC. The circumstances are as follows:

8 51. The facts and circumstances set forth above in paragraphs 31
9 through 36, inclusive, are incorporated here.

10 **PETITION TO REVOKE PROBATION**

11 FIRST CAUSE TO REVOKE PROBATION

12 (Obey All Laws)

13 52. At all times after the effective date of Respondent's probation,
14 Condition 1 stated:

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

18 53. Respondent's probation is subject to revocation because he failed to
19 comply with Probation Condition 1, referenced above. The facts and circumstances
20 regarding his violation are as follows:

21 a. Respondent violated the laws and regulations prohibiting aiding and
22 abetting the unlicensed practice of medicine. The facts and circumstances regarding this
23 violation are set forth in paragraphs 22 through 36, found in the First Cause for
24 Discipline, and incorporated here by reference.

25 b. Respondent violated the laws and regulations prohibiting the use of
26 an assumed or fictitious name when practicing medicine. The facts and circumstances
27 regarding this violation are set forth in paragraphs 22 through 40, found in the Second
28 Cause for Discipline, and incorporated here by reference.

1 c. Respondent violated the laws prohibiting the commission of
2 dishonest and corrupt acts and providing false and misleading information. The facts and
3 circumstances regarding this violation are set forth in paragraphs 22 through 49, found in
4 the Third Cause for Discipline, and incorporated here by reference.

5 d. Respondent violated the laws requiring a physician to maintain
6 adequate and accurate records pertaining to the provision of services rendered to patients.
7 The facts and circumstances regarding this violation are set forth in paragraphs 31 to 36
8 and 50 to 51, inclusive, found in the Fourth Cause for Discipline, and incorporated here
9 by reference.

10 SECOND CAUSE TO REVOKE PROBATION

11 (Quarterly Reports and Probation Surveillance Program Compliance)

12 54. At all times after the effective date of Respondent's probation,
13 Condition 2 stated:

14 "Respondent shall submit quarterly declarations under penalty of perjury on
15 forms provided by the Division, stating whether there has been compliance with all the
16 conditions of probation."

17 55. At all times after the effective date of Respondent's probation,
18 Condition 3 stated:

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

25 56. Respondent's probation is subject to revocation because he failed to
26 comply with Probation Conditions 2 and 3, referenced above. The facts and
27 circumstances regarding this violation are set forth in paragraphs 22 though 49, which are
28 incorporated here, as follows:

1 a. The "Quarterly Declaration Form" that Respondent must sign under
2 penalty of perjury every three months requests "Employment Information," including the
3 "Business name" and address of every location where Respondent worked. Additional
4 places of employment / information are to be listed on separate sheets attached to the
5 Quarterly report, if necessary.

6 b. Respondent repeatedly failed to immediately communicate in writing
7 to the Division, or to report on the Quarterly Declaration form, or to his probation
8 monitors during probation compliance interviews, the business names and addresses of
9 the locations where he worked during probation, as follows:

10 (1) Respondent failed to disclose he was working at IUCMC and at
11 FFMC when he was interviewed at the Medical Board by his probation monitors on July
12 11, 2001.

13 (2) While Respondent did disclose during the July 11, 2001, interview
14 and on the Quarterly Reports for the 2nd, 3rd, and 4th quarters in 2001, that he was
15 working as a surgeon in Canoga Park, he failed to disclose the business's name was
16 "Valley Medical Clinic." This omission was deceptive and meant Respondent had not
17 "complied with each and every term of probation," as he had indicated on his reports,
18 because the facility uses a fictitious name that has not been granted a permit by the
19 Medical Board or Department of Health Services, nor is the location a certified outpatient
20 surgery center.

21 (3) Although Respondent filed for and obtained a business license from
22 the City of Los Angeles on July 24, 2001, to do business as "1st Family Medical Center,"
23 located at 12914 Sherman Way, North Hollywood, Respondent failed to immediately
24 inform the Division or his probation monitors about this business name or change in
25 employment until September 2001, when the Medical Board probation monitor received
26 an incomplete Quarterly report on September 14, listing this location, and he discussed
27 the situation during the September 21, 2001, probation compliance interview.

28 ///

1 (4) On other occasions during probation, Respondent changed the
2 address and name of the business where he was working without immediately informing
3 the Division, in writing, of this change. Instead, Respondent reported some of these
4 changes on his Quarterly Declaration Forms, which often were submitted late. For
5 example, the Quarterly Declarations for the 3rd quarter and 4th quarter in 2000 (i.e.,
6 covering the periods 5/4 to 6/30/2000, and 7/1 to 9/30/2000), which were not received
7 until on or about November 6, 2000, indicated three employment locations that had not
8 been previously disclosed. Respondent does not report when he commenced working, or
9 stopped working, at any of the locations given in his reports, even though changes in
10 addresses are to be immediately communicated, in writing, to the Division.

11 THIRD CAUSE TO REVOKE PROBATION

12 (Probation Monitoring Costs)

13 57. At all times after the effective date of Respondent's probation,
14 Condition 10 stated:

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

20 58. Respondent's probation is subject to revocation because he failed to
21 comply with Probation Conditions 10, referenced above. The circumstances are as
22 follows:

23 a. Respondent was required to pay his probation monitoring costs for
24 calendar year 2003, in the amount of \$2,874.00, not later than January 31, 2004.

25 b. Although Respondent's probation monitor notified Respondent on
26 multiple occasions that Respondent needed to comply with this condition of probation, as
27 of November 24, 2004, Respondent still had not paid any amount toward satisfaction of
28 the probation monitoring costs for calendar year 2003.

1 PRAYER

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

5 1. Revoking or suspending Physician and Surgeon Certificate Number
6 C 26359, issued to Gilbert Emile Faustina, M.D.;

7 2. Revoking the probation that was granted by the Medical Board of
8 California in Case No. 16-1997-72138 and imposing the disciplinary order that was
9 stayed;

10 2. Revoking, suspending, or denying approval of Gilbert Emile
11 Faustina, M.D.'s authority to supervise physician's assistants, pursuant to Business and
12 Professions Code section 3527;

13 3. Ordering Gilbert Emile Faustina, M.D. to pay the Division of
14 Medical Quality the reasonable costs of the investigation and enforcement of this case,
15 and, if placed on probation, the costs of probation monitoring;

16 4. Taking such other and further action as deemed necessary and
17 proper.

18 DATED: December 8, 2004

19
20 
21 DAVID T. THORNTON
22 Executive Director
23 Medical Board of California
24 Department of Consumer Affairs
25 State of California

26
27 Complainant
28

EXHIBIT A

DECISION

MEDICAL BOARD CASE NO. 16-1997-72138

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 16-97-72138
) OAH No. L1998080062
GILBERT E. FAUSTINA, M.D.)
P.O. Box 235)
Hawthorne, CA 90251)
)
Physician's and Surgeon's)
Certificate No. C 26359)
)
Respondent.)
_____)

DECISION

The attached proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Medical Board of California as its Decision of the in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on May 4, 2000.

IT IS SO ORDERED this 4th day of April, 2000.

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Anabel Anderson Imbert
Anabel Anderson Imbert, M.D.
Panel A Chair
Division of Medical Quality

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

| | | |
|---------------------------------|---|---------------------------|
| In the Matter of the Accusation |) | |
| Against: |) | |
| |) | Case No. 16-97-72138 |
| GILBERT E. FAUSTINA, M.D. |) | |
| P.O. Box 235 |) | OAH Case No. L-1998080062 |
| Hawthorne, CA 90251 |) | |
| |) | |
| Physician's and Surgeon's |) | |
| Certificate number C 26359 |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

PROPOSED DECISION

This matter came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on February 29 and March 2, 2000.

Carlos Ramirez, Deputy Attorney General, represented Ron Joseph ("complainant").

Respondent appeared *in propria persona* on February 29, 2000, and by Walter Klein, Attorney at Law, on March 2, 2000.

Complainant seeks to discipline respondent's certificate on the basis of discipline imposed by the North Dakota State Board of Medical Examiners (North Dakota Board). While respondent does not dispute the fact that his license was disciplined in North Dakota, he argues that there is no reason to discipline his certificate in this State.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in his official capacity as Executive Director, Medical Board of California (Board).

2. On August 6, 1964, the Board issued Physician's and Surgeon's Certificate number C 26359 to respondent. The certificate has been in effect at all times material. It has not been previously disciplined.

3. Respondent graduated from Meharry Medical College in Nashville, Tennessee in 1963. He completed a general rotating internship at the Los Angeles General Hospital in 1964 and a residency in general and thoracic surgery at the Los Angeles County/Harbor UCLA Medical Center in 1968.

4. Although the initial date of licensure in North Dakota was not established at the hearing, respondent's license was in force and effect at all times material through December 1997.

5. On September 28, 1995, the Commission on Medical Competency of the State of North Dakota filed a complaint charging that respondent "[h]as engaged in a continued pattern of inappropriate care in violation of Sec. 43-17-31(21), NDCC; to wit: the Respondent has performed surgical procedures on the basis of inaccurate diagnoses, and has failed to transfer patients to another health care facility in a timely manner, as required by the best interest of the patients."¹

6. a. On November 22, 1996, the North Dakota Board approved a Stipulation previously signed by respondent resolving the then-pending charges.

b. The Stipulation contained the following statements: "... Respondent has denied the allegations of the Complaint..."; "[b]ecause of the uncertainty and costs of litigation the parties desire to resolve this matter pursuant to the terms of this agreement"; and "... it is understood that there is no agreement by either party with the other party's legal or factual position...."

c. Under the terms of the Stipulation, respondent accepted a two-year probation and terms and conditions that included assessment by an independent physician, maintaining the North Dakota Board informed of residence and business addresses, and reimbursement of fees and expenses in the amount of \$10,000.

7. The grounds upon which the North Dakota Board imposed discipline would have been grounds for discipline in California.

8. On October 22, 1997, the Commission on Medical Competency filed another Complaint against respondent, alleging failure to comply with the Stipulation by failing to inform the North Dakota Board of his residence or business addresses and by failing to make reimbursement payments.

¹ The pleadings contain no further detail regarding the alleged violations. Respondent denied the allegations at the hearing and presented evidence that he had obtained expert testimony supporting his position.

9. On March 12, 1999, the North Dakota Board issued a decision finding respondent in violation of the terms and conditions of the Stipulation, as charged in the October 1997 Complaint. However, the North Dakota Board also found that respondent had made the necessary payments and provided the required information on March 8, 9, and 10, 1999. The North Dakota Board did not order any further discipline but it did order respondent to start the application process anew if he ever decided to renew his license.

10. Respondent has not practiced medicine in North Dakota since the Spring of 1995. He has been employed for over three years as a Physician/Specialist at the King/Drew Medical Center in Los Angeles, California. He is responsible for training residents and for performing certain vascular surgical procedures.

11. He regularly attends continuing medical education seminars and conferences.

12. a. The Board has incurred actual costs of investigation and enforcement, in the form of Attorney General Charges, in the amount of \$8,608.

b. Absent any objection or contrary evidence by respondent, the actual costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline respondent's certificate pursuant to Business and Professions Code sections 2234 and 2305 in that the North Dakota Board disciplined respondent's license to practice medicine in that state, by reason of factual finding numbers 4, 5, 6, and 7.

2. Respondent argues that discipline is not warranted because actual misconduct on his part has never been established and because discipline will not serve any public protection need.

In Marek v. Board of Podiatric Medicine, 16 Cal.App.4th 1089 (1993), the Court upheld a disciplinary order in the face of arguments like those raised by respondent. In that case, two podiatrists had entered into a consent decree in Nevada in which they agreed to have their licenses disciplined without actually admitting any misconduct. The Court held that neither specific admissions nor proof of actual misconduct were necessary for the Board to impose discipline under Business and Professions Code section 2305. It noted that cause for discipline under the section lies not in the alleged underlying malfeasance but in the fact that discipline has been imposed by another state.

The Court also rejected respondents' contentions that disciplining their certificates would serve no legitimate public interest in light of their professional competence in the years following the consent decree. It found that the existence of the disciplinary order was sufficient reason for California to protect its citizens and to ensure high quality medical care.

In brief, respondent's arguments are unpersuasive in light of this compelling and controlling authority.

3. Cause exists to award the reasonable costs of investigation and enforcement, in the amount of \$8,608, pursuant to Business and Professions Code section 125.3, by reason of factual finding numbers 4, 5, 6, and 7, and legal conclusion numbers 1 and 2.

4. All evidence offered in mitigation and rehabilitation has been considered. Evidence in aggravation, as set forth in factual finding numbers 8 and 9, has also been considered. The order that follows is necessary for the protection of the public.

ORDER

Certificate No. C 26359 issued to respondent Gilbert E. Faustina, M.D., is suspended for six (6) months. However, the suspension is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions.

Within 15 days after the effective date of this decision the respondent shall provide the Division, or its designee, proof of service that respondent has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent or at any other facility where respondent engages in the practice of medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to respondent.

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. Completion of Probation.

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

7. 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.

8. Cost Recovery.

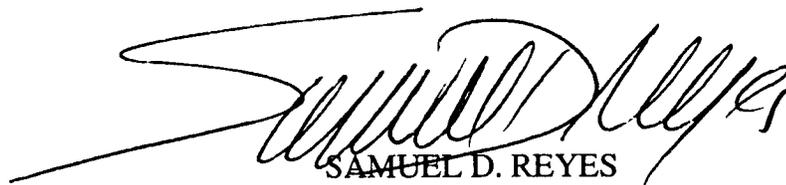
The respondent is hereby ordered to reimburse the Division the amount of \$8,608 within 90 days from the effective date of this decision for its investigative costs. Failure to reimburse the Division's cost of its investigation shall constitute a violation of the probation order, unless the Division 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.

9. 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.

10. 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: 3/13/00


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings