

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

In the Matter of the Accusation)
Against:)
)
DAVID K. ROSENTHAL, M.D.)
)
Physician's & Surgeon's)
Certificate # A-43832)
)
_____ Respondent)

File No: 02-2000-115719

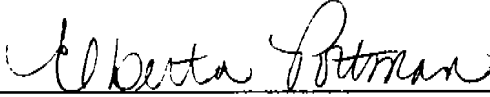
**ORDER CORRECTING CLERICAL ERROR IN
"EFFECTIVE DATE" PORTION OF DECISION**

On its own motion, the Division of Medical Quality (hereafter "division") finds that there is a clerical error in the "effective date" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the effective date will conform to the division's intention.

IT IS HEREBY ORDERED that the effective date contained in the Decision in the above-entitled matter be and is hereby amended and corrected nunc pro tunc as of the date of entry of the Decision to read as follows:

"This Decision shall become effective at 5:00 p.m. on **September 2, 2002.**

IT IS SO ORDERED this 5th day of August, 2002.



Elberta Portman, Staff Services Manager I
Division of Medical Quality
Medical Board of California

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

**In the Matter of the Third Amended
Accusation Against:**

Case No: 02-2000-115719

DAVID K. ROSENTHAL, M.D.

**Physician's and Surgeon's
Certificate #A-43832**

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby accepted and adopted as the Decision and Order by 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 August 8, 2002.

IT IS SO ORDERED August 1, 2002

MEDICAL BOARD OF CALIFORNIA



Ronald Wender, M.D.

Chair, Panel B

Division of Medical Quality

1 BILL LOCKYER, Attorney General
 of the State of California
 2 GAIL M. HEPPELL
 Supervising Deputy Attorney General
 3 MARA FAUST, State Bar No. 111729
 Deputy Attorney General
 4 California Department of Justice
 1300 I Street, Suite 125
 5 P.O. Box 944255
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 6 Telephone: (916) 324-5358
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7 Attorneys for Complainant

8
 9 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA.
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Third Amended Accusation
 11 Against:

Case No. 02-2000-115719

12 DAVID K. ROSENTHAL, M.D.
 529 38th Street
 14 Sacramento, CA 95816

OAH No.

**STIPULATED SURRENDER OF
 LICENSE AND ORDER**

15 Physician and Surgeon's Certificate No. A43832

16 Respondent.

17
 18 IT IS HEREBY STIPULATED AND AGREED by and between that parties to
 19 the above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant Ron Joseph is the Executive Director of the Medical Board
 22 of California. He brought this action solely in his official capacity and is represented in this
 23 matter by Bill Lockyer, Attorney General of the State of California, by Mara Faust, Deputy
 24 Attorney General.

25 2. David K. Rosenthal, M.D. (Respondent) is represented in this proceeding
 26 by attorney Robert J. Sullivan, whose address is 915 L Street, Suite 1000, Sacramento, CA
 27 95814-3701.

28 3. On or about July 20, 1987, the Medical Board of California issued

1 Physician and Surgeon's Certificate Number A43832 to David K Rosenthal, M.D. (Respondent).
2 The certificate was in full force and effect at all times relevant to the charges brought herein and
3 will expire on July 31, 2003, unless renewed.

4 JURISDICTION

5 4. The Third Amended Accusation No. 02-2000-115719 was filed before the
6 Division of Medical Quality (Division) for the Medical Board of California, Department of
7 Consumer Affairs, and is currently pending against Respondent. The Third Amended
8 Accusation and all other statutorily required documents were properly served on Respondent on
9 January 17, 2002. Respondent timely filed a Notice of Defense contesting the Third Amended
10 Accusation. A copy of Third Amended Accusation No. 02-2000-115719 is attached as exhibit A
11 and incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, fully discussed with counsel, and
14 understands the charges and allegations in Third Amended Accusation No. 02-2000-115719.
15 Respondent also has carefully read, fully discussed with counsel, and understands the effects of
16 this Stipulated Surrender of License and Order.

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

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

26 8. The admissions made by respondent herein are for the purpose of this
27 proceeding and any other proceedings in which the Division of Medical Quality, Medical Board
28 of California, or other professional licensing agency is involved, and shall not be admissible in

1 any other criminal or civil proceedings

2 CULPABILITY

3 9. Respondent admits the truth of the first cause for discipline in the Third
4 Amended Accusation No. 02-2000-115719 only as set forth herein. On or about February 9,
5 2001, in case number 00F10001, before the Sacramento County Superior Court, in Sacramento,
6 California, respondent entered a plea of nolo contendere to both a violation of Business and
7 Professions Code section 729 (sexual exploitation), a misdemeanor, and Penal Code section
8 243.4 (sexual battery) under *People v West*, a misdemeanor. Further respondent admits that he
9 was sentenced on March 13, 2001, to three years of probation, one hundred and eighty (180) days
10 in jail, and was ordered not to treat females or minor children during the period of probation, or if
11 the Medical Board of California acts in the interim and determines differently. Respondent
12 further admits that the facts and circumstances surrounding this offense are that on
13 approximately August 1, 2000, respondent resumed treatment of a 39-year-old female patient
14 (after a break of several years), in part because the patient stated that she was a victim of a
15 sexual assault by her landlord. Respondent admits that he had sexual contact with this female
16 patient through one act of sexual intercourse and one act of oral copulation on or about and
17 between October 10, 2000 and November 6, 2000. Respondent further agrees that cause exists
18 for discipline pursuant to Business and Professions Code sections 2236 and 726 and hereby
19 surrenders his Physician and Surgeon's Certificate to the Board for formal acceptance.

20 10. Respondent understands that by signing this stipulation he enables the
21 Division to issue its order accepting the surrender of his Physician and Surgeon's Certificate
22 without further process.

23 CONTINGENCY

24 11. This stipulation shall be subject to approval by the Division of Medical
25 Quality. Respondent understands and agrees that counsel for Complainant and staff of the
26 Medical Board of California may communicate directly with the Division regarding this
27 stipulation and settlement, without notice to or participation by Respondent or his counsel. By
28 signing the stipulation, Respondent understands and agrees that he may not withdraw his

1 agreement or seek to rescind the stipulation prior to the time the Division considers and acts
2 upon it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated
3 Surrender of License and Order shall be of no force or effect, except for this paragraph, it shall be
4 inadmissible in any legal action between the parties, and the Division shall not be disqualified
5 from further action by having considered this matter.

6 12. The parties understand and agree that facsimile copies of this Stipulated
7 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
8 and effect as the originals.

9 13. In consideration of the foregoing admissions and stipulations, the parties
10 agree that the Division may, without further notice or formal proceeding, issue and enter the
11 following Order, to be effective no less than thirty (30) days following said order:

12 **ORDER**

13 IT IS HEREBY ORDERED that Physician and Surgeon License No. A43832 ,
14 issued to Respondent David K. Rosenthal is surrendered and accepted by the Division of Medical
15 Quality.

16 1. Respondent shall lose all rights and privileges as a physician and surgeon
17 in California as of the effective date of the Division's Decision and Order.

18 2. Respondent shall cause to be delivered to the Division both his license and
19 wallet certificate on or before the effective date of the Decision and Order.

20 3. Respondent fully understands and agrees that if he ever files an application
21 for licensure or a petition for reinstatement in the State of California, the Division shall treat it as
22 a petition for reinstatement. Respondent may file a petition for reinstatement two years from the
23 effective date of the Decision and Order subject to the provisions regarding payment of costs.
24 Respondent must comply with all the laws, regulations and procedures for reinstatement of a
25 revoked license in effect at the time the petition is filed.

26 4. Respondent shall pay the Division its costs of investigation and
27 enforcement in the amount of \$13,000.00 within two years from the effective date of the
28 Decision and Order and prior to the filing of any petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Robert J. Sullivan. I understand the stipulation and the effect it will have on my Physician and Surgeon's Certificate No. A43832. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Division of Medical Quality, Medical Board of California.

DATED: 7/9/02



DAVID K. ROSENTHAL
Respondent

I have read and fully discussed with Respondent, David K. Rosenthal, the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form.

DATED: July 9, 2002



ROBERT J. SULLIVAN
Attorney for Respondent


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1 **ENDORSEMENT**

2 The foregoing Stipulated Surrender of License and Order is hereby respectfully
3 submitted for consideration by the Division of Medical Quality, Medical Board of California of
4 the Department of Consumer Affairs.

5
6 DATED: July 9, 2002
7

8 **BILL LOCKYER, Attorney General**
9 **of the State of California**

10 
11 MARA FAUST
12 Deputy Attorney General
13 Attorneys for Complainant

14 DOJ Docket Number: 03573160-SA010171
15 Stipulation for surrender 10/12/01
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28

Exhibit A

Third Amended Accusation No. 02-2000-115719

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, Supervising
Deputy Attorney General
3 MARA FAUST, State Bar No. 111729
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
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Facsimile: (916) 327-2247
7
8 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *January 17 20 02*
BY: M. Faust ANALYST

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

12 In the Matter of the Second Amended Accusation
Against:

Case No. 02-2000-115719

13 **DAVID K. ROSENTHAL, M.D.**
14 529 38th Street
Sacramento, CA 95816
15
16 Physician and Surgeon's Certificate No. A43832,
Respondent.

THIRD AMENDED ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about July 20, 1987, the Medical Board of California issued Physician and
24 Surgeon's Certificate Number A43832 to David K. Rosenthal, M.D. (hereinafter the "respondent").
25 The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on July 31, 2003, unless renewed.

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1 **JURISDICTION**

2 3. This Third Amended Accusation is brought before the Division of Medical Quality,
3 Medical Board of California ("Division"), under the authority of the following sections of the
4 Business and Professions Code ("Code").

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

9 5. Section 2234 of the Code states that:

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

14 (a) Violating or attempting to violate any provisions of this chapter;

15 (b) Gross negligence;

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

19 6. Section 125.3 of the Code states that:

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

27 (b) In the case of a disciplined licentiate that is a corporation or a
28 partnership, the order may be made against the licensed corporate
entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of
costs where actual costs are not available, signed by the entity
bringing the proceeding or its designated representative shall be
prima facie evidence of reasonable costs of investigation and
prosecution of the case. The costs shall include the amount of
investigative and enforcement costs up to the date of the hearing,
including, but not limited to, charges imposed by the Attorney
General.

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1 (d) The administrative law judge shall make a proposed finding of
2 the amount of reasonable costs of investigation and prosecution of the
3 case when requested pursuant to subdivision (a). The finding of the
4 administrative law judge with regard to costs shall not be reviewable
5 by the board to increase the cost award. The board may reduce or
6 eliminate the cost award, or remand to the administrative law judge
7 where the proposed decision fails to make a finding on costs
8 requested pursuant to subdivision (a).

9 (e) Where an order for recovery of costs is made and timely payment
10 is not made as directed in the board's decision, the board may enforce
11 the order for repayment in any appropriate court. This right of
12 enforcement shall be in addition to any other rights the board may
13 have as to any licentiate to pay costs.

14 (f) In any action for recovery of costs, proof of the board's decision
15 shall be conclusive proof of the validity of the order of payment and
16 the terms for payment.

17 (g) (1) Except as provided in paragraph (2), the board shall not renew
18 or reinstate the license of any licentiate who has failed to pay all of
19 the costs ordered under this section.

20 (2) Notwithstanding paragraph (1), the board may, in its discretion,
21 conditionally renew or reinstate for a maximum of one year the
22 license of any licentiate who demonstrates financial hardship and who
23 enters into a formal agreement with the board to reimburse the board
24 within that one-year period for the unpaid costs.

25 (h) All costs recovered under this section shall be considered a
26 reimbursement for costs incurred and shall be deposited in the fund
27 of the board recovering the costs to be available upon appropriation
28 by the Legislature.

(i) Nothing in this section shall preclude a board from including the
recovery of the costs of investigation and enforcement of a case in
any stipulated settlement.

(j) This section does not apply to any board if a specific statutory
provision in that board's licensing act provides for recovery of costs
in an administrative disciplinary proceeding.

7. Section 2236 of the Code states that:

(a) The conviction of any offense substantially related to the
qualifications, functions, or duties of a physician and surgeon
constitutes unprofessional conduct within the meaning of this chapter
[Chapter 5, the Medical Practice Act]. The record of conviction shall
be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency
shall notify the Division of Medical Quality of the pendency of an
action against a licensee charging a felony or misdemeanor
immediately upon obtaining information that the defendant is a
licensee. The notice shall identify the licensee and described the

1 crimes charged and the facts alleged. The prosecuting agency shall
2 also notify the clerk of the court in which the action is pending that
3 the defendant is a licensee, and the clerk shall record prominently in
4 the file that the defendant holds a license as a physician and surgeon.

5 (c) The clerk of the court in which a licensee is convicted of a crime
6 shall, within 48 hours after the conviction, transmit a certified copy
7 of the record of conviction to the board. The division may inquire
8 into the circumstances surrounding the commission of a crime in
9 order to fix the degree of discipline or to determine if the conviction
10 is of an offense substantially related to the qualifications, functions,
11 or duties of a physician and surgeon.

12 (d) A plea or verdict of guilty or a conviction after a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this
14 section and Section 2236.1. The record of conviction shall be
15 conclusive evidence of the fact that the conviction occurred.

16 8. Section 726 of the Code states:

17 The commission of any act of sexual abuse, misconduct, or relations
18 with a patient, client, or customer constitutes unprofessional conduct
19 and grounds for disciplinary action for any person licensed under this
20 division, under any initiative act referred to in this division and under
21 Chapter 17 (commencing with Section 9000) of Division 3.

22 This section shall not apply to sexual contact between a physician and
23 surgeon and his or her spouse or person in an equivalent domestic
24 relationship when that physician and surgeon provides medical
25 treatment, other than psychotherapeutic treatment, to his or her
26 spouse or person in an equivalent domestic relationship.

27 9. Section 2238 provides that a violation of any federal statute or federal regulation or
28 any of the statutes or regulations of this state regulating dangerous drugs or controlled substances
constitutes unprofessional conduct.

10. Section 2242(a) provides that prescribing, dispensing, or furnishing of dangerous
drugs as defined in Section 4211 without a good faith prior examination and medical indication
thereof, constitutes unprofessional conduct.

11. Section 2266 provides that the failure of a physician and surgeon to maintain
adequate and accurate records relating to the provisions of services to their patients, constitutes
unprofessional conduct.

12. Section 11154 of the Health and Safety Code provides, in relevant part, that except
in the practice of his or her profession, no person shall knowingly prescribe, administer, dispense,
or furnish a controlled substance to or for any person which is not under his or her treatment for a

1 pathology or condition other than addiction to a controlled substance, except as provided in this
2 division.

3 13. Section 11170 of the Health and Safety Code provides that no person shall prescribe,
4 administer, or furnish a controlled substance to himself.

5 14. Section 4074 provides, in relevant, part that a patient shall be informed of the harmful
6 effects of a drug that is dispensed and that the health facility shall establish a written policy to ensure
7 that each patient shall receive information regarding each medication and that information shall be
8 given by the patient's prescriber or pharmacist or dispensing registered nurse.

9 15. Section 4076 provides, in relevant, part that prescription medications shall not be
10 dispensed without a proper label.

11 16. Section 4170 provides, in relevant, part that no prescriber shall dispense drugs to
12 patients in his office unless all conditions of both 4170 and 4076 are met, which include a proper
13 label, an offer to give the patient a written prescription, a written disclosure to the patient regarding
14 the choice of obtaining the prescription from a pharmacy or the physician and the recordkeeping
15 requirements are met.

16 17. Section 4105 provides, in relevant part, that all records or other documentation of the
17 acquisition and disposition of dangerous drugs shall be retained in a readily retrievable form.

18 18. Section 14124.12 of the Welfare and Institutions Code states, in pertinent part:

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

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1 **DRUGS**

2 19. The following controlled substances and/or dangerous drugs are involved in this
3 proceeding.

4 A. Klonopin, a trade name for Clonazepam, is a Schedule IV controlled substance
5 within the meaning of Health and Safety Code section 11057(d)(6), and is a dangerous drug as
6 defined in section 4022 of the Code.

7 B. Vicodin, a trade name for the narcotic Hydrocodone (also known as
8 Dihydrocodeinone) combined with the non-narcotic substance Acetaminophen, is a Schedule III
9 controlled substance within the meaning of Health and Safety Code section 11056(e)(3), and a
10 dangerous drug as defined in section 4022 of the Code.

11 C. Soma, a trade name for Carisoprodol, is a dangerous drug as defined in section
12 4022 of the Code.

13 D. Marijuana, is a Schedule I controlled substance as defined by Health and
14 Safety Code section 11054 subdivision (d)(13) and a dangerous drug as defined in Section 4022,
15 subdivision (a) of the Code.

16 E. Lamictal, a trade name for Lamotrigine, is a dangerous drug as defined in
17 section 4022 of the Code.

18 F. Xanax, a trade name for Alprazolam, is a Schedule IV controlled substance
19 as defined by Health and Safety Code section 11057(d)(1), and a dangerous drug as defined in
20 section 4022 of the Code.

21 **FIRST CAUSE FOR DISCIPLINE**
22 **(Conviction of a Crime)**
23 **[Business and Professions Code section 2236]**

24 20. Respondent is subject to disciplinary action under section 2236 in that he suffered two
25 convictions of crimes that are substantially related to the qualifications, functions, or duties of a
26 physician and surgeon. The circumstances are as follows:

27 a. On or about February 9, 2001, in case number 00F10001 before the
28 Sacramento County Superior Court, in Sacramento, California, respondent entered a plea of nolo

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1 contendere to both a violation of Business and Professions Code section 729 (sexual exploitation),
2 a misdemeanor, and Penal Code section 243.4 (sexual battery), a misdemeanor.

3 b. Respondent was sentenced on March 13, 2001, to three years of probation,
4 one hundred and eighty (180) days in jail, and was ordered not to treat female or minor children
5 during the period of probation, or if the Medical Board of California determines differently.

6 c. The facts and circumstances surrounding this offense are that approximately
7 in or about June of 2000, respondent resumed treatment of patient B.G.¹, a 39-year-old female, after
8 a break of several years. B.G. returned to respondent because she had been the victim of a sexual
9 assault by her landlord. Respondent admitted having had sexual contact with his patient B.G.
10 through sexual intercourse and by having the patient orally copulate respondent which occurred in
11 and about and between October 10, 2000 and November 17, 2000. In or about November 6, 2000
12 and/or November 17, 2000, respondent gave patient B.G. 3-4 pills (allegedly Klonopin), from
13 another patient's returned bottle, for the patient to chew to relieve her anxiety, while at her
14 appointment. Respondent gave B.G. the pills after she told him she had already taken two Vicodin,
15 two Klonopin and one Soma. Respondent then had sexual intercourse with patient B.G. in his
16 medical office.

17 **SECOND CAUSE FOR DISCIPLINE**
18 **(Sexual Misconduct)**
19 **[Business and Professions Code Section 726]**

20 21. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference
21 as if fully set forth at this point.

22 22. Respondent's conduct as set forth in paragraph 21 above, is subject to disciplinary
23 action under section 726 (sexual misconduct), in that he committed two acts of sexual misconduct
24 with patient B.G., as previously described.

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28 1. Initials are used to protect the privacy interested of the affected individual. The name
will be provided through normal discovery.

THIRD CAUSE FOR DISCIPLINE
(Gross Negligence)
[Business and Professions Code Section 2234(b)]

23. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference as if fully set forth at this point.

24. Respondent's conduct as set forth in paragraph 23 above, is subject to disciplinary action under section 2234(b) of the Code in that respondent had sexual relations with B.G. by being orally copulated by B.G., constitutes gross negligence.

FOURTH CAUSE FOR DISCIPLINE
(Gross Negligence)
[Business and Professions Code Section 2234(b)]

25. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference as if fully set forth at this point.

26. Respondent's conduct as set forth in paragraph 25 above, along with the fact that respondent failed to do a substance abuse evaluation of patient B.G. during his period of treatment of B.G. in the year 2000, when respondent was aware of patient B.G.'s previous and current substance abuse, along with the fact that respondent prescribed psychotropic drugs to B.G. and engaged in psychotherapy for B.G.'s psychiatric problems constitutes gross negligence in violation of section 2234(b) of the Code.

FIFTH CAUSE FOR DISCIPLINE
(Gross Negligence)
[Business and Professions Code Section 2234(b)]

27. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference as if fully set forth at this point.

28. Respondent's conduct as set forth in paragraph 27 above, along with the fact that respondent knew B.G. to be a neurological patient with pain management problems under the care of Dr. Bissell, yet respondent fails to coordinate care of this patient with Dr. Bissell when respondent prescribes Xanax to patient B.G. on 9/26/00 and 11/17/00, without discussing Dr. Bissell's prior and current prescriptions of Klonopin to this patient, which constitutes gross negligence in violation of section 2244(b) of the Code.

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SIXTH CAUSE FOR DISCIPLINE
(Illegally Dispensing and Using Controlled Substances)
[Business and Professions Code Sections 2234(a) and (e), 2238, 2242(a)
and Health and Safety Code Sections 11154 and 11170]

29. In or about June 2000 and November 2000, respondent smoked marijuana with patient B.G., in respondent's car. In October 2000, patient B.G. purchased marijuana for respondent and gave the respondent the marijuana on Halloween.

30. Respondent's conduct as described in paragraph 29, constitutes violations of sections 2234(a) and/or (e), and/or 2238, and/or 2242(a) of the Code, and/or Health and Safety Code violations 11154, and/or 11170.

SEVENTH CAUSE FOR DISCIPLINE
(Failure to note dispensed drug)
[Business and Professions Code Section 2266]

31. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference as if fully set forth at this point.

32. Respondent's conduct as set forth in paragraph 31 above, is subject to disciplinary action under Business and Professions Code section 2266, in that respondent has failed to maintain adequate and/or accurate records relating to dispensing Klonopin to patient B.G.

EIGHTH CAUSE FOR DISCIPLINE
(Gross Negligence and Improper Labeling)
[Business and Professions Code Sections 2234(b), 4076 and 4170]

33. Complainant realleges paragraph 20(c) above, and incorporates it herein by reference as if fully set forth at this point.

34. Respondent's conduct as described in paragraph 33, constitutes violation of section 2234(b), 4076 and 4170 of the Code in that respondent improperly labeled a bottle containing Klonopin.

NINTH CAUSE FOR DISCIPLINE
(Gross Negligence)
[Business and Professions Code Section 2234(b)]

35. On or about and between March 23 and May 24, 2000, respondent treated patient B.H., a 56-year-old female, for anxiety, depression, attention deficit disorder and possible Bipolar II Disorder.

1 36. At one of the two above-referenced appointments, respondent gave the patient an
2 open bottle of 25 mg Lamictal tablets with the label partially torn off. The partial label on the bottle
3 had another physician's name on it as the prescribing physician and indicated that 200 tablets were
4 in the bottle, though fewer than that number were in the bottle.

5 37. Respondent gave the patient verbal instructions to take two tablets twice a day. The
6 instructions written on the bottle indicated to take four tablets twice a day. No mental status
7 examination was given by respondent and no record of what the drug Lamictal was prescribed to this
8 patient for was recorded in the chart. Respondent did not mention the drug's side effects to patient
9 B.H.

10 38. B.H. took the medication for 1 ½ - 2 weeks and found it make her feel ill. B.H. felt
11 drowsy, nauseous and lethargic. These feelings did not subside until B.H. stopped taking the
12 medication.

13 39. Respondent's conduct as described in paragraphs 35-38, constitutes a violation of
14 section 2234(b), in that respondent improperly reused a dangerous drug in an open bottle and
15 redispensed on a new patient, which had been prescribed by another doctor for a different patient.

16 **TENTH CAUSE FOR DISCIPLINE**
17 **(Gross Negligence and Improper Labeling)**
18 **[Business and Professions Code Sections 2234(b), 4076 and 4170]**

19 40. Complainant realleges paragraphs 35-38 above, and incorporates them herein by
20 reference as if fully set forth at this point.

21 41. Respondent's conduct as described in paragraph 40, constitutes violation of section
22 2234(b), 4076 and 4170 of the Code in that respondent improperly labeled a bottle containing
23 Lamictal.

24 **ELEVENTH CAUSE FOR DISCIPLINE**
25 **(Gross Negligence and Improper Recordkeeping)**
26 **[Business and Professions Code Section 2234(b), 4105, 2266 and 4170]**

27 42. Complainant realleges paragraphs 35-38 above, and incorporates them herein by
28 reference as if fully set forth at this point.

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1 43. Respondent's conduct as described in paragraph 42, constitutes violations of 2234(b)
2 4105, 2266 and 4170 of the Code in that Respondent's records were improper and insufficient with
3 regard to his prescribing and reusing the Lamictal to patient B.H.

4 **TWELFTH CAUSE FOR DISCIPLINE**
5 **(Gross Negligence, Insufficient Instructions to Patient)**
6 **[Business and Professions Code Sections 2234(b) and 4074]**

7 44. Complainant realleges paragraphs 35-38 above, and incorporates them herein by
8 reference as if fully set forth at this point.

9 45. Respondent's conduct as described in paragraph 44, constitutes violations of 2234(b)
10 and 4074 in that respondent failed to inform B.H. of the harmful side effects of Lamictal.

11 **THIRTEENTH CAUSE FOR DISCIPLINE**
12 **(Gross Negligence, No Good Faith Mental Examination)**
13 **[Business and Professions Code Sections 2234(b) and 2242]**

14 46. Complainant realleges paragraphs 35-38 above, and incorporates them herein by
15 reference as if fully set forth at this point.

16 47. Respondent's conduct as described in paragraph 46, constitutes violations of 2234(b)
17 and 2242, in that respondent failed to perform a mental status examination before prescribing
18 Lamictal to patient B.H.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**
20 **(Gross Negligence,)**
21 **[Business and Professions Code Sections 2234(b)]**

22 48. Complainant realleges paragraphs 35-38 above, and incorporates them herein by
23 reference as if fully set forth at this point.

24 49. Respondent's conduct as described in paragraph 48, along with the fact that
25 respondent knew of a prior problem with patient B.H. involving alcohol abuse yet failed to do a
26 substance abuse evaluation constitutes violations of 2234(b).

27 **PRAYER**

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A43832,
issued to David K. Rosenthal, M.D.;

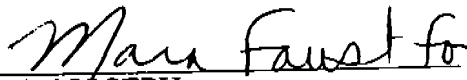
1 2. Revoking, suspending or denying approval of David K. Rosenthal, M.D.'s authority
2 to supervise physician's assistants, pursuant to section 3527 of the Code;

3 3. Ordering David K. Rosenthal, M.D. to pay the Division of Medical Quality the
4 reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the
5 costs of probation monitoring;

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

7 DATED: 4/17/02

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RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant