

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

In the Matter of the Accusation)
against:)
)
JAMES J. KOHUT, M.D.)
)
)
Physician's and Surgeon's)
Certificate #G 84723)
)
Respondent.)
_____)

Case No: 08-2003-142759

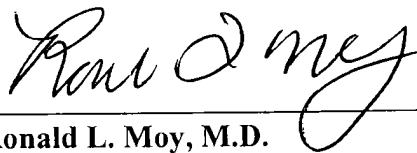
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 September 11, 2006

IT IS SO ORDERED August 11, 2006

MEDICAL BOARD OF CALIFORNIA



Ronald L. Moy, M.D.
Panel B, Chair
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
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4 California Department of Justice
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6 Telephone: (916) 324-5358
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7 Attorneys for Complainant
8

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

14 In the Matter of the Accusation Against:

15 JAMES JOEL KOHUT

16 Respondent

Case No. 08-2003-142759

OAH No. N-2006010702

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 PARTIES

21 1. David T. Thornton (Complainant) is the Executive Director of the Medical
22 Board 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 Attorney
24 General.

25 2. Respondent James Joel Kohut, M.D. (Respondent) is represented in this
26 proceeding by attorney Jerry R. Sparks Esq., whose address is 9401 Wilshire Boulevard, Eleventh
27 Floor, Beverly Hills, CA 90212.

28 ///

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. G84723
3 issued to Respondent James Joel Kohut, M.D. is revoked. However, the revocation is stayed and
4 Respondent is placed on probation for three (3) years on the following terms and conditions.

5 1. CLINICAL TRAINING PROGRAM Within 60 calendar days of the
6 effective date of this Decision, respondent shall enroll in a clinical training or educational program
7 equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the
8 University of California - San Diego School of Medicine ("Program").

9 The Program shall consist of a Comprehensive Assessment program
10 comprised of a two-day assessment of respondent's physical and mental health; basic clinical and
11 communication skills common to all clinicians; and medical knowledge, skill and judgment
12 pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical
13 education in the area of practice in which respondent was alleged to be deficient and which takes into
14 account data obtained from the assessment, Decision(s), Accusation(s), and any other information
15 that the Division or its designee deems relevant. Respondent shall pay all expenses associated with
16 the clinical training program.

17 Based on respondent's performance and test results in the assessment and
18 clinical education, the Program will advise the Division or its designee of its recommendation(s) for
19 the scope and length of any additional educational or clinical training, treatment for any medical
20 condition, treatment for any psychological condition, or anything else affecting respondent's practice
21 of medicine. Respondent shall comply with Program recommendations.

22 At the completion of any additional educational or clinical training,
23 respondent shall submit to and pass an examination. The Program's determination whether or not
24 respondent passed the examination or successfully completed the Program shall be binding.

25 Respondent shall complete the Program not later than six months after
26 respondent's initial enrollment unless the Division or its designee agrees in writing to a later time
27 for completion.

28 Failure to participate in and complete successfully all phases of the clinical

1 training program outlined above is a violation of probation.

2 If respondent fails to complete the clinical training program within the
3 designated time period, respondent shall cease the practice of medicine within 72 hours after being
4 notified by the Division or its designee that respondent failed to complete the clinical training
5 program.

6 2. PSYCHIATRIC EVALUATION Within 60 calendar days of the effective
7 date of this Decision, respondent shall undergo and complete a psychiatric evaluation (and
8 psychological testing, if deemed necessary) by a Division-appointed board certified psychiatrist, who
9 shall consider any information provided by the Division or designee and any other information the
10 psychiatrist deems relevant, and shall furnish a written evaluation report to the Division or its
11 designee. The Board will furnish two names to the respondent of a Board Certified psychiatrist
12 located in Southern California and the respondent shall select which psychiatrist shall evaluate him.
13 Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted
14 towards the fulfillment of this requirement. Respondent shall pay the cost of all psychiatric
15 evaluations and psychological testing. Respondent agrees that the psychiatrist can review the
16 medical board investigation report in case number 08 2003 142759 and relevant exhibits. If in the
17 psychiatric evaluation, the psychiatrist recommends additional psychiatric evaluations and/or
18 psychological testing, respondent agrees to undergo such evaluations and/or testing.

19 Respondent shall comply with all restrictions or conditions recommended by the
20 evaluating psychiatrist within 15 calendar days after being notified by the Division or its designee.
21 Failure to undergo and complete a psychiatric evaluation and psychological testing, or comply with
22 the required additional conditions or restrictions, is a violation of probation

23 3. PSYCHOTHERAPY If after completion of the psychiatric evaluation set
24 forth in Paragraph 2 above, the board certified psychiatrist recommends psychotherapy, respondent
25 shall within 30 calendar days of the receipt of notification of such a recommendation submit to the
26 Division or its designee for prior approval the name and qualifications of a board certified
27 psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years
28 of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon

1 approval, respondent shall undergo and continue treatment, including any modifications to the
2 frequency of psychotherapy, until the Division or its designee deems that no further psychotherapy
3 is necessary.

4 The psychotherapist shall consider any information provided by the Division or its
5 designee and any other information the psychotherapist deems relevant and shall furnish a written
6 evaluation report to the Division or its designee. Respondent shall cooperate in providing the
7 psychotherapist any information and documents that the psychotherapist may deem pertinent.
8 Respondent shall have the treating psychotherapist submit quarterly status reports to the Division
9 or its designee. At the completion of any recommended psychotherapy, the Division or its designee
10 may require respondent to undergo another psychiatric evaluations by either the board certified
11 psychiatrist selected pursuant to Paragraph 2, above, if that person is available or, if that person is
12 not available, by a Division appointed board certified psychiatrist.

13 If, prior to the completion of probation, respondent is found to be mentally unfit to
14 resume the practice of medicine without restrictions, the Division shall retain continuing jurisdiction
15 over respondent's license, and the period of probation shall be extended until the Division
16 determines that respondent is mentally fit to resume the practice of medicine without restrictions.
17 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

18 Failure to undergo and continue psychotherapy treatment, or comply with any
19 required modification in the frequency of psychotherapy, is a violation of probation.

20 4. NOTIFICATION Prior to engaging in the practice of medicine, the
21 respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the
22 Chief Executive Officer at every hospital where privileges or membership are extended to
23 respondent, at any other facility where respondent engages in the practice of medicine, including all
24 physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer
25 at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent
26 shall submit proof of compliance to the Division or its designee within 15 calendar days.

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

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

4 6. QUARTERLY DECLARATIONS Respondent shall submit quarterly
5 declarations under penalty of perjury on forms provided by the Division, stating whether there has
6 been compliance with all the conditions of probation. Respondent shall submit quarterly
7 declarations not later than 10 calendar days after the end of the preceding quarter.

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

13 Respondent shall not engage in the practice of medicine in respondent's place of
14 residence. Respondent shall maintain a current and renewed California physician's and surgeon's
15 license.

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

19 8. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent shall
20 be available in person for interviews either at respondent's place of business or at the probation unit
21 office, with the Division or its designee, upon request at various intervals, and either with or without
22 prior notice throughout the term of probation.

23 9. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent
24 should leave the State of California to reside or to practice, respondent shall notify the Division or
25 its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is
26 defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any
27 activities defined in Sections 2051 and 2052 of the Business and Professions Code.

28 All time spent in an intensive training program outside the State of California which

1 has been approved by the Division or its designee shall be considered as time spent in the practice
2 of medicine within the State. A Board-ordered suspension of practice shall not be considered as a
3 period of non-practice. Periods of temporary or permanent residence or practice outside California
4 will not apply to the reduction of the probationary term. Periods of temporary or permanent
5 residence or practice outside California will relieve respondent of the responsibility to comply with
6 the probationary terms and conditions with the exception of this condition and the following terms
7 and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

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

14 10. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT In the
15 event respondent resides in the State of California and for any reason respondent stops practicing
16 medicine in California, respondent shall notify the Division or its designee in writing within 30
17 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice
18 within California, as defined in this condition, will not apply to the reduction of the probationary
19 term and does not relieve respondent of the responsibility to comply with the terms and conditions
20 of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which
21 respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and
22 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 of
25 this condition, non-practice due to a Board-ordered suspension or in compliance with any other
26 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 described

1 in Business and Professions Code sections 2051 and 2052.

2 ///

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

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

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

25 14. PROBATION MONITORING COSTS Respondent shall pay the costs
26 associated with probation monitoring each and every year of probation, as designated by the
27 Division, which are currently set at \$3,173, but may be adjusted on an annual basis. Such costs shall
28 be payable to the Medical Board of California and delivered to the Division or its designee no later

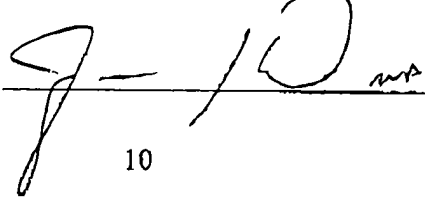
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15 associated with probation monitoring each and every year of probation, as designated by the
16 Division, which are currently set at \$3,173, but may be adjusted on an annual basis. Such costs shall
17 be payable to the Medical Board of California and delivered to the Division or its designee no later
18 than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is
19 a violation of probation.

20 ACCEPTANCE

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have
22 fully discussed it with my attorney, Jerry R. Sparks. I understand the stipulation and the effect it will
23 have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and
24 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision
25 and Order of the Division of Medical Quality, Medical Board of California.

26 DATED: 6/8/06
27 
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29
30 10

1 than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date
2 is a violation of probation.

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7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision
8 and Order of the Division of Medical Quality, Medical Board of California.

9 DATED: _____.

10 _____
11 JAMES JOEL KOHUT M.D.
Respondent

12 I have read and fully discussed with Respondent James Joel Kohut M.D. the terms
13 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
14 Order. I approve its form.

15 DATED: _____.

16 _____
17 JERRY R. SPARKS
Attorney for Respondent

18
19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
21 submitted for consideration by the Division of Medical Quality, Medical Board of California of the
22 Department of Consumer Affairs.

23 DATED: June 8, 2006.

24 BILL LOCKYER, Attorney General
of the State of California

25
26 Mara Faust
27 MARA FAUST
Deputy Attorney General

28 Attorneys for Complainant

1 I have read and fully discussed with Respondent James Joel Kohut M.D. the terms
 2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
 3 Order. I approve its form.

4 DATED: 6/8/06

5 
 6 _____
 JERRY R. SPARKS
 Attorney for Respondent

7
 8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
 10 submitted for consideration by the Division of Medical Quality, Medical Board of California of the
 11 Department of Consumer Affairs.

12 DATED: _____

13 BILL LOCKYER, Attorney General
 14 of the State of California

15 _____
 16 MARA FAUST
 Deputy Attorney General
 17 Attorneys for Complainant

18 DOJ Docket/Matter ID Number: SA2003 142759
 Slip2 (4).wpd

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Exhibit A

Accusation No. 08-2003-142759

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, State Bar No. 84134
Supervising Attorney General
3 MARA FAUST, State Bar No. 111729
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4 California Department of Justice
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7 Attorneys for Complainant
8

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 22, 2005
BY Kamela S. Mosher

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 Accusation Against:

Case No. 08-2003-142759

13 JAMES J. KOHUT
14 1505 Soquel Drive, Suite 1
Santa Cruz, CA 95065

A C C U S A T I O N

15 Physician's and Surgeon's Certificate No.
16 G84723

17 Respondent.
18

19 Complainant alleges:

20 PARTIES

21 1. David T. Thornton (Complainant) brings this Accusation solely in his
22 official capacity as the Executive Director of the Division of Medical Quality, Medical Board of
23 California.

24 2. On or about July 24, 1998, the Medical Board of California issued
25 Physician's and Surgeon's Certificate No. G84723 to James Joel Kohut (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
27 charges brought herein and will expire on May 31, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Division of Medical Quality ("Division") for the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

"(a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California, that a licensee's license has been placed on probation as a result of a disciplinary action, the department may not reimburse any Medi-Cal claim for the type of surgical service or invasive procedure that gave rise to the probation, including any dental surgery or invasive procedure, that was performed by the licensee on or after the effective date of probation and until the termination of all probationary terms and conditions or 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."

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

6. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this

1 article, unprofessional conduct includes, but is not limited to, the following:

2 "(a) Violating or attempting to violate, directly or indirectly, assisting in
3 or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter
4 5, the Medical Practice Act].

5 "(b) Gross negligence.

6 "(c) Repeated negligent acts. To be repeated, there must be two or more
7 negligent acts or omissions. An initial negligent act or omission followed by a separate
8 and distinct departure from the applicable standard of care shall constitute repeated
9 negligent acts.

10 "(1) An initial negligent diagnosis followed by an act or omission
11 medically appropriate for that negligent diagnosis of the patient shall constitute a single
12 negligent act.

13 "(2) When the standard of care requires a change in the diagnosis, act, or
14 omission that constitutes the negligent act described in paragraph (1), including, but not
15 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
16 conduct departs from the applicable standard of care, each departure constitutes a separate
17 and distinct breach of the standard of care."

18 7. Section 125.3 of the Code provides, in pertinent part, that the Division
19 may request the administrative law judge to direct a licentiate found to have committed a
20 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs
21 of the investigation and enforcement of the case.

22 FIRST CAUSE FOR DISCIPLINE
23 [Bus. & Prof. Code § 2234(b)]
(Gross Negligence)

24 8. Respondent is subject to disciplinary action under section 2234(b) in that
25 respondent undertook the care and treatment of patient M .O., a 36 year-old male, and attempted
26 to surgically remove a temporal aneurysm from the right side of the patient's head on May 21,
27 2002, when the x-rays clearly showed that the aneurysm was located on the left side of the
28 patient's head. Subsequently, on May 22, 2002, respondent performed a second surgery to

1 remove the aneurysm from the left side of patient M.O.'s head.

2 SECOND CAUSE FOR DISCIPLINE

3 [Bus. & Prof. Code § 2234(c)]

4 (Repeated Negligent Acts)

5 9. Complainant re-alleges paragraph 8 above and incorporates it herein by
6 reference as if fully set forth at this point. Respondent is subject to disciplinary action under
7 2234(c) of the Business and Professions Code in his treatment of patient M.O., as alleged in
8 paragraph 8, and A.F. as more fully described below.

9 10. Respondent undertook the care and treatment of patient A.F., a 36 year-
10 old male with cervical spondylosis. Respondent performed a laminectomy and fusion surgery on
11 patient A.F. at cervical level 6-7 on October 18, 2001. However, respondent charted the
12 operation on A.F. at the cervical level 5-6, not level 6-7, and such charting error constitutes a
13 simple departure from the standard of care. This departure taken in combination with the
14 departure in operating on the wrong side of patient M.O.'s head constitute repeated acts of
15 negligence in violation of section 2234(c) of the code.

16 THIRD CAUSE FOR DISCIPLINE

17 [Bus. & Prof. Code § 2234]

18 (General Unprofessional Conduct)

19 11. Respondent is subject to disciplinary action under section 2234 in that
20 respondent viewed adult pornographic web sites and downloaded pornography during work
21 hours on UMC (University Medical Center) computers during the period of 2002 through
22 February 2003. During this same time frame, respondent worked at UMC as a neurosurgeon.

23 PRAYER

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

26 1. Revoking or suspending Physician's and Surgeon's Certificate No.
27 G84723 issued to James Joel Kohut;

28 2. Revoking, suspending or denying approval of James Joel Kohut's authority
to supervise physician's assistants, pursuant to section 3527 of the Code;

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3. Ordering James Joel Kohut to pay the Division of Medical Quality of the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;

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

DATED: August 2, 2005



DAVID T. THORNTON
Executive Director
Division of Medical Quality, Medical Board of California
State of California
Complainant