REDACTED

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 N. BOWES, M.D.	)	File No. 10-1998-91381
Physician's and Surgeon's Certificate No. G 32788	)	
Respondent.	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on November 3, 2000.

IT IS SO ORDERED October 4, 2000.

MEDICAL BOARD OF CALIFORNIA

By: _____
Ira Lubell, M.D., Chair
Panel A
Division of Medical Quality

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

In the Matter of the Accusation Against: DAVID N. BOWES, M.D. 4647 Zion Avenue San Diego, CA 92120 Physician's and Surgeon's Certificate No. G 32788, Respondent.	No. 10-1998-91381 OAH No. L-2000020275

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 22, 2000, in San Diego, California.

Sanford H. Feldman, Deputy Attorney General, represented complainant Ron Joseph, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California.

Paul Spackman, Attorney at Law, represented respondent David N. Bowes, M.D., who was present throughout the administrative hearing.

The matter was submitted on August 22, 2000.

ISSUES

Does David N. Bowes, M.D., suffer from a mental illness affecting his competency to practice medicine safely?

If so, what administrative action, if any, is required to protect the public?

FACTUAL FINDINGS

The Accusation – Jurisdictional Matters

1. On March 22, 1999, Ron Joseph (hereafter complainant), the Executive Director of the Medical Board of California (hereafter the Board) signed the Accusation.

The Accusation alleges that David N. Bowes, M.D. (hereafter Dr. Bowes) engaged in unprofessional conduct including gross negligence, repeated negligent acts and incompetence. The Accusation further alleges that Dr. Bowes suffers from a mental or physical illness which affects his ability to practice medicine safely. The Accusation requests an award of reasonable costs of investigation and enforcement if Dr. Bowes has violated any provision of the licensing act.

The Accusation and other required jurisdictional documents were served on Dr. Bowes.

Dr. Bowes timely filed a Notice of Defense dated March 31, 1999.

The Petition for Interim Order

2. On August 10, 1999, complainant filed a Petition for Interim Order under Government Code section 11529. Various moving papers accompanied the Petition.

The Petition alleged that Dr. Bowes suffered from a mental or physical illness which impaired his ability to practice medicine safely to the extent that unless Dr. Bowes' license to practice medicine was immediately suspended, Dr. Bowes would represent a danger to the health, safety and welfare of the public.

The Petition and other required jurisdictional documents were served on Dr. Bowes who, through his attorney, filed responsive pleadings.

3. On September 1, 1999, Administrative Law Judge Alan S. Meth (hereafter ALJ Meth), Office of Administrative Hearings, heard the matter.

On September 20, 1999, ALJ Meth signed an Order Denying Petition for Interim Order. ALJ Meth found in pertinent part:

> "This is not a proper case for the issuance of an interim order in that it was not established that allowing respondent to continue to engage in the practice of medicine would endanger the public health, safety and welfare. The most obvious reason is the fact that respondent is not presently practicing medicine and there is little likelihood

respondent will return to the practice of medicine before a hearing on the accusation filed months ago would be heard and decided."

ALJ Meth's Order provided:

"The Petition for Interim Order Pursuant to Government Code section 11529 is hereby denied without prejudice, and a new petition may be filed if petitioner determines that respondent has in fact resumed the practice of medicine either at Kaiser or in some other capacity."

The Contested Administrative Hearing

4. On August 22, 2000, the administrative record concerning those matters alleged in the Accusation was opened. Jurisdictional documents were presented. Each party gave an opening statement.

Stipulations, sworn testimony and documentary evidence were received. No evidence was offered to support an award of reasonable costs of investigation and enforcement.

Closing arguments were given. Complainant conceded in closing argument that no evidence concerning Dr. Bowes' alleged unprofessional conduct was adduced at hearing and the allegations of gross negligence, repeated negligent acts and incompetence were not established.

On August 22, 2000, the record was closed and the matter was submitted.

David N. Bowes, M.D.

5. David N. Bowes, M.D. (hereafter Dr. Bowes) was born on [redacted], in Stamford, Connecticut.

Dr. Bowes attended the University of Redlands, California, and received a Bachelor of Science degree in 1969. He married that same year.

Thereafter, Dr. Bowes attended the University of California at San Diego (hereafter UCSD) and received a Master of Science degree in Bioengineering in 1970. While he was on the Ph.D. track at UCSD, Dr. Bowes applied to medical school.

Dr. Bowes was accepted to medical school and was awarded a Medical Doctorate degree from Pennsylvania State University, Hershey Medical Center, in 1975. Dr. Bowes first son was born in [redacted].

Dr. Bowes completed a surgical internship at UCSD in June 1976.

Dr. Bowes second son was born in [redacted], during the first year of Dr. Bowes' surgical residency. Dr. Bowes completed his four-year surgical residency at the University of California at Los Angeles in June 1980.

After completing his residency, Dr. Bowes joined the Southern California Permanente Medical Group (hereafter SCPMG or Kaiser) in 1980 as a full-time staff orthopedic surgeon. In 1982 Dr. Bowes became a partner in SCPMG.

Dr. Bowes became a Board Certified Orthopedic Surgeon in 1982.

Dr. Bowes was a responsible surgeon with the Kaiser San Diego Hand Clinic from June 1982 through 1992. He remained a full-time staff surgeon through August 1997. About 80% of the surgeries Dr. Bowes performed involved the hand. The remaining 20% of the surgeries were related to Dr. Bowes' "on-call" duties.

In 1987 Kaiser Permanent gave Dr. Bowes a K-Star Award for "Best All Around Performance" for his technical skills and his caring and encouraging attitude.

Dr. Bowes volunteered his professional services for one month in Fiji and for one month on two separate occasions in St. Lucia.

Dr. Bowes' License History

6. On August 24, 1976, the Board licensed Dr. Bowes to practice medicine in California. Dr. Bowes holds Physician's and Surgeon's Certificate No. G 32788. That certificate is renewed and is current. It expires on November 30, 2001, unless renewed, suspended or revoked.

There is no history of any administrative discipline against Dr. Bowes' certificate.

Dr. Bowes' Diagnosis of Adult ADHD,
Its Treatment and the Onset of Depression

7. In the early 1990s Dr. Bowes and his wife were experiencing marital difficulties. Dr. Bowes sought the professional assistance of Barbara Welsh-Osga, Ph.D. (hereafter Dr. Welsh-Osga), a clinical psychologist who has been licensed since 1983.

According to Dr. Welsh-Osga's curriculum vitae, she has a special interest and expertise in treating clients with physical disabilities, panic disorders, eating disorders, neuropsychological deficits and stress management problems.

Dr. Welsh-Osga has treated Dr. Bowes from 1992 to date. Dr. Bowes was initially seen on a weekly basis in individual psychotherapy, although the frequency of his visits has varied from one to four monthly sessions since.

According to Dr. Welsh-Osga's declaration:

> "Dr. Bowes presented as highly defensive and narcissistic with limited insight into his social interactions. It became clear that his chronic difficulties in interpersonal relationships and his need to seek high levels of stimulation were symptoms of his underlying, undiagnosed adult deficit hyperactive disorder "Adult ADHD." His son had also been suspected of having the disorder and was later diagnosed as well. Dr. Bowes was then seen by Dr. John Richards (a psychiatrist with expertise in attention deficit disorder "ADD") at Kaiser for medication evaluation, who started him on a trial of Ritalin. His ability to focus improved markedly, which allowed him to notice and process the reaction of others to his own behavior. This in turn was the beginning of very impressive clinical progress in gaining insight into his social behavior and the negative impact it had on social and family relationships. He had previously prided himself on his idiosyncratic, creative genius and leaderships skills, while others found him at times eccentric, overbearing and tactless."[1]

Dr. Welsh-Osga confirmed these impressions in her sworn testimony.

According to Dr. Welsh-Osga, after Dr. Bowes was diagnosed with Adult ADHD, he began having increasing problems at work. She believed this to be a result of several factors including his openly admitting his disorder and his treatment to his colleagues, the stripping of many personal defenses and his increasing depression as a result of his greater insight into the problems he had created for himself and others. In addition, Dr. Bowes reported increasing stress at work.

During this period, according to Dr. Welsh-Osga's declaration:

> "Meanwhile, the pressure of his work environment increased markedly when the orthopedic departmental leadership changed and the competitive demands of the health care environment grew. He had gained insight into how much effort it took him to behave within the heightened constraints of his work and home environments, and he began to feel increasingly stressed. He was emotionally quite vulnerable at this point, since he was for the first time able to see himself through the eyes of others. With old coping skills no longer available to him, and his middle age limiting his ability to bounce back from sleep deprivation, coupled with the continued threat of marital dissolution, he began to experience some depression and anxiety and agreed to take a leave of absence from work."

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[1] Dr. John Richards was and is, in fact, a pediatrician who has expertise in diagnosing and treating attention deficit disorders. He is not a psychiatrist.

Dr. Bowes' Behavior at Kaiser in the 1990s

8. Dr. Welsh-Osga's declaration understated the situation. William H. Browning, M.D. (hereafter Dr. Browning), a Board Certified Orthopedic Surgeon became Chief, Department of Orthopedic Surgery, at the Kaiser clinic in San Diego in the 1993.

There were approximately twenty orthopedic surgeons on the staff at the Kaiser clinic in San Diego, one of whom was Dr. Bowes.

Dr. Browning received several complaints concerning Dr. Bowes, whom Dr. Browning believed to be an unusual and manipulative individual. Dr. Browning became concerned about Dr. Bowes's personal style in dealing with his colleagues and clinic staff members between 1993 and 1997.

9. Dr. Bowes confirmed the difficulties he had. According to the declaration Dr. Bowes filed in opposition to complainant's petition for an interim order of suspension:

> "I have had differences with others within my department, particularly with Dr. Browning...These were provoked by my response to his ever-increasing demands to be more productive and to work the next full day after on-call duty. I felt that because of my ADHD, I was less able than others to perform optimally when sleep-deprived. In addition, my ADHD was exacerbated when I was required to work in the acute orthopedics 'boiler room'...I have requested this space be enlarged and/or optimized since it was built in 1987. I have also been outspoken about administration not delineating the orthopedists' job description clearly in the face of unrealistic demands."

In his interview with Mark A. Kalish, M.D. (hereafter Dr. Kalish), a Board Certified Psychiatrist, evaluated Dr. Bowes on February 26, 1999, at the Board's request. A clearer picture of Dr. Bowes's interpersonal style emerged during that evaluation. According to Dr. Kalish's narrative report:

> "The patient [Dr. Bowes] reports that he was under increasing stress and demands in the workplace. The patient was clearly anxious and depressed regarding these increasing demands. The patient reports a number of symptoms of his attention deficit hyperactivity disorder, which affected his workplace performance. He indicates that he was impulsive. He explains that he would speak out in administrative meetings and essentially filibuster those meetings. He reports that he was distractible. He explains that he had pressure of speech to put his ideas out and in the process he would lose his train of thought. The patient reports that he was irritable. He explains that he would over react to what he perceived to be attacks by colleagues."

As Dr. Bowes testified, "It was like paddling upstream. There was friction. I was not a good Indian."

10. An incident occurring at the Kaiser clinic in February 1997 began a process that ultimately resulted in Dr. Bowes taking a disability leave of absence from Kaiser and the practice of medicine in July 1997.

One morning in February 1997, Dr. Bowes was feeling particularly depressed and vulnerable at work because his wife was leaving town to attend her uncle's funeral. According to Dr. Welsh-Osga, he realized that he had let his wife and his children down. He was filled with sadness, remorse and grief over his failings.

Although the pace of work that morning was no more stressful than was ordinary, Dr. Bowes became extremely agitated because numerous patient x-rays were not positioned for his viewing before he entered an examining room to consult with a patient. The failure to position the x-rays was contrary to his previously stated preference.

Dr. Bowes stormed down to the administrator's office to complain about the matter. As he was speaking with the administrator in her office, Dr. Bowes became overwhelmed. He sat down, pulled his feet towards his chest, rested his head on his knees and "I had a good cry in the office." He did so because "I felt I was in a safe place." Dr. Browning was contacted.

Dr. Bowes thereafter made some admittedly inappropriate remarks such as "The patient and I will have to get down on our hands and knees to sort the x-rays out."

Dr. Browning observed that Dr. Bowes was "disheveled, distraught and not in control." Dr. Browning made the decision to send Dr. Bowes home for the remainder of the day and to reassign Dr. Bowes' patients to other staff members. Dr. Bowes testified that this was "an arbitrary decision," although Dr. Browning's decision was clearly reasonable and in Dr. Bowes', his patients' and the clinic's best interest.

Dr. Bowes admitted that when Dr. Browning directed him to leave the clinic that morning and go home, he responded, "Perhaps you should call security."

Dr. Bowes spent the remainder of the day at home.

11. Dr. Bowes situation at work did not improve. Matters finally came to a head after Dr. Bowes' decided to reimplant a portion of the index finger of a male teenager's right/major hand at the Kaiser clinic. Whether this was a good or bad decision is not in issue. Dr. Browning decided that it was finally time to offer Dr. Bowes the opportunity to take a leave of absence, a decision Dr. Bowes testified was nothing more than "Evaluation by innuendo." However, Dr. Bowes also testified, "I was open to the idea, but it was coercive."

Dr. Bowes last worked at Kaiser on August 26, 1997.

Dr. Bowes' Circumstances Away From Work

12. In September 1997, Dr. Bowes took disability leave for elective foot surgery and a fractured ankle. He was certified as being medically disabled through February 3, 1998.

Dr. Bowes, according to his declaration, "did not return to my prior position as a full-time orthopedic surgeon in February of 1998, but continued on short-term disability leave under the policy available through my partnership. This claim was based upon my having adult attention deficit hyperactivity disorder (ADHD), along with interpersonal relationship issues at home (marriage at risk) and at work (hostile workplace)."

Dr. Bowes' Opinions Concerning His Current Condition

13. Dr. Bowes' did not refer to his condition as a mental illness. Rather, he preferred to refer to his condition as a "disability," seeking to avoid the inevitable stigma associated with the phrase "mental illness." Dr. Welsh-Osga shared Dr. Bowes' concern and also referred to his condition as a "disability."

14. According to Dr. Bowes' declaration:

> "After being on stress disability from February to September of 1998, I felt ready to ask to return to work. Dr. Welsh-Osga, my treating psychologist, submitted a report to the effect that *I was ready to return to practice, provided that I receive reasonable accommodation for my disability*...She stated that I had improved in my behavioral self-assessment and was benefiting from the medication regimen monitored by Drs. Richards and Funkenstein. In agreement with Dr. Welsh-Osga and Dr. Richards, *I felt that my return to work should begin with a reduced work load (and reduced compensation), and that I not be placed into the regular on-call rotation initially. I asked only to be accommodated on the basis of my disability.* I have historically worked better in an environment where I can concentrate on the care of the patient without being sleep-deprived, and without being required to manage multiple patient requirements simultaneously while under pressure of time." (Emphasis added.)

In his testimony at the administrative hearing Dr. Bowes reiterated his belief that he was capable of safe practice on a part-time basis that did not include on-call duties or stressful situations. He felt he could perform invasive surgical procedures safely as a primary orthopedic surgeon, but he would like to begin working as an assisting rather than a primary surgeon.

Dr. Bowes testified he had sufficient insight and judgment into his condition to enable him to monitor it and to self-impose necessary work restrictions without outside intervention.

Dr. Welsh-Osga's Opinions Concerning Dr. Bowes' Current Condition

15. As Dr. Bowes' treating psychologist, Dr. Welsh-Osga had a personal and professional interest in the efficacy of her treatment and in Dr. Bowes' progress while in psychotherapy with her.

Dr. Welsh-Osga believed Dr. Bowes made tremendous progress in the past seven years of psychotherapy, notwithstanding a failed marriage and increasing friction at work ultimately resulting in Dr. Bowes taking a leave of absence. Dr. Welsh-Osga believed most of Dr. Bowes' insight and growth occurred since July 1997 after he stopped working at Kaiser. Dr. Welsh-Osga had asked Dr. Funkenstein, a psychopharmacologist, to review medications helpful in controlling Dr. Bowes' conditions. The medications have included Prozac, Cylert, Ritalin and Lithium, although not all of these medications were or are taken at the same time. Dr. Welsh-Osga views the administration of medication as an adjunct to psychotherapy.

Dr. Welsh-Osga believed that *when Dr. Bowes is under too much stress, his judgment is impaired.* For this reason, "*Dr. Bowes should return to work in an environment in which he is not on call and in a "boiler room.'"* (Emphasis added.) Dr. Welsh-Osga believed the limitations on Dr. Bowes' medical practice should be characterized as "accommodations" rather than "restrictions."

Dr. Colarusso's Opinions Concerning Dr. Bowes' Current Condition

16. In September 1999, Dr. Bowes contacted Maurice J. Alfaro, M.D. (hereafter Dr. Alfaro), the Area Medical Director of SCPMG, and Dr. Browning concerning his return to work.[2]

Dr. Bowes was referred to Calvin Colarusso, M.D. (hereafter Dr. Colarusso), a Board Certified Psychiatrist to determine Dr. Bowes' "suitability to function competently and independently as an orthopedic surgeon in the Southern California Permanente Medical Group."

17. Dr. Colarusso performed a comprehensive investigation including meetings with Drs. Alfaro and Browning, a comprehensive review of records, three in-depth

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[2] According to Dr. Browning, some of Dr. Bowes' disability benefits terminated after a year of disability. Whether this is true or not was not otherwise established and is not particularly relevant.

psychiatric interviews with Dr. Bowes, the consideration of psychological testing and numerous telephone contacts.

Dr. Colarusso provided the following DSM-IV diagnosis:

Axis I:	Attention-Deficit Hyperactivity Disorder, Adult Type.	314.01
	Dysthymic (depressive) Disorder, Adult Type.	300.42
Axis II:	Narcissistic Personality Disorder.	301.81
Axis III:	None are indicated.	
Axis IV:	Problems with primary support group: impending separation and divorce. Occupational problems: difficulties in the work place leading to disability status.	
Axis V:	Currently Dr. Bowes' symptoms may be described as in the 51-60 range, described in the manual as Moderate Symptoms.[3]	

Dr. Colarusso believed that if Dr. Bowes were to return to the kind of orthopedic work at SCPMG described by Drs. Alfaro and Browning, it "would likely result in the appearance of significant symptoms and dissatisfaction on the part of colleagues and administration in a short period of time."

Dr. Colarusso also wrote: "*I do not think Dr. Bowes is a physician who is disabled to the point where, in a setting which took into account his diagnoses and stress limitations, he is unable to practice with competence and appropriate concern for his patients.*" (Emphasis added.)

In a declaration submitted in connection with the petition for an interim order, Dr. Colarusso added:

> "Dr. Bowes has demonstrated insight into his disability and is well aware of what practice environment is most suitable to accommodate his disability. Simply because

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[3] Psychiatrists and other mental health care providers often refer to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (known as the DSM-IV) in reaching diagnostic impressions.

The DSM-IV utilizes a diagnostic system involving an assessment on several axes, each of which relates to a different domain of information.

Axis I reports clinical disorders and other conditions that are the focus of clinical attention. Axis II reports personality disorders, mental retardation, prominent maladaptive personality features or defense mechanisms. Axis III reports physical disorders and conditions. Axis IV reports negative life events, environmental difficulties, familial or interpersonal stresses or other problems relating to the context in which the patient's difficulties have developed. Axis V/Global Assessment of Functioning reports the clinician's judgment of the individual's overall level of functioning.

he cannot resume working at exactly the same highly pressured job without his disability being accommodated in any manner, does not mean that it is unsafe for Dr. Bowes to practice surgery. As I concluded in my report, Dr. Bowes would do well in many common surgical settings. These include practicing surgery within the Kaiser system with reasonable accommodation, in an outpatient orthopedic setting, or where there are fewer quantitative demands and/or distractions than exist in his pre-disability position at the Kaiser hospital."

18. Dr. Colarusso saw Dr. Bowes again on May 17, 2000, at the request of Deputy Attorney General Feldman and Attorney Spackman.

Dr. Colarusso was asked whether Dr. Bowes "suffers from a mental impairment that affects his ability to practice medicine safely without restriction or with restriction."

Following his supplemental investigation and psychological evaluation, Dr. Colarusso provided the following DSM-IV diagnosis:

Axis I: Attention-Deficit Hyperactivity Disorder, Adult type, 314.01, well controlled. Dysthymic Disorder, 300.42, in remission.

Axis II: Narcissistic Personality Disorder, 301.81, the symptoms of this disorder are very well controlled at present.

Axis III: None are present.

Axis IV: Dr. Bowes is still dealing with the separation and divorce from his wife; and with financial issues, litigation with New York Life, and decisions about returning to work.

Axis V: Currently Dr. Bowes' symptoms may be described as in the 61-70 range, described in the manual as Mild Symptoms.

Dr. Bowes has, according to Dr. Colarusso, two diagnosable mental disorders affecting his ability to function and practice medicine. They are treatable and are now under excellent control as a result of the efforts of two fine clinicians.

According to Dr. Colarusso, "*It is my opinion that if he continues to receive psychotherapeutic and psychopharmacological treatment on a regular basis he can practice medicine safely.*" But, *Dr. Bowes should not "practice in a full time, high pressure private practice or managed care setting"* and *"A prospective employer would need to know about and take these limitations into account when making a decision about whether or not to hire Dr. Bowes."* (Emphasis added.)

Dr. Colarusso believed Dr. Bowes had the insight and judgment to place appropriate work restrictions upon himself and if the Board agreed, there would be no need to restrict Dr. Bowes' license; if the Board determined that Dr. Bowes does not have sufficient insight and judgment to restrict his own practice, then he should be required to remain in treatment with a competent therapist and psychopharmacologist and he should be limited to twenty hours of practice per week.

Dr. Kalish's Opinions Concerning Dr. Bowes' Current Condition

19. Dr. Kalish did not testify. His opinions, conclusions and recommendations were set forth in a declaration dated August 9, 1999, that was admitted as direct evidence by stipulation.

Dr. Kalish performed a psychiatric evaluation on February 26, 1999. Dr. Bowes provided a history of treatment for psychological problems extending back to 1978 when he had marital difficulties as a result of the pressures associated with the completion of his residency. Dr. Bowes said he treated with a psychiatrist from 1987 through 1991 for unspecified problems.

In the mental status examination, Dr. Kalish noted significant tangential and circumstantial thinking. Dr. Bowes' mood and affect were depressed. His judgment and insight were deemed to be fair.

Following his evaluation of some medical records and his interview with Dr. Bowes, Dr. Kalish provided the following DSM-IV diagnosis:

Axis I: Depressive Disorder, not otherwise specified.
Marital Conflict.
Rule out adult attention deficit-hyperactivity disorder.
Work conflict.

Axis II: Personality diagnosis deferred.

Axis III: No medical diagnosis given.

Axis IV: Psychological stressors:
1. Marital conflict.
2. Medical Board proceedings.
3. Work conflict.

Axis V: Highest level of adaptive functioning in the past year is fair.

Dr. Kalish, as all other examiners, found Dr. Bowes to be cooperative, with no effort to exaggerate, deceive or mislead. There was no evidence of psychotic or delusional

thinking. Dr. Kalish, as all other examiners, found Dr. Bowes to be "quite open and insightful as to the effect his psychiatric condition has had upon his interaction with colleagues and patients."

Dr. Kalish's report stated that "at the present time he [Dr. Bowes] does not feel he is capable of performing surgery." Dr. Kalish either misunderstood or took Dr. Bowes' comments in this regard out of context.

Dr. Kalish opined that "Dr. Bowes would present a danger to the public if he were allowed to practice surgery at the present time. I do believe that he could safely practice medicine not involving invasive procedures."

As noted by ALJ Meth, this opinion was based on a misinterpretation of Dr. Welsh-Osga's letter and the environment at Kaiser.

Evidence Concerning Dr. Bowes' Ability to Practice Surgery

20. There is no evidence that Dr. Bowes cannot practice surgery safely if appropriate limitations – whether self-imposed or imposed by the Board – are in place. There is no history of patient harm other than one malpractice action which went to arbitration and resulted in a considerably smaller arbitration award than was demanded.

Unprofessional Conduct

21. No evidence was presented to establish any act of gross negligence, repeated acts of negligence or incompetence.

As previously noted, Dr. Bowes' physician's and surgeon's certificate has not been subject to previous discipline. No evidence of any patient harm was produced.

Costs of Investigation and Enforcement

22. No evidence was produced to establish a violation of the Medical Practice Act. No evidence was presented to establish the Board's costs of investigation and prosecution.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a physician's and surgeon's certificate is "clear and convincing evidence." See, *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.

"Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. Clear and convincing evidence is a higher standard of proof than proof by a preponderance of the evidence. See, BAJI 2.62.

"Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. *In re David C.* (1984) 152 Cal.App.3d 1189, 1208.

The Board's Authority to Impose License Discipline

2. Business and Professions Code section 822 provides in pertinent part:

"If a licensing agency determines that its licentiate's ability to practice his...profession safely is impaired because the licentiate is mentally ill...affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate of licensee.
(b) Suspending the licentiate's right to practice.
(c) Placing the licentiate on probation.
(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety that the persons right to practice his...profession may be safely reinstated."

Mental Illness and Fitness to Practice Safely

3. The line between self-confidence and narcissism is not always clear, nor is it clear that an extremely energetic individual is necessarily hyperactive. Depression is common in most everyone at some point. A medical license should not be restricted simply because a medical practitioner is diagnosed with an attention-deficit hyperactivity disorder and/or a depressive disorder, particularly when there is no history of patient harm, the disorder(s) is well controlled and there is no need for a restriction to ensure safe medical practice.

In the abstract the phrase "mental illness" is very broad and carries a stigma. It is, however, no more vague than the terms "disorder" and "condition." Viewed and qualified by

its statutory context, it is obvious that the Legislature intended the phrase "mentally ill" to apply to a licentiate who suffers from an illness, disability or condition affecting an individual's mental processes which impacts in a very real manner that individual's fitness to practice safely.

A physician's fitness to practice safely should not necessarily be determined by patient harm which has occurred in the past (although a history of unprofessional conduct is unfortunately often a very good measure of fitness) but, rather, in terms of whether there is a substantial risk of patient harm given the physician's existing mental, emotional and physical condition and the professional duties the physician is called on to perform.

Practicing medicine requires attention to numerous details, the ability to withstand enormous stresses and a capacity to focus for prolonged periods of time, particularly during operative procedures. Practicing medicine requires considerable emotional control. When a mental illness, disorder or condition limits an individual's ability to meet the mental and emotional challenge of practicing medicine, that individual should not practice medicine unless the impairments resulting such illness, disorder or condition can be managed.

Dr. Bowes Has a Mental Illness Affecting his Competency

4. Dr. Bowes has two diagnosable mental disorders affecting his ability to function and practice medicine safely: an Adult Attention-Deficit Hyperactivity Disorder and a Dysthymic Disorder.

The Adult Attention-Deficit Hyperactivity Disorder was not diagnosed until approximately 1993. Since that diagnosis was rendered, Dr. Bowes has struggled with its symptoms. He has remained in psychotherapy and he continues to take medication to control the disorder.

Dr. Bowes took a leave of absence from his practice as an orthopedic surgeon at Kaiser because of his Adult ADHD and he claimed a right to disability benefits on the basis of that disorder as it related to his ability to practice medicine. And, it is somewhat disturbing that while Dr. Bowes believed he needed the time away from work to enable him to gain control of this disorder, he considered the circumstances surrounding his taking of that leave to be "coercive."

Dr. Bowes' Adult Attention-Deficit Hyperactivity Disorder became "well controlled" *after* he stopped working at Kaiser; it was not well controlled when he was working there, even though he was involved in psychotherapy and was taking medication. No laboratory or psychological tests are presently available to conclude the disorder is well under control or in final remission. How Dr. Bowes will perform emotionally when he returns to practice is uncertain, even if he continues with his psychotherapy and medication programs.

Dr. Bowes' depression has also existed for many years. It is, according to Dr. Welsh-Osga, an understandable consequence of Dr. Bowes having come to grips with the harm to interpersonal relationships caused by his Adult Attention-Deficit Hyperactivity Disorder. It is obvious that Dr. Bowes' depression is also the result of a failed marriage, family problems, problems at work, this Medical Board proceeding, Dr. Bowes' belief that Kaiser unreasonably failed to accommodate his disability and his present financial circumstances. Dr. Bowes remains in psychotherapy and he continues to take medication for his depression.

The clear and convincing evidence established that Dr. Bowes' Adult Attention-Deficit Hyperactivity Disorder and his depression had and presently have an adverse effect on his ability to practice medicine safely.

Dr. Bowes recognized this to be the case. He testified that because of his conditions, he should have a reduced practice, he should not serve on-call and he should not act as a primary surgeon during invasive procedures but as an assisting surgeon. Dr. Bowes recognized his need to continue with psychotherapy and his need to continue taking medications.

Dr. Welsh-Osga recognized this to be the case. She testified that if Dr. Bowes were under too much pressure, his judgment might become impaired. For this reason she believed Dr. Bowes should not serve on-call and that he should engage in less stressful work than existed at the Kaiser clinic. She believed Dr. Bowes should continue psychotherapy and should continue taking medication under the supervision of a competent psychopharmacologist.

Dr. Colarusso recognized this to be the case. He believed Dr. Bowes should not practice in a full time, high pressure private practice or in a managed care setting, that any prospective employer should be aware of these limitations and that Dr. Bowes should continue to receive psychotherapeutic and psychopharmacological treatment.

There is no evidence that Dr. Bowes cannot practice surgery safely as an assisting surgeon if appropriate limitations are in place.

This conclusion is based on Legal Conclusions 1-3 and on Factual Findings 5-7, 9,10, 12, 14-18 and 20.

The Purpose of the Medical Practice Act and the Board's Authority to Restrict Dr. Bowes' Medical Practice

5. The purpose of the Medical Practice Act is to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from the ignorance, incompetency or lack of honesty and integrity of persons required to be

licensed under the Act. The Act is designed to assure the high quality of medical practice. See, *Borden v. Division of Medical Quality* (1994) 30 Cal.4th 874, 882-883.

To this end Business and Professions Code section 2229 provides in pertinent part:

"(a) Protection of the public shall be the highest priority for the Division of Medical Quality...and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge ...shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that the division shall...take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount."

The Need to Restrict Dr. Bowes' Practice

7. Dr. Bowes argued that he has sufficient insight and self-discipline to restrict his own medical practice. He claimed that the public interest does not require the Board to restrict his medical practice. Dr. Welsh-Osga and Dr. Colarusso expressed the opinion that this was not an unreasonable view.

While the administrative law judge and the Board must carefully consider the opinions and recommendations of Dr. Bowes' psychologist and an independent examining psychiatrist, their opinions cannot blindly be accepted if doing so causes the Board to shirk its primary statutory responsibility of protecting the public.

How Dr. Bowes will deal with the stresses associated with returning to work is uncertain. Whether Dr. Bowes' mental disorders will improve, remain the same or deteriorate after he returns to work is unknown. Whether Dr. Bowes will continue to engage in psychotherapy and whether he will continue to take his medications after he returns to work cannot be guaranteed unless he is ordered to do so. Any prospective employer should know of the need to restrict Dr. Bowes' medical practice, a need that can be met only through the imposition of probation.

This conclusion is based on Legal Conclusions 1-6 and on the Factual Findings cited therein.

Cause Exists for the Board to Restrict Dr. Bowes' Practice

8. Dr. Bowes has a mental illness which impairs his competence to practice medicine safely in the absence of reasonable restrictions and for that reason cause exists under Business and Professions Code section 822 to revoke Dr. Bowes' physician's and surgeon's certificate, to stay that revocation and to place Dr. Bowes on probation on appropriate terms and conditions to ensure the safety of the public.

Reasonable conditions of probation include Dr. Bowes' obligation to continue regular treatment with a psychotherapist, his obligation to continue taking medication as prescribed, the reduction of the professional services he provides to no more than thirty hours per week (about half the work week at Kaiser), prohibiting Dr. Bowes from serving as a primary surgeon in any invasive operative procedure, the need for a practice monitor, the obligation to cooperate with probation monitors and the obligation to disclose these terms and conditions of probation to all prospective employers. As a condition of probation, Dr. Bowes should also be required to take and pass an oral clinical examination because he has not practiced medicine for the past three years.

Dr. Bowes was examined by his treating psychologist and by several medical doctors in connection with this administrative action. There is no need to order Dr. Bowes to submit to further psychological, psychiatric or physical examinations as a condition of probation. If other mental or physical problems had been discovered in the course of his numerous treatments and examinations, they would have been noted in the experts' reports.

This conclusion is based on all Legal Conclusions and the Factual Findings referred to therein.

Unprofessional Conduct Was Not Established

9. Cause does not exist to discipline Dr. Bowes' physician's and surgeon's certificate under Business and Professions Code section 2234 in that unprofessional conduct was not established.

This conclusion is based on Legal Conclusion 1 and on Factual Findings 4 and 21.

Cause Does Not Exist to Award Costs of Investigation and Enforcement

10. Business and Professions Code section 125.3 authorizes an administrative law judge to award costs of investigation and enforcement if a licentiate has "committed a violation or violations of the licensing act."

11. Cause does not exist to direct Dr. Bowes to pay the Board's costs of investigation and enforcement in that no proof of such costs was introduced and Dr. Bowes violated any provision of the Medical Practice Act.

This conclusion is based on Legal Conclusions 1, 9 and 10 and on Factual Findings 4 and 21.

Termination of Probation

12. Should Dr. Bowes believe the illness, conditions or disorders no longer impact his fitness and capacity to practice medicine safely before probation expires, he may file a petition under Government Code section 11522. The burden of proof and persuasion will be on Dr. Bowes to establish that he is fit to continue practicing medicine without restriction.

ORDER

Physician's and Surgeon's Certificate No. G 32788 issued to David N. Bowes, M.D. (hereafter respondent) is revoked. However, the order of revocation is stayed and respondent is placed on probation for fifteen (15) years upon the following terms and conditions. Within fifteen (15) days after the effective date of this decision, respondent shall provide the Division, or its designee, with proof that respondent has served a true and correct 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, at any other facility or institution where respondent practices medicine and on the Chief Executive Officer at every insurance carrier extending malpractice insurance coverage to respondent.

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

2. Respondent shall, at all times, maintain a current and renewed physician's and surgeon's certificate.

3. Respondent shall take and pass an oral clinical examination or written examination in a subject to be designated and administered by the Division or its designee. The first examination shall be taken within sixty (60) days after the effective date of this decision. If respondent fails the first examination, he may take a second examination which may consist of a written as well as an oral examination as determined and administered by the by Division or its designee. The waiting period between the first and second examinations shall be at least three (3) months. If respondent fails to pass the first and second examinations, he may take a third and final examination after waiting a period of one year.

Respondent's failure to pass the oral clinical examination within eighteen (18) months after the effective date of this decision shall constitute a violation of probation.

Respondent shall pay the costs of all examinations.

For purposes of this condition, if respondent is required to take and pass a written exam it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Division or its designee.

If respondent fails to pass the first examination, respondent shall be suspended from the practice of medicine. He shall cease the practice of medicine within seventy-two (72) hours after being given notice by the Division or its designee that he has failed the examination. Respondent shall remain suspended from the practice of medicine until a repeat examination has been successfully passed as evidenced by written notice to respondent from the Division or its designee.

4. Within sixty (60) days of the effective date of this decision, respondent shall submit to the Division or to its designee for its prior approval the name and qualifications of a psychotherapist of respondent's choice.

Upon approval, respondent shall continue with psychotherapy until the Division or its designee deems that no further psychotherapy is necessary.

Respondent shall authorize and direct his treating psychotherapist to submit quarterly status reports to the Division or its designee advising the Division or its designee of respondent's progress and his capacity to practice medicine safely.

The Division or its designee may require respondent to undergo psychiatric evaluations by a Division-appointed psychiatrist.

If, before the termination of probation, respondent is found not to be mentally fit to continue the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over the respondent's license and the period of probation shall be extended until the Division determines that respondent is mentally fit to resume the practice of medicine without restrictions.

5. Within sixty (60) days of the effective date of this decision, respondent shall submit to the Division or to its designee for its prior approval the name and qualifications of a medical doctor of respondent's choice who will be responsible for overseeing and evaluating the efficacy of all medications respondent takes to control his Adult Attention-Deficit Hyperactivity Disorder and his depression. Respondent shall continue to take the medications prescribed by this medical

doctor until it is determined that the taking of any such medication is no longer necessary.

Respondent shall authorize and direct the medical doctor overseeing and evaluating the efficacy of his medication program to submit quarterly status reports to the Division or its designee.

The Division or its designee may require respondent to undergo an evaluation of the efficacy of the medications he takes to control his Adult ADHD or his depression by a Division-appointed psychiatrist if deemed necessary by the Division or its designee.

If, before the termination of probation, respondent is found not to be mentally fit to continue the practice of medicine without the taking of medication, the Division shall retain continuing jurisdiction over the respondent's license and the period of probation shall be extended at the discretion of the Division until the Division determines that the respondent is mentally fit to resume the practice of medicine without restrictions.

6. Respondent shall not work in the capacity of a licensed medical doctor for more than thirty (30) hours per week.

   Respondent shall not engage in solo practice.

   Respondent shall not supervise physicians' assistants.

   Respondent shall not work as a primary surgeon in connection with invasive procedures, but he may work as an assisting surgeon in such procedures.

   Respondent shall not work in any capacity that requires that he be "on-call".

   Within 30 days of the effective date of this decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee.

   If the monitor resigns or is no longer available, respondent shall, within fifteen (15) days, move to have a new monitor appointed, through nomination by respondent and approval by the Division or its designee.

7. Respondent shall advise all prospective employers of the terms and conditions of his probation before commencing any new employment with such employers by providing a copy of this Decision to his prospective employers.

Respondent shall file proof of such notification of his prospective employers with the Division within fifteen (15) days after commencing any new employment.

8. Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his business address and his residence address, each of which shall serve as addresses of record. Any change of address 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).

9. Respondent shall submit quarterly declarations under penalty of perjury on forms provide by the Division stating whether there has been compliance with all the conditions of probation.

10. 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.

11. 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.

12. If respondent leaves California to reside or to practice outside the State or if respondent stops practicing medicine in California for any reason, he 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 he is not engaging in any activities defined in Business and Professions Code sections 2051 and 2052.

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.

13. Respondent shall pay the costs associated with probation monitoring each and every year of probation, which are currently set at $2,304/year, but which may be adjusted on an annual basis. These costs shall be payable to the Division of Medical Quality and shall be delivered to the designated probation surveillance monitor no later that January 31 of each calendar year.

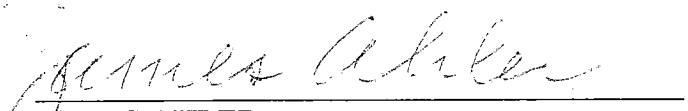
Failure to pay costs within 30 days of the due date shall constitute a violation of probation.

14. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke his 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.

15. Following the effective date of this decision, if respondent ceases to practice medicine due to retirement, health reasons or if he is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion in deciding 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.

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

Dated: September 6, 2000



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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 22 19 99
BY Kami Dudley ANALYST

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 N. BOWES, M.D.** 4647 Zion Avenue San Diego, CA 92120 Physician's and Surgeon's Certificate No. G 32788, Respondent.	Case No. 10-1998-91381 **ACCUSATION**

Ron Joseph, Executive Director of the Medical Board of California, alleges:

PARTIES

1. Complainant, Ron Joseph, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this Accusation solely in his official capacity.

2. On or about August 24, 1976, Physician's and Surgeon's Certificate No. G 32788 was issued by the Board to David N. Bowes, M.D. (hereinafter "respondent"). At all times relevant to the charges brought herein, this license has been in

full force and effect. Unless renewed, it will expire on November 30, 1999.

JURISDICTION

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

A. Code section 2227 provides, in pertinent part, that the Division may revoke, suspend for a period not to exceed one year, or place on probation and order the payment of probation monitoring cost, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Code section 2234 provides, in pertinent part, that the Division shall take action against any licensee who is charged with unprofessional conduct[1]. Unprofessional conduct includes, but is not limited to, the following:

> ". . . .
>
> "(b) Gross negligence.
>
> "(c) Repeated negligent acts.
>
> "(d) Incompetence.
>
> ". . . ."

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1. Unprofessional conduct is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession and which demonstrates an unfitness to practice medicine. Shea v. Board of Medical Examiners, (1978) 81 Cal.App.3d 654.

C. Code section 820 provides that whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

D. Code section 822 provides, in pertinent part, that if a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by revoking the licentiate's certificate or license, by suspending the licentiate's right to practice, by placing the licentiate on probation, or by taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

E. Code section 123.5 provides, in pertinent part, that the board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the

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board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

4. Section 14124.12 of the Welfare and Institutions Code provides, in pertinent part, that: "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 [of Health Services] 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."

CAUSE FOR DISCIPLINE

(Mental Impairment)

5. Respondent David N. Bowes, M.D., is subject to disciplinary action, revocation, suspension and restriction on

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account of the following conduct which demonstrates physical mental impairment:

A. Respondent, a staff orthopedic surgeon at Kaiser Permanente Medical Group has a psychiatric history and has been on Prozac since 1992. Currently, he also takes Ritalin.

B. In February 1996, respondent was relieved of his Kaiser orthopedic outpatient duties for half a day. On that day, he was not getting assistance with x-rays as he had requested and he complained to his boss (Dr. B.). Dr. B. told respondent that respondent appeared so upset he should not finish morning clinic. Respondent did not agree with the assessment, but went home.

C. In May or June, 1997, on a normal, not extraordinarily stressful or difficult day in the orthopedic clinic at Kaiser, respondent went into her office. He appeared very upset, frustrated and angry. He said that the system had to change. Then he began to sob and mumble. He became disoriented and pulled his legs up into a fetal position. He seemed unaware of her presence even though she walked over to him, touched his shoulder and, several times, called his name. After about three to five minutes of sobbing, he seemed to become aware of her presence. He pulled himself together, left the administrator's office, went into his office and locked the door.

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D. In July, 1997, respondent was placed on a leave of absence from Kaiser due to his psychiatric condition.

E. As of September 1998, respondent, according to his treating psychologist was not yet ready to return to his full pre-disability job description, but recommended an incremental return to employment. In her opinion, respondent may need to avoid being put on call and may need to avoid being subject to duties that require the use of small physical space with multiple simultaneous distractions.

F. In or about December 1998 and January 1999, at the request of Kaiser Permanente, respondent underwent a "fitness for duty" examination by an independent medical examiner. The examiner was of the opinion that respondent could return to work, but only with certain conditions in place. Kaiser did not accept the conditions.

G. On February 26, 1999, pursuant to an order from the Medical Board, respondent underwent a psychiatric evaluation. The evaluator was of the opinion that respondent was not fit to perform surgery.

6. As a result of the conduct described in paragraph 5 above, respondent certificate and license are subject to discipline, revocation, suspension or other restriction in that, in violation of Code sections 2234 and 822, his ability to practice is impaired due to mental illness.

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PRAYER

WHEREFORE, complainant requests that the Division hold a hearing on the matters alleged herein, and that following said hearing, the Division issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 32788, heretofore issued to respondent David N. Bowes, M.D.;

2. Directing respondent David N. Bowes, M.D., to pay to the Board a reasonable sum for its investigative and enforcement costs of this action, and directing respondent, if placed on probation, to pay the costs of probation monitoring; and,

3. Taking such other and further action as the Division deems appropriate to protect the public health, safety and welfare.

DATED: March 22, 1999.

Ron Joseph
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

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