DEPARTMENT OF INDUSTRIAL RELATIONS
**DIVISION OF WORKERS' COMPENSATION**
**LEGAL UNIT**
1515 Clay Street, Suite 1700
Oakland, California 94612
Tel (510) 286 -7100 Fax (510) 286-0687

July 7, 2017

Paul K. Barkal
8445 Oakwood Avenue
Munster, IN 46321

## NOTICE OF PROVIDER SUSPENSION – WORKERS' COMPENSATION

Dear Mr. Barkal:

The Acting Administrative Director of the Division of Workers' Compensation (DWC) is required by Labor Code section 139.21(a)(1)(C) to suspend you from participation in the California workers'compensation system because your license, certification, or approval to provide health care services has been surrendered or revoked. Enclosed is a copy of the document(s) relied upon by the Acting Administrative Director as the basis for taking this action.

Your suspension will start 30 calendar days after the date of mailing of thisnotice, unless you submit a written request for a hearing, which will stay the suspension pending the outcome of the hearing. Your request must be made within 10 calendar days of the date of mailing of this notice. If you do not request a hearing within the 10-day time limit, you will be suspended from participation in the California workers' compensation system pursuant to California Code of Regulations, title 8, section 9788.2(b).

Your request for a hearing must contain:

- Your current mailing address;
- The legal and factual reasons as to why you do not believe Labor Code section 139.21(a)(1) is applicable to you; and
- Your original signature or the original signature of your legal representative.

The scope of the hearing is limited to whether or not Labor Code section 139.21(a)(1) is applicable to you. The Acting Administrative Director is required to suspend you unless you provide proof in the hearing that Labor Code section 139.21(a)(1) does not apply.

Your original request for a hearing and one copy of the request must be filed with the Acting Administrative Director. Additionally, you must also serve one copy of the request for a hearing on the DWC Legal Unit. The addresses for the Acting Administrative Director and the Legal Unit are:

Hearing Request
Acting Administrative Director
Division of Workers' Compensation
1515 Clay Street, Suite 1800
Oakland, California 94612

and

Hearing Request
Legal Unit, Division of Workers' Compensation
1515 Clay Street, Suite 1800
Oakland, California 94612

The original and all copies of the request for hearing must have a proof of service attached. A sample proof of service, containing all necessary elements, can be found on the DWC website at https://www.dir.ca.gov/dwc/forms.html, under the category "Court Forms," and then "Proof of Service." The Acting Administrative Director is required to hold your hearing within 30 days of the receipt of your written request. The hearing will be conducted by a hearing officer appointed by the Acting Administrative Director. You will be notified shortly after the receipt of your request of the date and time of the hearing.

For more information about the suspension procedure, please refer to Provider Suspension Regulations, California Code of Regulations, title 8, sections 9788.1 - 9788.4, which can be found on the DWC website at http://www.dir.ca.gov/dwc/DWCPropRegs/Provider-Suspension-Procedure/Clean-Version/Text-of-Regulations.pdf.

Sincerely,

George Parisotto
Acting Administrative Director
Division of Workers' Compensation

BILL LOCKYER, Attorney General
of the State of California
STEVEN H. ZEIGEN, State Bar No. 60225
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation/Petition to Revoke Probation Against:

PAUL K. BARKAL, M.D.
P.O. Box 370173
San Diego, CA 92137-0173

Physician's and Surgeon's Certificate No. A 44292

Respondent.

Case Nos. D2 1991 15215; 19-2002-137347; 19-2004-156874

OAH No. L 2003010690

**STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. David T. Thornton (Complainant) is the Executive Director of the Medical Board of California. He brought this action solely in his official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Steven H. Zeigen, Deputy Attorney General.

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1 2. PAUL K. BARKAL, M.D. (Respondent) is represented in this proceeding
2 by attorney David Rosenberg, whose address is 401 "B" Street, Suite 2209, San Diego, CA
3 92101;
4 tel: (619) 232-1826.
5 . 3. On or about December 14, 1987, the Medical Board of California issued
6 Physician's and Surgeon's Certificate No. A 44292 to PAUL K. BARKAL, M.D. (Respondent).
7 The Certificate will expire on October 31, 2005, if it is not renewed.

8 **JURISDICTION**

9 4. Accusation/Petition to Revoke Probation No. D2 1991 15215 was filed
10 before the Division of Medical Quality (Division) for the Medical Board of California,
11 Department of Consumer Affiars, and is currently pending against Respondent. The Third
12 Accusation and Petition to Revoke Probation and all other statutorily required documents were
13 properly served on Respondent on December 28, 2004. Respondent timely filed his Notice of
14 Defense contesting the initial Accusation and Petition to Revoke Probation. A copy of the Third
15 Amended Accusation and Petition to Revoke Probation Nos. D2-1991-15215, 19-2002-137347,
16 and 19-2004-156874 is attached as exhibit A and incorporated herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 5. Respondent has carefully read, fully discussed with counsel, and
19 understands the charges and allegations in the Third Amended Accusation and Petition to
20 Revoke Probation Nos. D2-1991-15215, 19-2002-137347, and 19-2004-156874. Respondent
21 also has carefully read, fully discussed with counsel, and understands the effects of this
22 Stipulated Surrender of License and Order.
23 6. Respondent is fully aware of his legal rights in this matter, including the
24 right to a hearing on the charges and allegations in the Third Amended Accusation and Petition
25 to Revoke Probation Nos. D2-1991-15215, 19-2002-137347, and 19-2004-156874; the right to
26 confront and cross-examine the witnesses against him; the right to present evidence and to testify
27 on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses
28 and the production of documents; the right to reconsideration and court review of an adverse

decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

## CULPABILITY

8. Respondent understands that the charges and allegations in the Third Amended Accusation and Petition to Revoke Probation Nos. D2 1991 15215, 19-2002-137347, and 9-2004-156874, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

9. For the purpose of resolving the Third Amended Accusation and Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Third Amended Accusation and Petition to Revoke Probation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Division of Medical Quality, Medical Board of California to accept the surrender of his Physician's and Surgeon's Certificate without further process.

## CONTINGENCY

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

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Division of Medical Quality, Medical Board of California may, without further notice or formal proceeding, issue and enter the following Order:

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1 **ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 44292, issued to Respondent PAUL K. BARKAL, M.D. is surrendered and accepted by the Division of Medical Quality, Medical Board of California..

5 13. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Division's Decision and Order.

7 14. Respondent shall cause to be delivered to the Division both his wall certificate and pocket license certificate on or before the effective date of the Decision and Order.

10 15. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in the Third Amended Accusation and Petition to Revoke Probation No. D2-1991-15215, 19-2002-137347, and 9-2004-156874 shall be deemed to be true, correct and admitted by Respondent when the Division determines whether to grant or deny the petition.

18

19 ACCEPTANCE

20 I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, David Rosenberg. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. 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.

25 DATED: 10/21/05

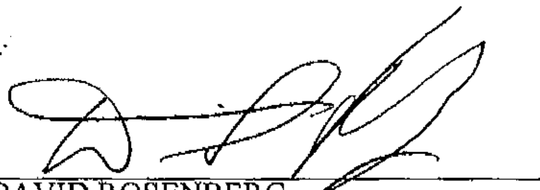
26

27 PAUL K. BARKAL, M.D. (Respondent)

28 Respondent

I have read and fully discussed with Respondent PAUL K. BARKAL, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 10/21/05



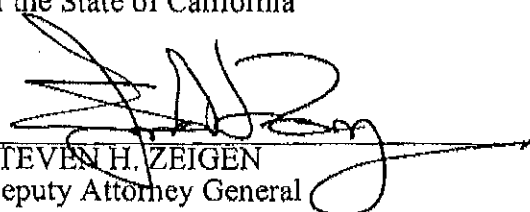
DAVID ROSENBERG
Attorney for Respondent

## ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California.

DATED: 10/21/05

BILL LOCKYER, Attorney General
of the State of California



STEVEN H. ZEIGEN
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SD2002AD0834
70041989.wpd

## Exhibit A

**Third Amended Accusation/Petition to Revoke Probation**
**Nos. D2-1991-15215, 19-2002-137347, and 9-2004-156874**

COPY

BILL LOCKYER, Attorney General
of the State of California
STEVEN H. ZEIGEN, State Bar No. 141135
Deputy Attorney General
California Department of Justice
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Telephone: (619) 645-2074
Facsimile: (619) 645-2061

Attorneys for Complainant

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

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

PAUL K. BARKAL, M.D.
P. O. Box 370866
San Diego, CA 92137-0866

205 S. Helix #57
Solana Beach, CA 92075

Physician and Surgeon's Certificate
No. A 44292

Respondent.

Case Nos. D2-1991-15215; 19-2002-137347; 19-2004-156874

OAH No. L-2003010690

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

Complainant alleges:

PARTIES

1. David T. Thornton (Complainant) brings this Second Amended Accusation and Petition to Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs. The previous Amended Accusation and Petition to Revoke Probation had been brought by Mr. Thornton's predecessor, Ron Joseph.

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2. On or about December 14, 1987, the Medical Board of California issued Physician and Surgeon's Certificate No. A 44292 to PAUL K. BARKAL, M.D. (Respondent). The certificate was in effect at all times relevant to the charges brought herein, and will expire on October 31, 2005, unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation Against PAUL K. BARKAL, M.D., Case No. 10-91-15215 in a decision effective August 8, 1997, respondent was placed on five years probation with other terms and conditions. In a disciplinary action entitled "In the Matter of the Accusation and Petition to Revoke Probation", Case No. D1-1991-15215, in a decision effective September 24, 1999, the Division of Medical Quality, Medical Board of California, revoked Respondent's Physician and Surgeon's Certificate, stayed the revocation, and extended the previously imposed probation six months. Thus, probation was to terminate February 8, 2003. Prior to that date, on December 4, 2002, an Accusation and Petition to Revoke Probation was filed, thereby tolling the running of the previously imposed probation. On September 16, 2003, a First Amended Accusation and Petition to Revoke Probation was filed. A copy of the 1997 and 1999 decisions are attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation 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.

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

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

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

"(b) Gross negligence.

"(c) Repeated negligent acts.

"(d) Incompetence.

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

"(f) Any action or conduct which would have warranted the denial of a certificate."

7. Section 2261 of the Code states:

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

8. Section 2262 of the Code states:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct.

"In addition to any other disciplinary action, the Division of Medical Quality or the California Board of Podiatric Medicine may impose a civil penalty of five hundred dollars ($500) for a violation of this section."

9. Section 725 of the Code states:

"Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

1 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
2 California Intractable Pain Treatment Act shall be subject to disciplinary action for
3 lawfully prescribing or administering controlled substances in the course of treatment of a
4 person for intractable pain."

5 10. Section 810 of the Code states:

6 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
7 including suspension or revocation of a license or certificate, for a health care
8 professional to do any of the following in connection with his or her professional
9 activities:

10 "(1) Knowingly present or cause to be presented any false or fraudulent claim for
11 the payment of a loss under a contract of insurance.

12 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or
13 use the same, or to allow it to be presented or used in support of any false or fraudulent
14 claim.

15 "(b) It shall constitute cause for revocation or suspension of a license or
16 certificate for a health care professional to engage in any conduct prohibited under
17 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

18 "(c) As used in this section, health care professional means any person licensed or
19 certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act,
20 or the Chiropractic Initiative Act."

21 11. Section 2216.2 of the Code provides that "it is unprofessional conduct for
22 a physician and surgeon to fail to provide adequate security by liability insurance... for claims by
23 patients arising out of surgical performed outside of a general acute care hospital..."

24 12. Section 2221.1 of the Code provides that the Board "may take disciplinary
25 action , including ... revocation or suspension of licenses , against physician and surgeons and all
26 others licensed or regulated by the Board who, except for good cause, knowingly fail to protect
27 patients by failing to follow infection control guidelines thereby risking the transmission of blood
28 borne infectious diseases from the physician and surgeon... In so doing, the Board shall consider

referencing the standards, regulations, and guidelines of the State Department of Health Services... for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings."

13. Section 2266 of the Code provides that "the failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

14. Section 2285 of the Code provides " the use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct.

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

FIRST ADDITIONAL CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Acts of Negligence, Incompetence, Dishonesty)

16. Respondent is subject to disciplinary action under sections 2234(b), (c), (d), and (e) of the Code in that he was grossly negligent, incompetent, committed repeated negligent acts, and/or was dishonest in his care and treatment of patients D.M., J.G., and L.Z. The circumstances are as follows:

**Patient D.M.**

A. In December 1996, patient D.M. underwent L5-S1 laminectomy and fusion with indigenous bone graft, as well as implantation of a bone stimulator. She had a history of numerous other surgeries including hysterectomy, cholecystectomy, and bilateral carpal tunnel release.

B. Despite her surgery, D.M. was still in pain and began seeing pain specialist Dr. W in April 1997. In May 1997, she received trigger point injections and

injections in the sacroiliac joint under fluoroscopy. In June 1997, D.M. received selective nerve root injection. D.M. continued to complain of increased numbness and weakness over her lower extremities.

C. In September 1997, D.M. underwent removal of the bone stimulator from her back. In December 1997, she underwent removal of the hardware from her back.

D. In February 1998, D.M. underwent bilateral carpal tunnel release surgery. When she was evaluated in April 1998, her right foot was found to be dragging, and she was referred to respondent for pain management. On or about August 5, 1998, respondent did a comprehensive pain evaluation. On or about August 13, 1998, respondent did a selective nerve root injection between L5 and S1.

E. On or about September 30, 1998, respondent performed a subcutaneous trial placement of the spinal cord stimulator leads under local anesthesia and intravenous sedation. In the recovery room, D.M. complained of severe burning pain in the right thigh and paralysis of the right leg, hyperesthesia, and allodynia. Despite Versed, Ativan, intravenous morphine, Fentanyl, and Demerol, D.M. only received partial relief of her intractable pain.

F. D.M. was evaluated by neurosurgeon, Dr. A., after undergoing emergency MRI and myelogram. The MRI revealed nothing above the L1 level because of electrode placement.

G. On or about October 8, 1998, respondent performed internalization of the spinal cord stimulator with internal pulse generator (IPG) placement. The internalization of the spinal cord stimulator was performed under general anesthesia. Nonetheless, respondent documented that during the procedure the patient could feel paraesthesia and comfort over the entire area of pain.

H. Respondent subsequently did multiple reprogrammings of the IPG and reported excellent pain relief. D.M., as well as, other physicians and therapists with whom she was treating, made statements indicating there was no relief.

I. D.M. developed urinary and fecal incontinence, a sign that damage had been done to the hypogastric plexus nerves. Respondent thereafter removed the spinal cord stimulator. A neurological evaluation concluded that there was myelomalacia at T10-T11 level, which possibly was due to the placement of the spinal cord stimulator.

**Patient J.G.**

J. Sixty-five year old J.G. first saw respondent in July 1998. She had a history of having fallen in 1973 and again in 1985, the latter of which resulted in vertebral compression fractures. In February 1998, J.G. underwent lumbar diskectomy at three levels with fusion. Numbness and weakness were resolved, but the pain in her lower back persisted.

K. Respondent physically examined J.G. at her first visit on or about July 27, 1998. While he found limited motion around the lumbar area, respondent noted a negative straight leg raising test, normal motor system and deep tendon reflexes, negative sacral compression, and no myofascial abnormalities. The patient had tenderness at L4-5 and L5-S1 facet joints bilaterally. Respondent found no trigger points.

L. Between June 19, 1999 and April 18, 2001, respondent gave the patient a total of twenty-six (26) trigger point injections. Between January 26, 1999 and March 27, 2001, respondent gave the patient six (6) sacroiliac joint arthrograms and steroid injections. Between January 6, 2000 and August 31, 2000, respondent gave the patient eight (8) caudal epidural steroid injections. Between July 28, 1998 and August 9, 1998, respondent gave J.G. four (4) bilateral facet joint L4-5 & L5-S1 arthrograms and steroid injections. Between October 6, 1999 and December 3, 1999, the patient also received 15 acupuncture treatments. On September 15, 1998, respondent performed cryoneurolysis at L3, L4, and L5 bilateral facet joint nerves.

M. Each time respondent performed a procedure, respondent documented that the patient ended up with excellent results.

N. Despite documenting that the patient was a borderline diabetic, respondent failed to document the patient's fasting blood sugar level prior to treatment.

**Patient L.Z.**

O. During 1998, L.Z. was looking for a pain management doctor and found respondent through the yellow pages. She had undergone surgery following her sustaining a broken jaw after being struck by a student at a private school. Workmen's Compensation approved respondent and she saw him one to two times each week from about January 1999 through January 2002. It was respondent's responsibility to monitor the care L.Z was receiving from all of her physicians. At times, she had 4 or 5 different doctors.

P. Beginning in approximately May 2002, respondent began becoming non-responsive to L.Z.'s needs. Respondent would cancel appointments with L.Z. When she called respondent's office, the staff would be unable to tell her where respondent was. Respondent failed to order the equipment she needed, equipment which she was required to receive through Worker's Compensation insurance.

Q. In early May 2002, L.Z. was in such pain she was throwing up. She called respondent's office and was told respondent would be out of town from May 7 through May 13, 2002. No one was left to cover for her. She called several times requesting an appointment and received no return calls. By the end of May 2002, L.Z. had two appointments with respondent, one of which she was keeping as a backup. Her appointment with respondent for May 21, 2002, was canceled the very day. When she showed up for her backup appointment, L.Z. was told respondent was out of town because the pipes had burst in his parents' Indiana home.

R. On or about August 16, 2002, L.Z. received a phone from respondent's office canceling two weeks worth of her appointments due to respondent's doing surgeries those weeks. When L.Z. spoke with another of respondent's staff that same day, she was told respondent was out of town interviewing physicians. When L.Z. called for another appointment on August 26, 2002, L.Z. was told respondent had canceled his appointments for the past three weeks and his schedule was not known.

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S. L.Z. became so frustrated trying to get an appointment, she had a case management agency call to get her an appointment. Respondent's staff refused to speak with anyone but Worker's Compensation or L.Z.'s attorney. When L.Z. called again in early September 2002, she was told respondent was out of town for two weeks interviewing physicians and running his corporation. L.Z. called again on or about September 17, 2002, and was told respondent was still out of the office. L.Z. told the staff person she was in severe pain and having decreased functioning and needed physical therapy.

T. Between September 2002 and November 2002, L.Z. informed her Worker's Compensation adjuster, her vocational rehabilitation therapist, her dentist, her physician and her physical therapist that respondent was not providing adequate care and treatment. Her attorney and another doctor called respondent requesting an appointment for her. Another physician requested L.Z. receive physical therapy.

U. In late October 2002, L.Z. was told by respondent's staff that respondent had the flu for the past two weeks, despite being told by respondent's staff at another office he had seen patients on October 8 and 11. L.Z. received a call from respondent's office saying she had been given an appointment for October 28, 2002. When L.Z. called the office, she discovered the telephone number had been changed. When L.Z. showed up for her October 28th appointment, respondent was not there. Instead, Dr. K. was there, a doctor she had never met before. At the end of October L.Z., in consultation with her attorney, decided to switch doctors.

V. On or about November 13, 2002, L.Z. called respondent's office with medical questions. She was told respondent was on extended leave and had not given a return date. That same day she received a call from respondent's office scheduling an appointment for November 18th. On or about November 15th L.Z. received a call from respondent's office saying he wanted her appointment to be the last of the day on the 18th, so respondent could spend more time with her. L.Z. arrived for her 10:30 a.m. appointment one-half hour early. While waiting she heard another patient say he had

not seen respondent for three months. L.Z. heard a staffer tell a patient, respondent was leaving in 25 minutes. At about 12:30 p.m. respondent walked into the waiting room, said "Oh, you are here, shook her hand, and walked out the door. Respondent never returned, and never saw L.Z. At approximately 1:05 p.m. she saw Dr. K. who did not want to see her because respondent had not discussed her case with him.

W. In December L.Z. was told that Dr. K. would be her doctor because respondent was refusing to see his patients. By the time she saw Dr. K. on December 15, 2002, L.Z. had lost her Worker's Compensation benefits due to respondent's failure to see her.

X. In January 2003, L.Z. called respondent's office and spoke with the answering service. She learned respondent had been evicted from his Midway office. On January 13, 2003, L.Z. visited respondent's Solana Beach office and spoke with L.M., who told her she did not work for respondent and could not provide L.Z. her medical records. Later that same day respondent called L.Z. and left a message saying her records would be available at the Midway office by that Friday, and requested she stay a patient of Dr. K. Respondent had been evicted from the Midway office, but made no mention of it.

On or about January 14, 2003, L.Z. was told she could pick up her records at the Midway office.

On or about January 17, 2003, L.Z. called L.M. and said she no longer wanted respondent as her physician, that all she wanted was her records. L.M. told L.Z. she would send the records to her attorney by the following Tuesday.

Y. By January 22, 2003, L.Z. had still not received her records. On that day, L.Z. spoke with L.M., who told her respondent had ordered his staff to lie about who owned the business. L.M. said she could no longer work for respondent because of all the patients who called and were in pain, and in need of a reliable doctor, which respondent was not. L.M. said she hoped L.Z. could get her records.

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Z. On or about January 24, 2003, L.Z. called the Midway office and got a recording about remote access. She still had not received her records. On or about February 5, 2004, L.Z received a call from respondent who said he had told his staff to schedule her for an appointment for each of the past three weeks.

17. Respondent violated sections 2234 (b), (c), and (d) in that during the care and treatment rendered patients D.M., J.G., and L.Z. respondent committed gross negligence, incompetence and /or repeated acts of negligence on account of the following:

A. Respondent failed to remove the spinal cord stimulator from D.M. after the patient had an adverse reaction to it.

B. In the absence of pain relief, or when there is an adverse event during a spinal cord stimulator trial, it is contraindicated to thereafter internalize the stimulator.

C. Respondent performed the internalization of the spinal cord stimulator under general anesthesia, thus making it impossible that D.M. could tell respondent she could feel paresthesia covering the entire area of pain as respondent documented in his OP report.

D. Respondent failed to removed the spinal cord stimulator after D.M. complained of paralysis and burning after the subcutaneous trial.

E. Respondent treated J.G. with twenty-six (26) trigger point injections and six (6) sacroiliac joint arthrograms despite finding no pain trigger points and negative sacral compression in his July 27, 1998, examination of the patient.

F. Respondent failed to document anything about the J.G.'s fasting blood sugar level prior to treatment despite documenting the fact she was a borderline diabetic.

G. Respondent abandoned L.Z by failing to provide adequate pain management follow-up and coordinate her treatment with the other treating physicians.

H. Respondent abandoned patient L.Z. by failing to keep scheduled appointments.

I. Respondent failed to provide L.Z. her medical records in a timely fashion.

J. Respondent ordered his staff to lie to patient L.Z.

SECOND ADDITIONAL CAUSE FOR DISCIPLINE

(Making False Statements)

18. Respondent is subject to disciplinary action under section 2261 of the Code in that he falsely represented the existence or nonexistence of a state of facts during his care and treatment of D.M. and L.Z. The circumstances are as follows:

A. Paragraphs 17 (A) through (I) and (O) through (Z) are hereby incorporated by reference as if fully set forth.

B. On or about April 3, 2003, respondent appeared at the Medical Board offices for a physician interview concerning his care and treatment of patient J.G. During the tape recorded interview respondent stated he was a part owner of the Del Mar Surgery Center where he periodically performed, or hired people to perform, procedures for him. Respondent has no ownership interest in the Del Mar Surgery Center.

C. During the physician interview on or about April 3, 2003, respondent stated he would have certified copies of patient J.G.'s records to the Board within one week. Those records were not forwarded for more than one month after they were requested.

D. Respondent performed the internalization of the spinal cord stimulator on patient D.M. under general anesthesia, thus making it impossible that the patient could tell respondent she could feel paresthesia covering the entire area of pain as respondent documented in his OP report.

E. Respondent ordered his staff to lie to patient L.Z. about why respondent failed his scheduled appointments with her.

THIRD ADDITIONAL CAUSE FOR DISCIPLINE

(Altering Medical Records)

19. Respondent is subject to disciplinary action under section 2262 of the Code in that he altered medical records with fraudulent intent. The circumstances are as follows:

A. Ms. A. H. is the owner and manager of the Hillside Transcription Service and performed transcription for respondent from 1991 through June2002.

B. Sometime between 2001 and 2002, a Dr. H. was working for respondent, who required that each of Dr. H.'s operative reports be dictated in a draft form so that respondent could revise them. Despite not being percipient to the procedure for which the operative report was written, respondent nonetheless ordered A.H. to change the report. When A. H. inquired about the changes, respondent told her he made changes designed to increase Workers' Compensation reimbursement, or to increase the chance for reimbursement by the Workman's Compensation insurance companies.

C. Ms. L. M. worked as respondent's Office Administrator from October 2002 until March 2003. During that time she witnessed respondent re-dictate other physicians reports, sign their names and put his initials underneath. Dr. H. was one of those physicians.

D. Ms. C. J. was a medical transcriptionist who transcribed medical records for respondent from June through December 2002. During that time frame, respondent made changes to reports dictated by other physicians. One of those physicians was, again, Dr. H. Another was a Dr. K. C. J. also knew that respondent had dictated a report for another physician, Dr. Y. C. J. was also aware that respondent had asked a Dr. F. to dictate a report for a procedure he did not do. When Dr. F. refused, respondent refused to pay Dr. F. for his other services rendered on behalf of respondent. At one point, respondent asked C. J. to destroy reports of two chiropractors, Dr. A. and Dr. V. C. J. refused to do so. She quit working for respondent in June 2002, with respondent owing her money for transcription services for which she was never paid.

E. Ms. K.K. worked as respondent's staff supervisor from September 2001 until January 2003. Respondent told K.K. he had changed the operative report of Dr. H. because Dr. H. did not know how to write a report.

F. Mr. W.O. was hired by K.K. to be respondent's practice administrator, a position he held from September 2002 through January 2003. Respondent taught W.O. how to do the billing, showing him how to change the reports of the other doctors

working for respondent to reflect a more detailed, costly procedure. Respondent also showed W.O. how to forge the signatures of the other physicians in his employ.

G. Ms. D.H. began working for respondent as a billing in or about August 2002. She learned that respondent was billing for treating patients under the wrong taxpayer identification number. In reviewing superbills D.H. became aware that respondent was upcoding and unbundling the billed procedures to reflect more and more complex procedures which were paid out at a higher rate. D.H. confirmed her suspicions by comparing respondent's reports with those of the insurance company. D.H. also became aware that respondent was changing operative reports of other physicians, describing procedures he had not observed. She discussed this W.O. who acknowledged making the same discoveries.

H. On or about December 30, 2002, Ms. M.H. received a call from a person identifying himself as Dr. W., wanting her to transcribe dictated reports for three physicians. M.H. later discovered it was respondent who had called impersonating Dr. W.

I. M.H. transcribed for respondent, thinking he was Dr. W., for about two months from January 2003 until March 2003. Toward the end of January, respondent called her and said he had to change the reports of Dr. K. She called Dr. K. who said he could do nothing about the changes respondent made to his reports because he had a contract with respondent. Dr. K. said he never saw his reports after he dictated them.

20. Respondent is guilty of having violated Code section 2262 on account of the following:

A. Respondent altered the operative reports of various physicians, including Drs. H. and K.

B. Respondent dictated an operative report for Dr. Y., for a procedure respondent did not perform.

C. Respondent ordered Dr. F. to dictate a report for a procedure he did not perform, and when Dr. F. refused, respondent refused to pay him for services rendered.

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FOURTH ADDITIONAL CAUSE FOR DISCIPLINE

(Dishonest Acts)

21. Respondent is subject to disciplinary action under code section 2234(e) in that he committed dishonest acts. The circumstances are as follows:

A. Paragraphs 17 in its entirety, and 20(I) are incorporated by reference as if fully set forth herein.

B. Respondent altered the operative reports of various physicians, including Drs. H. and K.

C. Respondent dictated an operative report for Dr. Y., for a procedure respondent did not perform.

D. Respondent ordered Dr. F. to dictate a report for a procedure he did not perform, and when Dr. F. refused, respondent refused to pay him for services rendered.

E. Respondent impersonated another physician, Dr. W.

FIFTH ADDITIONAL CAUSE FOR DISCIPLINE

(Excessive Treatment)

22. Respondent is subject to disciplinary action under code section 725 in that during the care and treatment of patient J.G. he provided excessive treatment. The circumstances are as follows:

A. Paragraphs16 (J) through (N) is incorporated as if fully set forth herein.

B. Respondent was advised by J.G.'s surgeon that the only way to treat her pain was with pain relieving medication. Despite this admonition, respondent gave to patient 26 trigger point injections, and six sacroiliac joint arthrograms and steroid injections.

SIXTH ADDITIONAL CAUSE FOR DISCIPLINE

(Gross Negligence, Repeated Acts of Negligence , Incompetence, Dishonest Acts and Insurance Fraud)

23. Respondent is subject to disciplinary action under code sections 2234(b), (c), (d), (e), 2221.1, 2285, and 810 in that he committed gross negligence, repeated acts of

negligence, incompetence, dishonest acts, and insurance fraud, while failing to follow proper infectious control protocols, and failing to obtain a fictitious name permit during the providing of general anesthesia to perform a procedure known as "Manipulation Under Anesthesia" (MUA). The circumstances are as follows:

A. Respondent is the President and Chief Executive Officer, and a Director and incorporator of Pain Intervention Therapy (PIT), a corporation organized and existing under the laws of the state of California. Its registered address is respondent's Solana Beach office: 215 South Highway 101, Suite 209, Solana Beach, California 92075.

B. Brett A., a chiropractor, is the Chief Financial Officer and a Director. Jeffrey V., another chiropractor, is the Secretary and a Director.

C. Beach Cities is a limited partnership organized and existing under the laws of the state of California with the same Solana Beach address as Pain Intervention. Beach Cities has three general partners Pemcor, Inc. operated by respondent, Kellet, Inc., operated by Brett A., and War, Inc. operated by Jeffrey V.

D. West Coast is a corporation organized and existing under the laws of California with its registered address as 3434 Midway Drive, Suite 2004, San Diego, California 92110. West Coast is owned and operated by respondent.

E. On or about July 30, 2002, respondent, as Pain Intervention Therapy, leased the Tri-City Surgery Center in Vista, from Dr. Daniel Lee, DDS, one of the principals of the center. The terms of agreement provided a lease period through July 31, 2003, during which PIT of San Diego, would use one of the operating rooms every Tuesday, Wednesday, and Thursday from 12:00 p.m. to 6: p.m. PIT was required to carry its own medical liability insurance , and be accredited as a separate surgery center entity. It never did and never was.

F. Respondent first used the surgery center on or about July 30, 2002, for the purpose of performing manipulations under anesthesia (MUAs). Respondent's patients were virtually all non-English speaking, Hispanic individuals, who had been referred to PIT by Brett A., and/or Jeffrey V. Many did not receive proper pre-operative

instructions. Respondent's patients filled the surgery center. Trash was strewn all over the center. One patient had an oxygen saturation problem which Dr. Lee helped resolve. A second patient had an airway problem. That same day, a woman patient was sitting on the edge of a recovery room bed wobbling, when one of the center's employees saved her from falling to the floor.

G. Approximately one week after beginning to use the surgery center, respondent was asked to provide PIT's proof of liability insurance and current accreditation to the owners of the surgery center. Respondent never supplied such documentation.

H. Prior to performing the MUAs, respondent's staff failed to take an appropriate history or perform a pre-operative physical. Patient assessments were incomplete. The staff hired by respondent to work for PIT allowed blood to be splattered on the walls and the floors. There was no patient privacy as men and women paraded around the center in hospital gowns open in the back.

I. On or about August 15, 2002, 911 had to be called for a PIT patient experiencing chest pain.

J. On a morning after respondent's staff had used the center, the container for sharp instruments was found overflowing in the operating room used by respondent. That same day, blood was found on a pre-op table railing. Respondent's staff had strapped a sharps container to a chair in the pre-op area. Respondent's nurses carried a dirty sharps container with blood on it into the center's secretary's office for storage until the next scheduled day.

K. Post operatively, respondent's patients were left in the recovery room, unmonitored and unsupervised. They were allowed to leave the center even though still wobbly.

L. Respondent's staff failed to provide adequate monitoring to ensure patient safety both before and after the MUA procedure

M. Respondent's patients underwent MUAs without first undergoing more conservative chiropractic modalities, and without being told they needed orthopedic

surgery.

N. Respondent's patients received the MUAs and the general anesthesia on three successive days regardless of their need for additional procedures.

O. Respondent upcoded the PIT billings for the MUAs provided at the Tir-City surgery center. Brett A. and Jeffrey V. charged a surgical CPT code ( 22505) which is a surgical code outside the scope of their chiropractic license.[1] Each of the chiropractors also charged for a 26 area manipulation of the spine which is impossible to have accomplished in the time allotted for each of the patients. Brett A. billed $1989.00 for each of the manipulations, in addition to billing $1491.88 for Jeffrey V. acting as his assistant. Jeffrey V. billed $1,147.50 per manipulation, plus an additional $860.70 for Brett A. assisting him.

P. Respondent charged an outpatient surgery facility fee for PIT, generally in the amount of $4000.00 for each of the manipulations. At no time, was PIT a licensed, accredited or certified outpatient setting. Brett A., Jeffrey V. and respondent, through PIT, billed in excess of $240,000 for MUAs and anesthesia to one insurance company alone.[2]

Q. Beach Cities entered into a leasing arrangement with the Del Mar Cosmetic Medical Center to use that facility on specified days. Beach Cities billed for surgical facility fees for the administration of outpatient pain injections despite never obtaining the necessary accreditation or certification to operate as an out patient surgery center.

R. Beach Cities referred their patients to West Coast for pain management evaluations. Every evaluation of a patient so referred was upcoded by respondent in the billing to reflect a level 5 consultation (CPT code 99245).

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1. Upcoding is the "deliberate misleading use of a particular code." Siddiqi v. United States 98 F.3d 1427,1428 ( 2d Cir. 1996). It occurs when a provider uses a CPT code to bill for a higher level, and more expensive, service than the service which was actually provided.

2. That company, Zenith Insurance, is suing respondent and the others under California's unfair competition law ( Section 17200, et seq.)

24. Respondent violated section2 2234 (b), (c), (d), (e), and 801 by reason of, but not limited too, the following:

A. Respondent failed to provide adequate patient privacy

B. Respondent failed to hire adequate, and properly trained staff to ensure patient safety during the recovery period.

C. Respondent failed to provide adequate oxygen in the recovery room for the patients.

D. Respondent failed to provide adequate pre-operative instructions to the patients.

E. Respondent's staff permitted sharp instruments to lie around the center, and allowed blood spills on the floors and walls.

F. Respondent failed to insure that the patients first underwent conservative chiropractic modalities before preforming the more expensive MUA procedure.

G. Patients were inadequately monitored of their vital signs, and were allowed to leave the surgery center without insuring they had a ride home.

H. Patients underwent MUAs without first undergoing more conservative chiropractic modalities, and without being told they needed orthopedic surgery.

I. Patients received the MUAs and the general anesthesia on three successive days regardless of their need for additional procedures.

J. Respondent billed surgery center facility fees despite not being certified or accredited as a surgery center.

K. Respondent, as PIT, conspired with Brett A. and Jeffrey V. to bill upcoded procedures.

L. Respondent, as PIT, along with Brett A. and Jeffrey V. billed for total body efficacious MUAs despite completing the billed procedure in five minutes. Such a procedure takes between 30 and 45 minutes.

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M. Respondent upcoded the billings for West Coast by billing the patient evaluations as level 5.

SEVENTH ADDITIONAL CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)[3]

25. Respondent has further subjected his Physician's and Surgeon's Certificate to disciplinary action under sections 2227 and 2234, as defined by section 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine as more particularly alleged hereinafter:

A. At the time she stopped working for respondent, medical transcriptionist, A.H. was owed $5,000 by respondent. Although she collected a judgment against respondent, he has never paid off his debt.

B. Respondent failed to pay his employees prior to Christmas 2002.

C. Respondent failed to pay K.K. her salary in December 2002 and January 2003.

D. Respondent failed to pay the rent for his office in December 2002, thereafter being evicted from the premises.

E. Respondent refused to take calls from his patients.

F. Respondent failed to pay payroll taxes, social security taxes, and/or other taxes resulting in the California Franchise Tax Board filing liens against respondent for $111,147.58, with interest to be paid, for the tax years 1994, 1995,1999, 2000, and 2001.

G. Respondent misrepresented the amount of accounts receivable to Neighborhood National Bank in order to secure a loan.

H. Respondent failed to pay D. H. for her billing services.

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3. Unprofessional conduct under section 2234 of the Code is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. ( *Shea v. Board of Medical Quality Assurance* (1978) 81 Cal. App.3d 564,575.)

I. Respondent failed to pay medical transcriptionist C.J. the $8,000 he owes her.

J. Respondent traveled with patient charts in his vehicle, leaving them strewn in his car in public view.

K. Respondent failed to pay Dr. H. in a timely fashion.

L. Respondent failed to pay the medical billing service operated by J.F. approximately $20,000 in fees.

M. Respondent wrote a check to cover the cost of malpractice insurance which bounced, and was never reissued. ( Section 2216.2)

N. Respondent left his office after lunch despite the fact patients were waiting to see him.

P. Respondent failed to pay B.R. approximately $5,500 for her services as his practice administrator.

Q. On August 29,2000, the California Franchise Tax Board filed a notice of tax lien with the San Diego County Recorder in the amount of $32, 949.85, with interest to be paid, for the tax year 1998.

R. On January 17, 2002, respondent settled an action brought against him by A.W., an individual who was injured in his office. Respondent agreed to make 48 separate payments of $2,000 to A.W. After making the first two payments, respondent has failed to make any subsequent payments. A judgment in the amount of $149,384.21 was entered against respondent on January 17, 2003. Respondent failed to appear in court on July 11, 2003, and a civil bench warrant was issued with bail set at $5,000.

S. On March 8, 2002, respondent was stopped by a San Diego police officer for speeding. Respondent told the officer his residence was in Indiana, despite living in Solana Beach. Respondent was ordered to pay a fine of $132.00, which he has failed to pay.

T. On July 26, 2002, a judgement was entered against respondent in the amount of $6,458.82 for failing to pay wages from May 15, 2001 to April 09, 2001,to former employee J.S..

U. On July 30, 2002, a judgement was entered against respondent in the amount of $4,651.65 for failing to pay wages from May 1, 2001 to May 10, 2001, to former employee K.B.

V. On May 1, 2003, a judgment was awarded against respondent in the amount of $5,000 for failing to pay wages to former employee M. B-M.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Have a Practice Monitor)

26. At all times after the effective date of Respondent's probation, Condition 7 of case no. 10-91-15215 stated:

" 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 shall be monitored by another physician in respondent's field of practice, pain management, who shall provide periodic reports to the Division or its designee.

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

27. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 7, referenced above. The facts and circumstances regarding this violation are as follows:

A. On or about May 8, 2002, respondent's practice monitor resigned after respondent refused to supply the monitor billing records so the monitor could choose which files he would review. Prior to that date, respondent selected which four or five files he would send to the monitor for review.

B. When the monitor wanted to revise the system by which he reviewed files by requesting them randomly from billing records, respondent refused to comply forcing the monitor to resign.

C. Respondent has been without a monitor for more than two years despite being advised by probation monitors Cynthia Brandenburg, Ruben Denis and Jesse

Valdez that he was out of compliance with this condition.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Have Timely Eye Examinations)

28. At all times after the effective date of Respondent's probation, Condition 1 of Case No. D1-1001-15215 provided:

"For the duration of respondent's probationary period respondent shall undergo semi-annual eye examinations from a licensed ophthalmologist, for the purpose of ensuring there is no problem with his vision as a result of respondent's recurring retina problems, or any other associated eye condition affecting his ability to practice medicine. A copy of each semi-annual examination shall be sent to the Division by the examining physician within seventy-two (72) hours of the examination."

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

A. Respondent failed to submit eye examinations reports for the last six months of 2001, and the first six months of 2002.

B. When he did submit the reports, they were not timely filed, nor were they filed within 72 hours of the examination.

C. Respondent has continued to fail to provide reports of eye-examinations despite being advised by probation monitors Cynthia Brandenburg, Ruben Denis, and Jesse Valdez that he was out of compliance with this condition.

THIRD CAUSE TO REVOKE PROBATION

( Failure to Take Additional CME)

30. At all times after the effective date of Respondent's probation, Condition 3 of Case No. 10-91-15215 stated:

"Within 90 days from the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval an educational program or course to be designated by the Division, which shall not be less than 40

hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of Continuing Medical Education of which 40 hours were in satisfaction of this condition and were approved in advance by the Division or its designee."

31. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to submit any Continuing Medical Education credit hours for year 2001, 2002, and 2003.

B. Respondent has failed to submit any CME credit hours for 2004 despite being advised by probation monitors Ruben Denis and Jesse Valdez he is out of compliance with this condition.

C. Any CME credits respondent has now supplied were not done in a timely matter, and were done only after the filing of the Petition to Revoke Probation.

## FOURTH CAUSE TO REVOKE PROBATION

( Failure to Timely Pay for Psychological Evaluation)

32. At all times after the effective date of Respondent's probation, Condition 5 of Case No. 10-91-15215 stated:

"Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required bu the Division or its designees, respondent shall undergo a psychiatric evaluation and psychological testing by a Division approved psychiatrist or psychologist, who shall furnish an evaluation report to the Division or its designees. The respondent shall pay the cost of the psychiatrist evaluation."

33. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent completed the psychiatric evaluation on February 25, 1998.

B. Any monies he has paid toward the payment of the psychiatric evaluation were paid in an untimely fashion, and merely in response to the filing of the petition to revoke probation.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Comply with the Division's Probation Surveillance Program)

34. At all times after the effective date of Respondent's probation, Condition 11 of Case No. 10-91-15215 stated:

" Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his address of business and residence which shall both serve as addresses of record. Changes of addresses shall be immediately communicated to the Division in writing. Under no circumstances shall a post office box serve as an address of record.

" Respondent shall also immediately inform the Division, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or os contemplated to last, more than 30 days."

35. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to keep his probation monitor informed of his ever changing addresses.

B. Respondent has continued to use a post office box as an address of record.

C. Respondent has refused to contact probation monitor Jesse Valdez despite repeated attempts to have him do so.

D. Respondent has violated conditions 3,5,7,10,16,and 17 of Case No. 10-91-156215, and conditions 1 and 3 of Case No. D1-91-15215.

## SIXTH CAUSE TO REVOKE PROBATION

(Failure to Submit Timely Quarterly Reports)

36. At all times after the effective date of Respondent's probation, Condition 10 of Case No. 10-91-15215 stated:

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

37. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 10, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent failed to submit quarterly reports for October - December 2002.

B. Respondent failed to submit quarterly reports in for all of 2003.

C. Respondent has failed to submit quarterly reports for the first three quarters of 2004, despite being advised by probation monitors Ruben Denis and Jesse Valdez of his obligation to do so.

## SEVENTH CAUSE TO REVOKE PROBATION

(Failure to Pay Costs of Investigation)

38. At all times after the effective date of Respondent's probation, Condition 16 of Case No. 10-91-15215 stated:

" The respondent is hereby ordered to reimburse the Division the amount of $7,500.00 for its investigation and prosecution costs. Respondent shall pay the entire amount within two years from the effective date of this decision, in amounts to be agreed upon between respondent and the Division. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to another payment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to reimburse the Division for its investigative and prosecution costs."

At all times after the effective date of the decision in Case No. D1-1991-15215, Probationary Condition No. 3 stated:

" The respondent is hereby ordered to reimburse the Division the amount of $500 for its investigation and prosecution costs. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of probation, unless the Division agrees in writing to another payment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to reimburse the Division for its investigative and prosecution costs."

39. Respondent's probation is subject to revocation because he failed to comply with Probation Conditions 16 and 10, referenced above. The facts and circumstances regarding this violation are as follows:

A. On November 12, 2003, respondent paid $20,579.00 for probation monitoring and investigative costs for years 2000-2003. Those payments were made in an untimely fashion and only after the petition to revoke probation was filed and served against respondent.

## EIGHTH CAUSE TO REVOKE PROBATION

(Failure to Pay Probation Monitoring Costs)

40. At all times after the effective date of Respondent's probation, Condition 17 of Case No. 10-91-15215 stated:

" Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Division at the beginning of each calendar year. Failure to pay such costs shall constitute a violation of probation."

41. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17, referenced above. The facts and circumstances regarding this violation are as follows:

A. On November 12, 2003, respondent paid $20,579.00 for probation monitoring and investigative costs for years 2000-2003. Those payments were made in an untimely fashion and only after the petition to revoke probation was filed and served against

respondent.

B. Respondent has failed to pay any probation monitoring costs for the year 2004.

NINTH CAUSE TO REVOKE PROBATION

(Failure to Maintain Office Within One Hour's Drive of San Diego)

42. At all times after the effective date of Respondent's probation, Condition 8 of case no. 10-91-15215 stated:

" Respondent shall maintain no medical office more than a one hour drive from the location of his main medical office."

43. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent has opened offices in Chicago in association with another San Diego chiropractor.

DISCIPLINE CONSIDERATIONS

44. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 28, 1995, an accusation was filed, following which a supplemental accusation was filed on or about August 17, 1995. On or about December 3, 1996, a second supplemental accusation was filed. On or about January 21, 1997, a full interim suspension order was issued, which was vacated on or about February 21, 1997. On or about August 8, 1997, a decision became effective which revoked respondent's physician's and surgeon's certificate, stayed the revocation and placed respondent on probation for a period of five years with terms and conditions.

45. On or about October 19, 1998, an accusation and petition to revoke probation was filed. On or about September 24, 1999, a decision became effective which extended the previous probation six months from the original date of probation. Those decisions are incorporated by reference as if fully set forth herein.

## PRAYER

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 the probation that was granted by the Medical Board of California in Case No. D1-119-15215, and imposing the disciplinary order that was stayed thereby revoking Physician and Surgeon's Certificate No. A 44292 issued to PAUL K. BARKAL, M.D. ;

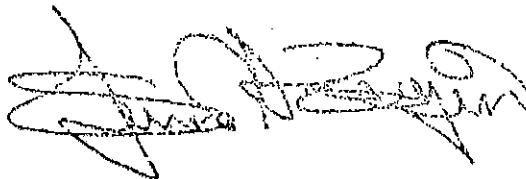
2. Revoking or suspending Physician and Surgeon's Certificate No. A 44292, issued to PAUL K. BARKAL, M.D.;

3. Revoking, suspending or denying approval of PAUL K. BARKAL, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

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

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

DATED: December 28, 2004



DAVID THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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

| | |
|---|---|
| In the Matter of the Accusation/Petition to Revoke Probation Against:<br><br>PAUL K. BARKAL, M.D.<br><br>Physician's and Surgeon's Certificate No. A 44292<br><br>Respondent. | File No. D2-1991-15215 |

**DECISION**

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

This Decision shall become effective at 5:00 p.m. on November 17, 2005.

IT IS SO ORDERED November 10, 2005.

MEDICAL BOARD OF CALIFORNIA

By: ______________________
Steven Alexander, Chair
Panel A
Division of Medical Quality