

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

In the Matter of the Accusation )  
Against: )  
 )  
MURRAY RICHARD SUSSER, M.D. )  
 )  
Physician's & Surgeon's )  
Certificate No. G-22316 )  
 )  
 )  
 )  
\_\_\_\_\_)  
Petitioner )

MBC No. 17-2002-133925


OAH No: L2003050261


**ORDER DENYING PETITION FOR RECONSIDERATION AND REQUEST FOR STAY**

The Petition for Reconsideration and Request for Stay filed on behalf of the Murray Richard Susser, M.D., in the decision in the above-entitled matter, having been read and considered, is hereby denied.

This Decision remains effective at 5:00 p.m. on June 10, 2005.

IT IS SO ORDERED: June 10, 2005

  
\_\_\_\_\_  
Joan M. Jerzak  
Chief of Enforcement

  
Ronald L. Moy, M.D.  
Panel B Chair  
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:**

**MURRAY SUSSER, M.D.  
2211 Corinth Avenue, #204  
Los Angeles, CA 90064**

**Physician's and Surgeon's Certificate  
Number G 22316,**

**Respondent.**

**Case No. 17-2002-133925**

**OAH No. L2003050261**

**PROPOSED DECISION**

On March 28, 2005, Complainant's Motion for Issuance of Proposed Decision, came on regularly for hearing in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings.

Vladimir Shalkevich, Deputy Attorney General, represented Ron Joseph (Complainant). Murray Susser, M.D. (Respondent) was represented by Carlos F. Negrete, Attorney at Law.

**FACTUAL FINDINGS**

1. The Accusation was brought by Complainant Ron Joseph in his official capacity as Executive Director of the Medical Board of California (Board).
2. At a settlement conference on November 5, 2004, a settlement was reached and placed orally on the record. Included in the record are the terms of settlement, Respondent's agreement with those terms, and Respondent's stipulation that the oral settlement agreement was binding on Respondent until the terms of settlement were acted on by the Board.

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3. Vladimir Shalkevich, counsel for Complainant, forwarded a settlement stipulation to Respondent's counsel, Henry Fenton, on or about November 18, 2004. In December 2004, after receiving no response, Mr. Shalkevich telephoned Mr. Fenton and was informed that Mr. Fenton did not believe the settlement stipulation accurately reflected the agreement in that, as written, the stipulation required Respondent to surrender his DEA certificate and obtain a substitute certificate. That process would necessitate the suspension of Respondent's script writing privileges for several months, a condition that was not part of the original agreement.

4. After checking with the DEA and his supervisor, Mr. Shalkevich redrafted the settlement stipulation to reflect that Respondent's current DEA certificate would be limited in conformity with the settlement agreement. On December 9, 2004, Mr. Shalkevich faxed the corrected settlement stipulation to Mr. Fenton.

5. On February 2, 2005, having received no response to the corrected settlement stipulation, Mr. Shalkevich again telephoned Mr. Fenton. Mr. Fenton stated he no longer represented Respondent, and that Respondent was then represented by attorney Carlos Negrete. On February 8, 2005, after leaving two messages for Mr. Negrete, Mr. Shalkevich reached Mr. Negrete by telephone. Mr. Negrete informed Mr. Shalkevich that he was reviewing the settlement agreement and the transcript, and that he would contact Mr. Shalkevich by February 14, 2005. At the end of the day of February 14, 2005, having not heard from Mr. Negrete, Mr. Shalkevich left another telephone message for him. On February 15, 2005, Mr. Negrete faxed a letter to Mr. Shalkevich objecting to the standard terms and conditions in the settlement agreement.

6. Complainant brought the Motion for Issuance of Proposed Decision and Respondent's counsel served and filed opposition papers. The motion was heard on March 28, 2005.

7. After consideration of the points and authorities and argument submitted by both sides, the Motion was granted. This Proposed Decision is therefore issued without a trial, and is based upon the transcript of the settlement conference, a copy of which is attached.

### **LEGAL CONCLUSIONS**

1. Pursuant to the agreement of the parties, Respondent admits that Complainant has sufficient evidence to establish a prima facie case at trial, and that, should Respondent be subjected to another Accusation or a Petition to Revoke Probation by the Medical Board of California, all of the allegations and assertions in the Accusation in the instant case will be deemed admitted. In addition, pursuant to the agreement of the parties, should Respondent ever seek penalty relief, the allegations in the Accusation in the instant case will be deemed admitted at that time and for those purposes only.

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2. Pursuant to the agreement of the parties, cause exists to enter the Order set forth below, including the payment of costs of investigation and prosecution.

## **ORDER**

### **WHEREFORE, THE FOLLOWING ORDER is hereby made:**

Physician and Surgeon Certificate No. G22316 issued to Respondent, Murray Susser, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five years on the following terms and conditions:

#### **1. Controlled Substances-Partial Restriction**

Respondent shall not order, prescribe, dispense, administer, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules IV and V of the Act.

Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. If Respondent forms the medical opinion, after a good faith prior examination, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following a good faith examination, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

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## **2. Controlled Substances-Maintain Records and Access to Records and Inventories**

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Division or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

## **3. Prescribing Practices Course**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices, at Respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first six months of probation is a violation of probation.

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

Respondent shall submit a certification of successful completion to the Division or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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#### **4. Clinical Training Program**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program).

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

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

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

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

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

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

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

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## **5. Monitoring - Practice/Billing**

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Division or its designee for prior approval as a practice and billing monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Division, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Division or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice and billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Division or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine or billing, or both, and whether Respondent is practicing medicine safely, billing appropriately or both.

It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Division or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Division or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar days after being so notified by the Division or designee.



Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

#### **6. Notification**

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

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

#### **7. Supervision of Physician Assistants**

During probation, Respondent is prohibited from supervising physician assistants.

#### **8. Obey All Laws**

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

#### **9. Quarterly Declarations**

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. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

#### **10. Probation Unit Compliance**

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

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

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

#### **11. Interview with the Division or Its Designee**

Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

#### **12. Residing or Practicing Out-of-State**

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Division or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. 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 will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

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

#### **13. Failure to Practice Medicine - California Resident**

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

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

Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

#### **14. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Division, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order 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. Cost Recovery**

Within 90 calendar days from the effective date of the Decision or other period agreed to by the Division or its designee, Respondent shall reimburse the Division the amount of \$5,000.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-practice by Respondent shall not relieve Respondent his obligation to reimburse the Division for its costs.

#### **16. License Surrender**

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

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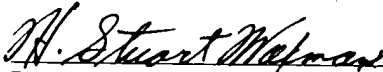
### **17. Probation Monitoring Costs**

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

### **18. Completion of Probation**

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

DATED: April 20, 2005

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings

BEFORE THE DIVISION OF MEDICAL QUALITY

MEDICAL BOARD OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

DAVID B. ROSENMAN, ADMINISTRATIVE LAW JUDGE

In the Matter of the )  
Accusation Against: )

MURRAY SUSSER, M.D., )

Respondent. )  
\_\_\_\_\_ )

No. 17-2002-133925  
L-2003050261

TRANSCRIPT OF PROCEEDINGS, taken at  
320 West Fourth Street, Room 630,  
Los Angeles, California, commencing at  
11:26 a.m., on Friday, November 5, 2004,  
heard before DAVID B. ROSENMAN, Administrative  
Law Judge, reported by MAXINE MILLER,  
Hearing Reporter.

APPEARANCES:

For the DEPARTMENT: DEPARTMENT OF JUSTICE  
BY: VLADIMIR SHALKEVICH  
DEPUTY ATTORNEY GENERAL  
300 South Spring Street  
Suite 5000  
Los Angeles, California  
90013

For the RESPONDENT: LAW OFFICES OF HENRY R. FENTON  
BY: HENRY R. FENTON  
Attorney at Law  
11835 West Olympic Boulevard  
Suite 705  
Los Angeles, California  
90064

I N D E X

Agreement terms read by  
Mr. Shalkevich

PAGE

7

Terms agreed to by  
Dr. Susser

10

E X H I B I T S

(None)

1 Los Angeles, California, Friday, November 5, 2004

2 11:26 a.m.

3  
4  
5 THE COURT: We're on the record.

6 This is in the matter of the Accusation  
7 before the Medical Board of California against  
8 Dr. Murray Susser. The Board's Case Number is  
9 17-2002-133925. The Office of Administrative  
10 Hearings Case Number is L-2003050261.

11 My name is David Rosenman. I'm an  
12 Administrative Law Judge with the Office of  
13 Administrative Hearings, and we have a settlement in  
14 the case that is going to be placed on the record.

15 Let me get the appearance on behalf of  
16 Complainant.

17 MR. SHALKEVICH: Good morning, Your Honor.  
18 Vladimir Shalkevich, Deputy Attorney General on  
19 behalf of the Complainant.

20 THE COURT: Thank you.

21 And the appearance for the Respondent.

22 MR. FENTON: Henry Fenton, attorney for Dr. Susser.

23 THE COURT: And let's note for the record  
24 that Dr. Susser is present.

25 Good morning, Doctor.



1 MR. SUSSER: Good morning.

2 THE COURT: Thank you.

3 All right. We have had significant  
4 discussion today to resolve the case. I want to thank  
5 everyone for their participation in that process today.

6 Doctor, I've already gone through this with  
7 you off the record, but we're going to cover it again. I  
8 want you to listen carefully while Mr. Shalkevich recites  
9 the terms of the settlement, because when he's done, I  
10 have several questions for you.

11 I'm going to ask you if you've heard  
12 the terms, if you understand them, if you've had a  
13 chance to discuss them with your attorney, if you  
14 agree with them, if you understand you'll be waiving  
15 your right to a hearing, and that if a written  
16 agreement is prepared and you don't sign it, that a  
17 Proposed Decision can be written upon motion of the  
18 Deputy Attorney General.

19 So keep those questions in mind as  
20 Mr. Shalkevich goes through his recitation of the  
21 settlement terms.

22 Are you ready, Mr. Shalkevich?

23 MR. SHALKEVICH: Yes, Your Honor, and thank  
24 you very much.

25 In deciding on the terms of the

1 settlement, we looked at and utilized the "Manual of  
2 Modern Disciplinary Orders and Disciplinary  
3 Guidelines," 9th edition of 2003 vintage that was  
4 prepared by the Medical Board of California,  
5 Division of Medical Quality and Judge Rosenman was  
6 kind enough to let us borrow for this purpose.

7 THE COURT: So as you refer to terms, you  
8 might be using either the title or a short-term  
9 reference, but you mean to use the language as set  
10 forth in those guidelines; is that correct?

11 MR. SHALKEVICH: That is correct, Your Honor.  
12 And Mr. Fenton and I spent some time looking at  
13 these things, and we came to an agreement that, for  
14 the most part, the agreement is going to be as it is  
15 set forth in this booklet except some of the things  
16 that are going to be modified. I will indicate  
17 those during the recitation.

18 THE COURT: Very good. Go ahead.

19 MR. SHALKEVICH: In terms of the admissions,  
20 we have agreed that the Medical Board, the  
21 Complainant, has sufficient evidence to establish a  
22 prima facie case at trial, and that is what our  
23 stipulation is going to reflect. However, should  
24 Dr. Susser be subjected to another proceeding, a  
25 disciplinary proceeding by the Board, be it a new

1 Accusation or a petition to revoke probation that  
2 we're talking about here, all of the allegations and  
3 assertions in the currently pending Accusation will  
4 be deemed to have been admitted. Likewise, should  
5 Dr. Susser ever seek penalty relief, the allegations  
6 of the Accusation will be deemed admitted at that  
7 time and for those purposes only.

8 And in terms of the conditions of the  
9 probation, we have agreed that Dr. Susser's license is  
10 going to be revoked. However, the revocation is going to  
11 be stayed, and his license will be placed on probation for  
12 a period of five years. And there will be additional  
13 conditions on that probation as well.

14 First of all, Dr. Susser has agreed  
15 that he will enroll in a full PACE course as it is  
16 given at the University of San Diego and that he  
17 will complete it within the time as specified by the  
18 standard language of the manual. Also, he'll take a  
19 prescribing practices course also within the same  
20 temporal guidelines as the manual recommends.

21 MR. MR. FENTON: And as I recall, the time  
22 for completion is six months from the date of the  
23 effective date of the decision.

24 MR. SHALKEVICH: I believe that's correct,  
25 and also that he would have to show that he had

1 enrolled within 60 days.

2 MR. MR. FENTON: I think that is correct.

3 MR. SHALKEVICH: He will agree to have his billing  
4 and practice monitored by a practice monitor who will be  
5 selected by Dr. Susser and submit a plan, and the Board  
6 will approve the monitor and the plan and proceed  
7 according to the standard language of the manual.

8 Dr. Susser has also agreed that his  
9 prescribing privileges under his D.A. certificate  
10 will be restricted partially and that he will be  
11 unable to prescribe Schedule 1, Schedule 2, and  
12 Schedule 3 substances, which means that he will be  
13 allowed to prescribe Schedule 4 and higher.

14 We also agree that Dr. Susser will pay  
15 \$5,000 in cost recovery in this case.

16 Additionally, there are standard conditions  
17 that are listed in the manual that usually apply to all of  
18 the settlements, and in this particular case, I will  
19 simply refer to them as their headings are listed in the  
20 manual. And that is notification, supervision of  
21 physician assistants, obey all laws, quarterly  
22 declarations, probation unit compliance, interview with  
23 the Division or its designee, residing or practicing out  
24 of state, failure to practice medicine for a California  
25 resident, completion of probation, violation of probation,

1 license surrender. And probation monitoring costs will be  
2 a part of this order -- or rather the stipulation and the  
3 resultant order, and the cost recovery is another standard  
4 term which I already discussed previously.

5 And that encompasses the entire agreement as  
6 far as I understand.

7 THE COURT: Very good.

8 Mr. Fenton, any modification of those  
9 terms other than what you've suggested already?

10 MR. FENTON: No.

11 Just one second.

12 THE COURT: All right.

13 MR. FENTON: No, I have nothing.

14 THE COURT: All right. And, Doctor, and  
15 we're at the point that I had indicated earlier  
16 where I would be asking you some questions. First,  
17 have you heard the terms of the settlement?

18 DR. SUSSER: Yes.

19 THE COURT: Do you understand the terms of  
20 the settlement?

21 DR. SUSSER: Yes, I think so.

22 THE COURT: All right. Have you had a chance  
23 to discuss those terms with your attorney?

24 DR. SUSSER: Yes, I have.

25 THE COURT: Do you agree with the terms of

1 the settlement?

2 DR. SUSSER: Yes, I do.

3 THE COURT: All right. Do you understand  
4 that by settling the case you're waiving the right  
5 to a hearing?

6 DR. SUSSER: Yes, I do.

7 THE COURT: All right. And also, if a  
8 written agreement is prepared that conforms with the  
9 terms and you refuse to sign, do you agree that a  
10 written Proposed Decision can be prepared by an  
11 Administrative Law Judge in conformity with the  
12 terms that are on the record here today if the  
13 Complainant makes a written motion, then attaches a  
14 transcript of the proceeding, and the motion is to  
15 be served on you and set for a hearing?

16 DR. SUSSER: Yes, I understand.

17 THE COURT: And, Mr. Fenton, do you also agree?

18 MR. MR. FENTON: Yes.

19 THE COURT: Mr. Shalkevich, do you agree?

20 MR. SHALKEVICH: Yes, Your Honor.

21 THE COURT: Very good. All right.

22 And you understand, do you, Doctor, that  
23 Mr. Shalkevich will be preparing a written stipulation;  
24 that once you've signed that, it goes to the Board which  
25 has the discretion to accept or not accept it?

1 DR. SUSSER: Yes, sir.  
2 THE COURT: Very good.  
3 Mr. Shalkevich, anything else that you feel  
4 needs to be placed upon the record this morning?  
5 MR. SHALKEVICH: That is all, Your Honor.  
6 Thank you.  
7 THE COURT: Mr. Fenton, anything?  
8 MR. FENTON: No, nothing further.  
9 THE COURT: Doctor, I very much appreciate  
10 your assistance today. With this stipulation on the  
11 record, we will take the pending trial dates off  
12 calendar and they'll be vacated. The trial will  
13 remain open pending receipt of a signed stipulation  
14 by Dr. Susser and Mr. Fenton.  
15 MR. FENTON: Very well.  
16 MR. SHALKEVICH: Thank you.  
17 THE COURT: Thank you all.  
18 Off the record.  
19 (Proceedings concluded at 11:35 a.m.)  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

I, MAXINE MILLER, HEARING REPORTER, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF PROCEEDINGS WAS  
TAKEN BEFORE ME ON FRIDAY, NOVEMBER 5, 2004,  
AT THE TIME AND PLACE THEREIN SET FORTH, AND WAS TAKEN  
DOWN BY ME IN SHORTHAND, AND THEREAFTER TRANSCRIBED INTO  
TYPEWRITING UNDER MY DIRECTION AND SUPERVISION;

AND I HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT  
OF PROCEEDINGS IS A FULL, TRUE AND CORRECT TRANSCRIPT OF  
MY SHORTHAND NOTES SO TAKEN.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR NOR  
RELATED TO ANY PARTY TO SAID ACTION, NOR IN ANYWISE  
INTERESTED IN THE OUTCOME THEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED MY  
NAME THIS 17TH DAY OF JANUARY, 2005.

Maxine Miller  
MAXINE MILLER,  
HEARING REPORTER



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FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO April 23, 20 03  
BY Valerie Moore ANALYST

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

12 In the Matter of the Accusation Against:  
13 MURRAY RICHARD SUSSER, M.D.  
2211 Corinth Avenue, #204  
14 Los Angeles, California 90064  
15 Physician and Surgeon's Certificate No. G 22316  
16 Respondent.

Case No. 17-2002-133925

ACCUSATION

18 Complainant alleges:

19 PARTIES

- 20 1. Ron Joseph (Complainant) brings this Accusation solely in his official  
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
22 Affairs.
- 23 2. On May 2, 1972, the Medical Board of California issued Physician and  
24 Surgeon's Certificate Number G 22316 to Murray Richard Susser, M.D. (Respondent). The  
25 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on September 30, 2004, unless renewed.

## JURISDICTION

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

4. Section 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.

5. 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.”

6. Section 125.3 of the Code provides, in pertinent part, that the Division may request the administrative law judge to direct a licensee 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.

7. Section 14124.12 of the Welfare and Institutions Code states, in pertinent

1 part:

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

15           8.       Section 2242 of the Code states:

16           “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section  
17 4022 without a good faith prior examination and medical indication therefor, constitutes  
18 unprofessional conduct.

19           “(b) No licensee shall be found to have committed unprofessional conduct within  
20 the meaning of this section if, at the time the drugs were prescribed, dispensed, or  
21 furnished, any of the following applies:

22           “(1) The licensee was a designated physician and surgeon or podiatrist serving in  
23 the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if  
24 the drugs were prescribed, dispensed, or furnished only as necessary to maintain the  
25 patient until the return of his or her practitioner, but in any case no longer than 72 hours.

26           “(2) The licensee transmitted the order for the drugs to a registered nurse or to a  
27 licensed vocational nurse in an inpatient facility, and if both of the following conditions  
28 exist:

“(A) The practitioner had consulted with such registered nurse or licensed vocational nurse who had reviewed the patient's records.

“(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

“(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refilling.

“(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code.”

## KETAMINE

9. Ketamine hydrochloride (ketamine) is a general anesthetic. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (g), and a dangerous drug pursuant to section 4022 of the Code. Ketamine is commonly used as a drug of abuse.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence—Patient Nancy B.)

10. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he was grossly negligent in his care and treatment of Patient Nancy B.<sup>1</sup> The circumstances are as follows.

11. From some time in 1991 until on or about July 17, 2002, Respondent provided medical care to Patient Nancy B. Over the years Respondent treated Nancy B. for a number of complaints, including muscular skeletal pain and restless leg syndrome.

1. The full names of the patients to whom reference is made herein will be disclosed to Respondent upon an appropriate request for discovery.

1                   12.       From approximately February 1999 through approximately June 2002,  
2 Respondent provided Nancy B. with access to ketamine on a consistent basis through the  
3 issuance of prescriptions for ketamine to her. Prescriptions by Respondent, or re-fills of  
4 prescriptions by Respondent, allowed Nancy B. to obtain ketamine (or Ketalar, a brand name for  
5 katamine) from pharmacies on or about the following dates: October 30, 1998; February 3, 1999;  
6 March 5, 1999; May 21, 1999; June 14, 1999; June 29, 1999; July 30, 1999; October 26, 1999;  
7 November 17, 1999; February 16, 2000; March 10, 2000; March 21, 2000; April 7, 2000; May 5,  
8 2000; May 20, 2000; May 26, 2000; June 20, 2000; July 11, 2000; July 14, 2000; August 11,  
9 2000; August 16, 2000; August 17, 2000; August 29, 2000; September 22, 2000; October 5,  
10 2000; October 13, 2000; November 6, 2000; November 20, 2000; November 27, 2000;  
11 December 13, 2000; December 19, 2000; January 2, 2001; January 8, 2001; February 2, 2001;  
12 February 14, 2001; March 5, 2001; March 14, 2001; April 19, 2001; May 15, 2001; June 12,  
13 2001; June 30, 2001; July 11, 2001; July 25, 2001; August 22, 2001; September 5, 2001;  
14 September 24, 2001; October 2, 2001; October 9, 2001; October 12, 2001; October 19, 2001;  
15 October 30, 2001; November 16, 2001; November 21, 2001; December 18, 2001; December 20,  
16 2001; January 15, 2002; January 23, 2002; February 19, 2002; April 26, 2002; April 29, 2002;  
17 May 20, 2002; June 7, 2002; and June 17, 2002.

18                   13.       There was no medical indication for the prescription of ketamine in the  
19 course of Respondent's treatment of Nancy B. Respondent's prescription of ketamine for Nancy  
20 B. constituted an extreme departure from the standard of care.

## 21 22                                   SECOND CAUSE FOR DISCIPLINE

23                                   (Gross Negligence—Patient Kurt B.)

24                   14.       Respondent is subject to disciplinary action under section 2234,  
25 subdivision (b), of the Code in that he was grossly negligent in his care and treatment of Patient  
26 Kurt B. The circumstances are as follows.

27                   15.       At all times relevant to the causes for discipline alleged herein, Patient  
28 Kurt B. was the husband of Patient Nancy B. Respondent provided medical care to Kurt B. from

1     sometime in 1991, until on or about July 16, 2002.

2                 16.     Respondent's notes for a patient visit by Kurt B. on November 15, 1999,  
3     indicate that Kurt B. had recurring pain. However, the notes are vague as to the site of the pain.

4                 17.     From approximately April 2000 through approximately June 2002,  
5     Respondent provided Kurt B. with access to ketamine through the issuance of prescriptions for  
6     ketamine to him. Prescriptions by Respondent, or re-fills of prescriptions by Respondent,  
7     allowed Kurt B. to obtain ketamine (or Ketalar, a brand name for ketamine) from pharmacies on  
8     or about the following dates: April 7, 2000; January 31, 2001; February 26, 2001; March 26,  
9     2001; June 5, 2001; July 17, 2001; July 26, 2001; August 27, 2001; September 28, 2001; October  
10    9, 2001; October 17, 2001; November 9, 2001; November 12, 2001; December 5, 2001;  
11    December 11, 2001; January 2, 2002; January 8, 2002; January 28, 2002; February 4, 2002;  
12    March 4, 2002; April 24, 2002; May 17, 2002; May 29, 2002; June 3, 2002; June 10, 2002; June  
13    17, 2002; and June 24, 2002.

14                18.     There was no medical indication for the prescription of ketamine in the  
15    course of Respondent's treatment of Kurt B. Respondent's prescription of ketamine for Kurt B.  
16    constituted an extreme departure from the standard of care.

17  
18                                 THIRD CAUSE FOR DISCIPLINE

19                                 (Repeated Negligent Acts)

20                19.     Respondent is subject to disciplinary action under section 2234,  
21    subdivision (c), of the Code in that he was repeatedly negligent in his care and treatment of  
22    patients. The circumstances are as follows.

23                20.     The allegations contained in paragraphs 11-13 and 15-18 above are re-  
24    alleged at this point.

25                21.     Respondent's prescription of ketamine for Nancy B. constituted a  
26    departure from the standard of care.

27                22.     Respondent's prescription of ketamine for Kurt B. constituted a departure  
28    from the standard of care.

1                   24.       During the month of June, 2002, Respondent provided Nancy B. with  
2 access to an excessive amounts of injectable analgesics, to wit, Demerol and Talwin, and thereby  
3 departed from the standard of care. A prescription for injectable Demerol from Respondent was  
4 filled by Nancy B. on or about June 25, 2002. Prescriptions (or re-fills) for injectable Talwin  
5 from Respondent were filled by Nancy B. on or about June 4, 2002; June 7, 2002; and June 10,  
6 2002.

7  
8                                   FOURTH CAUSE FOR DISCIPLINE

9                                   (Prescribing Dangerous Drugs Without Medical Indication)

10                   25.       Respondent is subject to disciplinary action under section 2242,  
11 subdivision (a), of the Code in that he prescribed a dangerous drug as defined in section 4022, to  
12 wit, ketamine, to Patients Nancy B. and Kurt B. without medical indication. The circumstances  
13 are as follows.

14                   26.       The allegations contained in paragraphs 11-13 and 15-18 above are re-  
15 alleged at this point.

16  
17                                   DISCIPLINE CONSIDERATIONS

18                   27.       To determine the degree of discipline, if any, to be imposed on  
19 Respondent, Complainant alleges that on or about May 12, 1997, in a prior disciplinary action  
20 entitled In the Matter of the Accusation Against Murray Susser, M.D., in Case No. 07-1992-  
21 16339, Respondent's physician and surgeon's certificate was revoked pursuant to a stipulated  
22 settlement in which Respondent admitted that his license was subject to discipline for  
23 unprofessional conduct pursuant to section 2234 of the Code. Such revocation was stayed, and  
24 Respondent was placed on probation for three years on terms and conditions. That decision is  
25 now final and is incorporated by reference as if fully set forth herein. Effective May 12, 2000,  
26 Respondent's physician and surgeon's certificate was restored to clear status, probation having  
27 been successfully completed.

1  
2 PRAYER

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

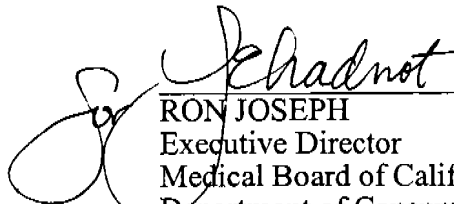
5 1. Revoking or suspending Physician and Surgeon's Certificate Number G  
6 22316, issued to Murray Richard Susser, M.D.;

7 2. Revoking, suspending or denying approval of Murray Richard Susser,  
8 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

9 3. Ordering Murray Richard Susser, M.D. to pay the Division of Medical  
10 Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on  
11 probation, the costs of probation monitoring;

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

13 DATED: April 23, 2003  
14

15  
16   
17 RON JOSEPH  
18 Executive Director  
19 Medical Board of California  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant  
23  
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