

Action Report

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Physician-Assisted Suicide and the State of the Law in California

by Thomas S. Lazar*

Assisted suicide . . . in the news . . . on CNN . . . and still a felony in the State of California. As the issue of assisted suicide makes its way to the United States Supreme Court, the purpose of this article is to bring physicians in California up to date on the significant legal proceedings across the Nation surrounding physician-assisted suicide and, equally important, on the status of California law on the subject.

I. Terminology:

Before discussing the subject of physician-assisted suicide, establishing correct terminology is essential.

1. "Physician-assisted suicide" occurs when a physician provides a patient with, but does not administer, a lethal dose of medication or some other lethal agent, and/or medical knowledge, so that the patient can, without further assistance from the physician, kill him/herself. Assisted suicide, regardless of whether the assistant is a physician, is a felony under California law. (Cal. Pen. Code, § 401.)

2. "Euthanasia," whether voluntary (*i.e.*, with the consent of the patient) or involuntary, occurs when a physician directly administers a lethal dose of medication, or some other lethal agent, to a patient with the intent of, and for the purpose of, killing the patient. Euthanasia, which is simply the direct, intentional and deliberate killing of another person, is murder under California law. (Cal. Pen. Code, § 187.)

3. "Physician-aid-in-dying" occurs when a physician directly administers a lethal dose of medication, or some other lethal agent, to a patient with the intent of, and for the purpose of, killing the patient. "Physician-aid-in-dying" is simply euthanasia with another label and, thus, is murder under California law. (Cal. Pen. Code, § 187.)

4. "Passive euthanasia", actually a misnomer, is a term used to describe a situation in which artificial life-sustaining measures are lawfully and ethically withdrawn, pursuant to the request of the patient and/or surrogate, and the patient is allowed to die a natural death as a result of his/her underlying illness. Such a situation is not "euthanasia" at all but, rather, is simply the lawful and ethical withdrawal of unwanted medical treatment.

Assisted suicide should also not be confused with the provision of palliative care. Palliative care is designed to relieve distressing symptoms in dying patients and includes measures to alleviate pain and suffering, together with the provision of emotional, social and spiritual support for the patient. (The Hastings Center, *Guidelines on the Termination of Life-Sustaining Treatment and the Care of the Dying*, 71-73 (1987).) As the American Medical Association has observed, "[t]he intent of the palliative treatment is to relieve pain and suffering, not to end the patient's life, but the patient's death is a possible side effect of the treatment." American Medical Association, Council on Ethical and Judicial Affairs, *Code of Medical Ethics Reports*, Vol. V, No. 2 (July 1994), Report 59, *Physician-Assisted Suicide*, 269.

"Further, there is some evidence that administering narcotic agents in amounts sufficient to provide adequate pain relief may extend, rather than shorten, life. This is because patients without pain are more likely to accept a greater degree of nourishment, to be more active and less depressed, and to be more open to other treatment possibilities. As a result, they may live longer." (The Hastings Center, *Guidelines on the Termination of Life-Sustaining Treatment and the Care of the Dying*, 73 (1987).)

II. Our Nation's Historical and Traditional Treatment of Suicide and Assisted Suicide:

Opposition to suicide is deeply rooted in our Nation's history and tradition. "At common law, suicide was a felony, punished by forfeiture of property to the king and ignominious burial. Essentially, suicide was considered a form of murder." (*In re Joseph G.*, 34 Cal.3d 429, 433 (1983) (citations omitted).) While no State has a statute imposing criminal penalties for a successful suicide, "abolition of such 'punishments' as ignominious burial for suicide and then the decriminalization of both suicide and attempted suicide did not come about because suicide was deemed a 'human right' or even because it was no longer considered reprehensible. These changes occurred, rather, because punishment was seen as unfair to innocent relatives of the suicide and because those who committed or attempted to commit the act were thought to be prompted by mental illness."¹

(Cont. on p. 5)

THE MISSION OF THE MEDICAL BOARD OF CALIFORNIA

The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act.

1995-96 Annual Report: Numbers And Efficiency Increase

The Medical Board of California (MBC) is pleased to present in this issue the 1995-96 *Annual Report* which provides some measure of the workload with which the MBC deals. Like any report, this one is full of data which both educates and raises new questions, many of which we will spend the next year addressing. I'd like to focus on some of the data which I believe tells a positive story, and then I'd like to look at some numbers which cause me concern.

First, I note that the number of licensees has grown again, this time to 103,130. While some express the concern that this is evidence of a "glut" of doctors, I prefer to believe that it shows physician confidence in continuing to practice medicine and in California as a place to be licensed to practice. Despite all the negatives we hear about practicing medicine in today's world, these twin expressions of confidence speak to the contrary and in a way that means extraordinary benefits for consumers. It means that California will continue to attract the highest quality of physicians and surgeons in numbers which facilitate consumers' access to quality health care.

The other figures of which I'm proud (although that emotion is tempered by sad concern) is found in the continued strong enforcement effort which this board and its staff embarked on some years ago. While we each wish that there were only good, competent, honest physicians, we are all practical enough to know that some doctors don't measure up to the very high standards which apply to us. The 1995-96 *Annual Report* shows that the Division of Medical Quality did not back off when such physicians were brought to its attention. The board's Enforcement Program has become very efficient and productive in recent years in its ability to safeguard the public. As funding has lagged, we have been forced to become more efficient by having to do more with less. We have done just that—note that as the number of complaints has increased so have the number of cases closed and the number of cases referred to the Attorney General by the Medical Board's field investigators.

However, I am concerned about the number of cases which the Office of the Attorney General filed on our behalf last year (262 Accusations/Petitions to Revoke Probation). This



Alan E. Shumacher, M.D.

is the lowest number in many years despite MBC having spent more of its precious resources (\$7.2 million) on Attorney General services than ever before. This continued increase in costs to pay for legal services directly threatens the consumers whom we are charged with protecting by siphoning off scarce resources which are necessary for the review and resolution of consumer complaints. We cannot let the quality which has been built in the Enforcement Program diminish because of the costs of legal services; therefore, the board has made a priority of ensuring that we are securing the best legal services at the most affordable

price. Without that balance, consumer protection will suffer.

Accordingly, the board has taken the following immediate

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steps. First, meetings between board leadership and the Attorney General's Office have resulted in some changes in the AG's operating mode which all parties believe will increase efficiency, preserve quality, and control costs. Second, the board, through its Audit and Performance Standards Committee, will critically review our relationship with

the AG's Office. This review will generate discussion about how the MBC uses legal services to assure that they are supportive of the board's mission of "...vigorous, objective enforcement of the Medical Practice Act."

Changes at the Board

I wish to express my appreciation to a fine former member of the board, Mike Mirahmadi, M.D., who, due to the press of his professional life, recently declined to commit to a second term. Also, I would like to acknowledge the retirement of the board's staff counsel, Foone Louie, last August 16. Mr. Louie served as counsel to the board for 19 years at its headquarters in Sacramento. I join board members and staff in thanking him for his many years of distinguished service to the board, and in wishing him a long and enjoyable retirement.

Who Is Responsible For Medical Decisions? The Prohibition Against The Corporate Practice of Medicine

by

Stewart Hsieh, J.D., Vice President, Medical Board of California
Anita Scuri, J.D., Counsel, Legal Office, Department of Consumer Affairs

A person is considered to be practicing medicine when he or she “practices or attempts to practice, or ... advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or ... diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person.” (Business and Professions Code Section 2052; emphasis added.) A person can be an individual, a corporation, or other artificial entity such as a partnership or association.

The unlicensed practice of medicine is prohibited by California Business and Professions Code Section 2052. In addition, California has a specific ban on the corporate practice of medicine (California Business and Professions Code Section 2400): “Corporations and other artificial legal entities shall have no professional rights, privileges, or powers.”

What public policy is served by prohibiting the corporate practice of medicine? The public policy behind the corporate practice ban becomes apparent when the question is phrased like this: Why is it unlawful for a lay person to practice medicine or exercise control over a physician’s professional judgment? Simply put, the ban on corporate practice is intended to prevent interference with the physician-patient relationship by a corporation or other unlicensed person and to ensure that medical decisions are made by a licensed physician.

A physician who is licensed to practice medicine in California has established at least a minimum level of education and competence. A criminal records check and background check have also been performed to determine whether the physician has been convicted of a crime that is substantially related to the qualifications, functions or duties of a physician or has done any other act that would be grounds for denial of a license. The same is not true of an unlicensed individual or lay corporation. The public policy behind the corporate practice prohibition is obviously to protect patients from interference with a physician’s judgment and with the physician-patient relationship, which is necessarily based on trust and confidence. In other words, the physician should not be forced to choose between the dictates of his or her “employer” and the best interests of the physician’s patients.

It is this potential for divided loyalties—and the potential destruction of the physician-patient relationship as a result—that the bar against corporate practice is intended to prevent. The physician must be free to exercise his/her independent

professional judgment as to what is best for a particular patient.

The corporate practice prohibition becomes even more important in this era of managed care and integration of health care delivery systems. But is that prohibition actually enforced or is it merely a “paper” prohibition—a toothless tiger, so to speak?

The Medical Board of California has been increasingly involved in actions involving the unlicensed corporate practice of medicine. In the last several years, the board has initiated disciplinary action against physicians who allowed their licenses to be “used” by lay individuals or corporations. A physician can be disciplined for aiding and abetting unlicensed persons to practice medicine (Business and Professions Code Section 2264). This constitutes unprofessional conduct, which may result in the ultimate sanction: license revocation. In one particular case which resulted in discipline against a physician’s license, the lay corporation (which was ostensibly a management company) owned and operated clinics. The physician contracted with the management company and obtained the fictitious name permits for the clinics. The physician saw patients and performed surgery at one of the clinics about once a week. The medical records were the property of the management company and not the physician. The management company paid the physician a set percentage of the patient fees. In other words, the management company was really practicing medicine without a license and the physician had aided and abetted that unlicensed practice of medicine.

The board has also attempted to put unlicensed persons out of the business of practicing medicine. It has sought injunctions to stop them from practicing medicine without a license. The board has also referred cases for criminal prosecution, since the unlicensed practice of medicine is a misdemeanor and this is the only other remedy available to the board. The burden of proof is high—clear and convincing evidence to a reasonable certainty in a disciplinary case; beyond a reasonable doubt in a criminal proceeding. The cases are usually very complex and require the unraveling of the various arrangements between the physician and the unlicensed person.

Given the board’s current focus on the effects of unlicensed third parties intervening in or exercising control over a physician’s professional judgment, you can expect that the board will be expanding its role in enforcing the ban on the corporate practice of medicine.

Prenatal Physicians Must Offer HIV Testing and Counseling to Pregnant Patients

Effective January 1, 1996, all prenatal health care providers—including physicians—must offer every pregnant patient HIV information, counseling and testing. This law, introduced as SB 889 (Leslie), passed both houses of the Legislature unanimously, was signed by Governor Wilson, and chaptered into law as Health and Safety Code section 305. A “prenatal health care provider” is defined as “a licensed health care professional providing prenatal care within his or her lawful scope of practice...not (including) a licensed health care professional who provides care other than prenatal care to a pregnant patient.”

The information to be provided includes, but is not necessarily limited to: a description of the modes of HIV transmission; a discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission; and referral information to other HIV prevention and psychosocial services, if appropriate, including anonymous and confidential test sites approved by the Office of AIDS of the state Department of Health Services (DHS). (Physicians may refer individuals who want anonymous or confidential testing to that office: (800) 367-AIDS in Northern California, (800) 922-AIDS in Southern California).

The prenatal care provider must offer an HIV test to every pregnant patient, unless a positive HIV test result is already documented in the patient's medical record or the patient has AIDS as diagnosed by a physician. When an HIV test is offered, it must include discussion of the purpose of the test; its risks and benefits; and its voluntary nature. If the patient voluntarily consents to testing, the provider must arrange for HIV testing directly or by referral, including, but not limited to, referral to anonymous and confidential test sites approved by DHS' Office of AIDS.

The prenatal care provider must document in the patient's medical record that HIV information and counseling and the HIV antibody test have been offered. Any documentation or disclosure of HIV-related information must be made in compliance with existing law.

Each year, approximately 7,000 HIV-infected women give birth in the United States and ultimately, 1,000 to 2,000 of the infants are infected with the virus. If a mother learns of her HIV status, she may decide what steps to take to seriously reduce the possibility that the disease will be passed on to her child. Maternal to infant HIV transmission can occur in utero, during labor and delivery, and after birth through breast feeding. According to the Centers for Disease Control and Prevention guidelines resulting from AIDS Clinical Trial 076 (ACTG 076), zidovudine (AZT) could reduce perinatal HIV transmission by as much as two-thirds in some HIV-infected women and their babies.

Governor Wilson Reappoints Four Medical Board Members

On July 30, 1996, Governor Pete Wilson announced that the following board members have been reappointed to new terms:

- Cathryne Bennett-Warner of San Rafael, originally appointed in December 1993 to the Division of Medical Quality (DMQ), where she still serves. Ms. Bennett-Warner is vice president for public affairs for Burson-Marsteller based in San Francisco.
- Bruce Hasenkamp of Hillsborough, originally appointed in June 1987 to the board's former Division of Allied Health Professions. In 1992 Governor Wilson appointed him to the board's Division of Licensing (DOL), where he serves as secretary. Mr. Hasenkamp is executive director of the Saint Francis Foundation.
- Karen McElliott of San Diego, originally appointed in August 1992 to the board's DMQ, where she still serves. She was president of the DMQ in 1995.
- Alan E. Shumacher, M.D., of San Diego, originally appointed in August 1992 to the board's DOL. He is currently president of the Medical Board, and serves on its Division of Medical Quality. Dr. Shumacher is director emeritus of the Division of Neonatology at Children's Hospital San Diego.

MBC Welcomes New Counsel

Christine R. Hall has joined the Medical Board as its general counsel. This position provides legal services support to the Medical Board, the executive director, Medical Board staff and others in areas such as physician discipline, legislation, litigation, and provides legal opinions.

Ms. Hall was general counsel for the California Association of Hospitals and Health Systems (CAHHS) for seven years. Her work experience has given her the opportunity to actively participate in a number of issues facing the delivery of health care including peer review, corporate practice of medicine, managed care, capitation, consent to treatment and anti-physician self-referral laws.

While at CAHHS, Ms. Hall oversaw the activities of the CAHHS legal division, advised the board of trustees and membership on state and federal legislative, legal and regulatory issues. She also participated in litigation and oversaw outside counsel activities on behalf of CAHHS membership. Ms. Hall continues to serve on the advisory board of the California Health Law Monitor and remains active in numerous state and local legal associations.

Before joining CAHHS, Ms. Hall was counsel for the state Senate Judiciary Committee where her experience as a critical care nurse (she holds a Bachelor of Science in Nursing, is a licensed registered nurse and has her Public Health Nurse Certification) was put to use advising the committee on health care-related issues.

Physician-Assisted Suicide (Cont. from p. 1)

In the United States, suicide continues “‘to be considered an expression of mental illness.’”² Indeed, a report that the Ninth Circuit Court of Appeals called “[t]he most comprehensive study of ... [this] subject by a governmental body”³ found that “[s]tudies that examine the psychological background of individuals who kill themselves show that 95 percent have a diagnosable mental disorder at the time of death.”⁴ “[A]ll states provide for the involuntary commitment of persons who may harm themselves as the result of mental illness, and a number of states allow the use of nondeadly force to thwart suicide attempts.” (*People v. Kevorkian*, 447 Mich. 436, 479, 527 N.W.2d 714, 732 (1994) (footnotes omitted), *cert. denied*, 115 S.Ct. 1795 (1995).) Simply stated, “there is no significant support for the claim that a right to suicide is so rooted in our tradition that it may be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty.’”⁵

Like suicide, assisted suicide was also a crime at common law. At common law, a person who assisted another to commit suicide was guilty of murder. *In re Joseph G.*, 34 Cal.3d 429, 434 (1983). While a few states continue to classify assisted suicide as murder or manslaughter, “the predominant statutory scheme is to create a sui generis crime of aiding and abetting suicide.” *In re Joseph G.*, 34 Cal.3d 429, 434 (1983). Today, at least forty States, Puerto Rico and the Virgin Islands, impose criminal penalties on those who assist another to commit suicide.⁶

III. Assisted Suicide Under the California Penal Code:

Assisted suicide has been a felony in California since 1873 and is expressly proscribed by statute in this state. That proscription is contained in California Penal Code section 401 which provides that “[e]very person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony.” In 1992, the California Court of Appeal directly addressed the constitutionality of Penal Code section 401 in the case of *Donaldson v. Lungren*, 2 Cal.App.4th 1614 (1992). In that case, Donaldson, an individual with an inoperable brain tumor, brought suit against various state and county entities seeking a determination that he had a constitutional right to an assisted suicide. The question presented was whether a terminally ill individual’s constitutional rights to privacy and to refuse medical treatment under the United States and California Constitutions included a right to an assisted suicide. After balancing Donaldson’s interests against those of the State, the Court of Appeal concluded that Donaldson had “no constitutional right to a state-assisted death.” (*Donaldson*, 2 Cal.App.4th at 1623.) The Court of Appeal also rejected a First Amendment challenge by the person who wanted to assist Donaldson to commit suicide, concluding that California’s prohibition of assisted suicide does not impair an individual’s right of free speech and expression. (*Donaldson*, 2 Cal.App.4th at 1625.)

In November of 1992, the people of the State of California went to the polls to vote on Proposition 161, the “Physician-Assisted Death” initiative, which would have authorized physicians to provide “aid-in-dying” to terminally ill patients. “Aid-in-dying” was defined by the proposed initiative ballot measure as “a medical procedure that will terminate the life of the qualified patient in a painless, humane and dignified manner whether administered by the physician at the patient’s choice or direction or whether the physician provides means to the patient

for self-administration.” If accepted by California voters, Proposition 161 would have thus legalized both assisted suicide and euthanasia, albeit in limited circumstances. However, Proposition 161 was rejected by California voters, reportedly on the grounds that it lacked sufficient safeguards. Accordingly, as it has been since 1873, assisted suicide remains a felony in the State of California.

IV. Assisted Suicide Under the State Medical Practice Act:

The Medical Board of California has been charged with a legislative mandate to take disciplinary action against any physician found guilty of unprofessional conduct. (Cal. Bus. & Prof. Code, §§ 2220, 2227 and 2234.) The purpose of such disciplinary proceedings is to protect the public. (*Yakov v. Board of Medical Examiners*, 68 Cal.2d 67, 73 n.6. (1968).) It is well-settled that “[t]he revocation or suspension of a license is not penal, but rather, the Legislature has provided for such to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty and integrity.” (*Stewart v. Board of Medical Quality Assurance*, 80 Cal.App.3d 172, 183 (1978), *citing* *Furnish v. Board of Medical Examiners*, 149 Cal.App.2d 326, 331 (1957). *See also* *Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564, 574 (1978) and citations therein.) It has long been recognized that the State has an important interest in maintaining the ethical integrity of the medical profession. (*Donaldson v. Lungren*, 2 Cal.App.4th 1614, 1620 (1992).)

In addition to its various statutory definitions, unprofessional conduct under the State Medical Practice Act has been defined by the California Court of Appeal as that conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564, 574-575 (1978).)

In its 1994 decision revoking the medical license of Jack Kevorkian, the Medical Board of California declared that: “The most fundamental principle of medical ethics is that a physician shall assist a patient, to the best of that physician’s ability, through advice and treatment, in the maintenance, improvement and re-establishment of the patient’s mental and physical well-being.” (*Default Decision in the Matter of the Accusation and First Supplemental Accusation Against: Jack Kevorkian, M.D.*, Case No. D-5111, page 7, lines 14-18.)

The Medical Board of California has also held that “the nationwide standard of medical ethics provides that a physician shall not aid, assist, facilitate or actively participate in the suicide of his patient nor shall he suggest any such counsel.” (*Default Decision in the Matter of the Accusation and First Supplemental Accusation Against: Jack Kevorkian, M.D.*, Case No. D-5111, page 7, lines 18-21, *emphasis original*.) These fundamental principles of medical ethics, which have been recognized for centuries, are also contained in the Hippocratic Oath, the foremost ethical code of the practice of medicine, which provides, in pertinent part, as follows: “. . . I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please

(Cont. on p. 6)

Physician-Assisted Suicide (Cont. from p. 5)

no one will I prescribe a deadly drug, nor give advice which may cause his death...."⁷ (See *Dorland's Illustrated Medical Dictionary* (25th ed.) at page 715, column 2.)

The American Medical Association (AMA) has long opposed both euthanasia and assisted suicide. In reaffirming its long-standing opposition to physician assisted suicide, the AMA has declared that physician-assisted suicide "threatens the very core of the medical profession's ethical integrity" and is "fundamentally inconsistent with the physician's professional role." American Medical Association, Council on Ethical and Judicial Affairs, *Code of Medical Ethics Reports*, Vol. V, No. 2 (July 1994), Report 59, *Physician-Assisted Suicide*, 269 and 274, respectively.

The California Medical Association (CMA) has likewise consistently opposed both euthanasia and assisted suicide. In 1988, the CMA's House of Delegates adopted a resolution declaring the CMA's opposition to active euthanasia. Recently, in describing its opposition to physician-assisted suicide to the United States Supreme Court, the CMA stated: "Notably, CMA's Board of Trustees voted in 1992 to oppose California's 'Physician-Assisted Death' initiative (Proposition 161) and, since then, has consistently affirmed that position." (Motion for Leave to File Brief as Amici Curiae in *State of Washington, et al. v. Harold Glucksberg, M.D., et al.*, U.S. Supreme Court Docket No. 96-110, pages 3-4.)

In short, euthanasia and assisted suicide are not, and never have been, part of the practice of medicine, with or without the consent of the patient. As the above authorities make clear, intentionally killing a patient, or assisting a patient to kill him/herself, is fundamentally inconsistent with the ethical duties, responsibilities and functions of a physician. Accordingly, any physician engaging in such activities could be subject to discipline for unprofessional conduct under the State Medical Practice Act.

V. Proceedings Before the United States Supreme Court:

The issue of assisted suicide is presently before the United States Supreme Court in two significant cases. The first case, *Quill v. Vacco*, 80 F.3d 716 (April 2, 1996), involves a challenge to the constitutionality of New York's prohibition of assisted suicide. In that case, the United States Court of Appeals for the Second Circuit held that there is no right to commit suicide under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. However, the Second Circuit went on to invalidate New York's prohibition of assisted suicide on the grounds that such prohibition violates the Equal Protection Clause of the Fourteenth Amendment. The basis of the Second Circuit's equal protection holding was its belief that since a patient has the right to refuse, or order the withdrawal of, life-sustaining medical treatment, a patient not dependent on life-sustaining treatment has an equal right to bring about his/her death through assisted suicide. The Attorney General of the State of New York, Dennis C. Vacco, has filed a petition for certiorari seeking review of the Second Circuit's opinion by the United States Supreme Court. California Attorney General Daniel E. Lungren has submitted an amicus brief, joined by 14 other States, urging the Supreme Court to grant review in the case.

The second assisted suicide case presently before the Supreme Court is *Compassion in Dying v. State of Washington*, 79 F.3d 790

(March 6, 1996). In that case, the United States Court of Appeals for the Ninth Circuit held that the Due Process Clause of the Fourteenth Amendment encompasses a liberty interest to commit suicide and assisted suicide. The decision of the Ninth Circuit is thus in direct conflict with that of the Second Circuit in *Quill v. Vacco*. The Attorney General of the State of Washington, Christine O. Gregoire, has filed a petition for certiorari seeking review of the Ninth Circuit's opinion by the United States Supreme Court. California Attorney General Daniel E. Lungren has submitted an amicus brief, joined by 15 other States, and the Commonwealth of Puerto Rico and Territory of American Samoa, urging the Supreme Court to grant review in the case.

The decisions of both the Second and Ninth Circuit have been stayed and, as a result, neither opinion will take effect until further order by the United States Supreme Court. Assuming the Supreme Court grants review, it is anticipated that a final decision on the constitutionality of state prohibitions of assisted suicide will be issued early next year.

VI. Conclusion:

Assisted suicide continues to be debated on talk shows and in hospital corridors. Proponents of assisted suicide put forth impassioned arguments for its acceptance. Defenders of its prohibition advance equally compelling arguments on the dangers of assisted suicide, both to the Nation and the medical profession itself. The United States Supreme Court will shortly decide the issue. Meanwhile, assisted suicide remains, as it has for over a century, a felony in the State of California. It also remains unprofessional conduct under the State Medical Practice Act and grounds for disciplinary action against any physician engaging in such activity.

**Deputy Attorney General, Office of the Attorney General of the State of California, Health Quality Enforcement Section*

¹Yale Kamisar, *Are Laws against Assisted Suicide Unconstitutional?*, 23 Hastings Center Report, No. 3, 32 (1993) (footnote omitted). See also *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 294-295 (1990) (Scalia, J., concurring).

²In re *Joseph G.*, 34 Cal.3d 429, 433 (1983), citation omitted. See also *Donaldson v. Lungren*, 2 Cal.App.4th 1614, 1624 (1992).

³*Compassion in Dying v. State of Washington*, 49 F.3d 586, 591-592 (9th Cir. 1995), *superceded by* 79 F.3d 790 (9th Cir. 1996).

⁴New York State Task Force Report, *When Death is Sought—Assisted Suicide and Euthanasia in the Medical Context* (hereinafter "New York State Task Force Report") (May 1994) at 11.

⁵Thomas J. Marzen, et al., *Suicide: A Constitutional Right?*, 24 Duq. L. Rev. (1985), at 100, citing *Palko v. Connecticut*, 302 U.S. 319 (1937). See also *New York State Task Force Report*, at 54-63 and 67-75.

⁶On November 8, 1994, the people of the State of Oregon passed Measure 16, a ballot initiative which would have permitted physicians to prescribe lethal medication for terminally ill patients. However, a federal district court has issued a permanent injunction preventing the initiative from taking effect. *Lee v. State of Oregon*, 891 F.Supp. 1429 (D.Or. 1995). That case is presently on appeal.

⁷In discussing the Hippocratic Oath, the Michigan Supreme Court has observed that "[t]here is no historical exception for physician-assisted suicide. To the contrary, such involvement traditionally has been regarded as contrary to the Hippocratic Oath, which includes the following sentence: 'To please no one will I prescribe a deadly drug, nor give advice which may cause his death.'" (*People v. Kevorkian*, 447 Mich. 436, 478 n. 50, 527 N.W. 2d 714, 731 n. 50 (1994) (further citation omitted), *cert. denied*, 115 S.Ct. 1795 (1995).)

DISCIPLINARY ACTIONS: MAY 1, 1996 TO JULY 31, 1996

Physicians and Surgeons

ALPERN, HARVEY L., M.D. (A-23632) Los Angeles, CA

B&P Code §650. Stipulated Decision. Made payments to a management services company for patient referrals to his office. Public Letter of Reprimand. June 5, 1996

ATIGA, ROLANDO L., M.D. (A-25166) Glendora, CA

B&P Code §§725, 810, 2231(b)(c)(d)(e), 2242, 2261. Stipulated Decision. Repeated negligent acts, incompetence in his treatment of a patient with Bell's Palsy. Prescribed drugs for which there was no medical indication, excessive prescribing of drugs and treatment. False billing. Sixty days' suspension stayed, 4 years' probation with terms and conditions. May 22, 1996

BAUDER, GEORGE, M.D. (C-19812) Oroville, CA

B&P Code §§2234, 2241, 2242. Provided controlled substances (Darvon, Diazepam, Tylenol with Codeine and Vicodin) and dangerous drugs (Hismanal, Indocin and Tavist D) to drug addicts without a good faith prior exam. Revoked. Default. May 10, 1996

BISHOP, LESLIE M., M.D. (A-53264) Long Beach, CA

B&P Code §2233. Gave a false and incorrect answer on his application for licensure by omitting his conviction for disturbing the peace by loud and unreasonable noise. Public Letter of Reprimand. July 18, 1996

BRODERICK, JOSEPH THOMAS, M.D. (C-22456) Laguna Hills, CA

B&P Code §§725, 2234(b)(c)(d). Failed to engage in follow-up of several patients after extensive testing. Excessive use of diagnostic procedures. Failed to obtain adequate history on 4 patients. Revoked, stayed, 7 years' probation with terms and conditions. June 21, 1996

CANTWELL, JOHN R., M.D. (A-13417) San Jose, CA

B&P Code §2234(b)(d). Stipulated Decision. Gross negligence. Failed to diagnose deep vein thrombosis in a patient. Revoked, stayed, 3 years' probation with terms and conditions. May 22, 1996

CAREY, SHARON LEE, M.D. (G-28674) Glen Ellen, CA

B&P Code §820. Failed to submit to a Medical Board-ordered physical, mental, and substance abuse examination. Revoked. Default. June 6, 1996

CARRON, WILLIAM CLARK, M.D. (G-47837) Seattle, WA

B&P Code §§490, 2234(a), 2236. Stipulated Decision. Convicted of stalking. Revoked, stayed, 5 years' probation with terms and conditions. July 8, 1996

CHAVEZ, RUDY, M.D. (G-44536) Rosemead, CA

B&P Code §§725, 2234(b), 2261. Stipulated Decision. Excessive use of treatment facilities in a patient's prolonged hospitalization. Created a false document on a worker's compensation claim on behalf of a patient. Revoked, stayed, 5 years' probation with terms and conditions. May 22, 1996

CHOMIAK, BRYANT DOUGLAS, M.D. (G-60553) Las Vegas, NV

B&P Code §§2305, 2234. Disciplined by Nevada for failing to comply with an order for a physical exam. Revoked, stayed, 5 years' probation with terms and conditions. June 24, 1996

CHONG, BYRON MING, M.D. (A-23615) Salinas, CA

B&P Code §§2234, 2236. Stipulated Decision. Convicted of false imprisonment. Revoked, stayed, 5 years' probation with terms and conditions. July 15, 1996

COHN, BRUCE A., M.D. (A-21639) Tiburon, CA

B&P Code §2234(a)(b)(e). Stipulated Decision. Failed to appropriately diagnose a malignant melanoma in a patient. Negligence in removal of a tattoo and misrepresenting the treatment modality used as a laser, rather than, as alleged, an infrared coagulator. Revoked, stayed, 3 years' probation with terms and conditions. July 17, 1996

COLE, WILSON M., M.D. (A-21596) Escondido, CA

B&P Code §2234(b). Stipulated Decision. Completed a DMV form stating patient was in control of his seizures, when in fact he was not. Revoked, stayed, 3 years' probation with terms and conditions, including 15 days' actual suspension. July 10, 1996

DEMETRIOS, ABBAS H., M.D. (C-41495) Lake Isabella, CA

B&P Code §2305. Discipline by Georgia for pattern of inappropriate sexual conduct with several female patients. Revoked. Default. May 3, 1996

DIXON, PETER ENSIGN, M.D. (C-33904) St. Helena, CA

B&P Code §§2234(b)(c)(d), 822, 2236. Stipulated Decision. Ability to practice medicine impaired related to alcohol abuse. Gross negligence, repeated acts of negligence and incompetence in the treatment of 3 female patients desiring delivery. Revoked, stayed, 7 years' probation with terms and conditions. June 6, 1996

Explanation of Disciplinary Language

1. **"Revoked"**— The license is canceled, voided, annulled, rescinded. The right to practice is ended.

2. **"Revoked - Default"**— After valid service of the Accusation (formal charges), the licensee fails to file the required response or fails to appear at the hearing. The license is forfeited through inaction.

3. **"Revoked, stayed, 5 years' probation on terms and conditions, including 60 days' suspension"**— "Stayed" means the revocation is postponed, put off. Professional practice may continue so long as the licensee complies with specified probationary terms and conditions, which, in this example, includes 60 days' actual suspension from practice. Violation of probation may result in the revocation that was postponed.

4. **"Suspension from practice"**— The licensee is benched and prohibited from practicing for a specific period of time.

5. **"Temporary Restraining Order"**— A TRO is issued by a Superior Court Judge to halt practice

immediately. When issued by an Administrative Law Judge, it is called an ISO (Interim Suspension Order).

6. **"Probationary Terms and Conditions"**— Examples: Complete a clinical training program. Take educational courses in specified subjects. Take a course in Ethics. Pass an oral clinical exam. Abstain from alcohol and drugs. Undergo psychotherapy or medical treatment. Surrender your DEA drug permit. Provide free services to a community facility.

7. **"Gross negligence"**— An extreme deviation from the standard of practice.

8. **"Incompetence"**— Lack of knowledge or skills in discharging professional obligations.

9. **"Stipulated Decision"**— A form of plea bargaining. The case is negotiated and settled prior to trial.

10. **"Surrender"**— Resignation under a cloud. While charges are pending, the licensee turns in the license—subject to acceptance by the relevant Board.

11. **"Probationary License"**— A conditional license issued to an applicant on probationary terms and conditions. This is done when good cause exists for denial of the license application.

12. **"Effective date of Decision"**— Example: "June 8, 1996" at the bottom of the summary means the date the disciplinary decision goes into operation.

13. **"Judicial Review recently completed"**— The disciplinary decision was challenged through the court system—Superior Court, maybe Court of Appeal, maybe State Supreme Court—and the discipline was upheld. This notation explains, for example, why a case effective "June 10, 1992" is finally being reported for the first time four years later in 1996.

14. **"Public Letter of Reprimand"**—A lesser form of discipline that can be negotiated for minor violations before the filing of formal charges (accusations). The licensee is chastised in the form of a letter.

FILA, ERNEST GEORGE, M.D. (A-40729) Littleton, CO
B&P Code §§2305, 2234. Discipline by Colorado for substandard medical care and treatment of 2 patients with cardiopulmonary problems. Revoked, stayed, 5 years' probation with terms and conditions. Will take effect if/when his license is returned to active status. June 24, 1996

FLEISS, PAUL M., M.D. (A-28858) Los Angeles, CA
B&P Code §§490, 2236, 2234(e). Stipulated Decision. Convicted of conspiracy and false statements on a loan application to a federally insured bank. Revoked, stayed, 1 year probation with terms and conditions and Public Letter of Reprimand. May 22, 1996

GANZ, MATTHEW B., M.D. (C-23071) Hayward, CA
B&P Code §§2233, 2234. Stipulated Decision. Failed to adequately treat obese woman during 1982-1988 by prescribing weight reduction medication without placing her on a serious weight reduction program. Public Letter of Reprimand. June 6, 1996

GERSON, BENJAMIN, M.D. (G-53690) Newton, MA
B&P Code §2305. Discipline by Massachusetts for dispensing Diazepam, Flurazepam and other dangerous drugs to immediate family without maintaining appropriate records. Public Letter of Reprimand. June 25, 1996

GIDWANI, ASHOK MOTILAL, M.D. (A-36815) Littleton, CO
B&P Code §2236. Stipulated Decision. Conviction for soliciting another to commit an assault. Revoked, stayed, 5 years' probation with terms and conditions. May 22, 1996

GOLDBERG, STEVEN, M.D. (G-31613) Laguna Niguel, CA
B&P Code §§2238, 2239, 2234. Stipulated Decision. Self-use of cocaine and Vicodin. Revoked, stayed, 7 years' probation with terms and conditions. May 3, 1996

GUPTA, NARESH K., M.D. (A-44000) Berkeley, CA
B&P Code §§2234(b)(c), 726. Stipulated Decision. Charged with gross negligence in sexually abusing a female patient during a neurological consultation; in closing his office and leaving the country without notifying patients of his departure and where to obtain medical records; and in leaving

prescription drugs and syringes exposed in the abandoned office. Revoked, stayed, 5 years' probation with terms and conditions. November 16, 1995

HALLE, MICHAEL ALAN, M.D. (C-32485) Plantation, FL
B&P Code §2305. Discipline based on Florida's action for failing to maintain proper medical records and for concealing a material fact during the disciplinary process. Public Letter of Reprimand. May 14, 1996

HAYLING, WILLIAM HARTLEY, M.D. (G-45817) Marina del Rey, CA
B&P Code §§125, 2053, 2234(a), 2264, 2271. Stipulated Decision. Allowed unlicensed individuals to run a natural childbirth facility under false auspices of being managed by a licensed physician. Revoked, stayed, 5 years' probation with terms and conditions. July 29, 1996

HENDRIX, JEFFERSON CONN, M.D. (A-32571) Santa Ana, CA
B&P Code §2234(b)(c)(d). Stipulated Decision. Failed to adequately document in the medical records of 4 patients' medical histories, physical examinations, treatments rendered and medications prescribed. Revoked, stayed, 5 years' probation with terms and conditions. May 23, 1996

HORACEK, HENRY JOSEPH, M.D. (C-41990) Charlotte, NC
B&P Code §§2234, 2305. Discipline by North Carolina for engaging in physician-patient relationship. Revoked. Default. May 13, 1996

HUSSAIN, KARIM MOHAMMED, M.D. (A-29548) Fremont, CA
B&P Code §2234(b)(c)(d). Stipulated Decision. Failed to meet prevailing standard of practice of medicine among the community of licensed cardiologists in the care and treatment of several patients in hospital setting. One year suspension, stayed, 5 years' probation with terms and conditions. July 29, 1996

JAFFE, LAWRENCE J., M.D. (A-32274) San Diego, CA
B&P Code §§2234(b)(c)(e), 2239, 2242, 2261, H&S Code §11173. Stipulated Decision. Unprofessional conduct, gross negligence, and repeated negligent acts in the care and treatment of 1 patient. Dishonesty in writing and refilling a prescription using a false name, self-use or prescribing of dangerous drugs, and prescribing dangerous drugs without a good faith prior exam. Revoked, stayed, 5 years' probation with terms and conditions. July 5, 1996

JARVIS, JORDAN, M.D. (G-47577) Modesto, CA
B&P Code §2238. On October 22, 1992, following a plea of nolo contendere, was convicted of driving while under the influence of alcohol/drugs. Public Letter of Reprimand. August 24, 1995

KHAIRA, AJIT SINGH, M.D. (A-46411) Fresno, CA
B&P Code §§2264, 2234, 2234(c). Stipulated Decision. Employed an unlicensed physician assistant and failed to properly supervise the purported physician assistant during the course of his employment. Revoked, stayed, 2 years' probation with terms and conditions. June 28, 1996

KING, SUZANNE KIRKWOOD, M.D. (A-48844) San Diego, CA
B&P Code §§2305, 2234. Discipline by Massachusetts for engaging in sexual relations with a patient. Revoked. May 13, 1996

KO, PETER YOU, M.D. (A-36122) Flushing, NY
B&P Code §§2305, 2234. Discipline by New York for failing to maintain accurate records for several patients. Sixty days' actual suspension. June 17, 1996

LANWEHR, BERNHARD H., M.D. (G-45770) Amawalk, NY
B&P Code §§2234, 2305. Discipline by New York for gross negligence, repeated acts of negligence, and incompetence. Revoked. July 1, 1996

LEE, MUN FA, M.D. (A-21784) Clearlake Oaks, CA
B&P Code §§725, 2234, 2238, 822. Stipulated Decision. Unprofessional conduct, excessive treatment or prescribing and violations of drug statutes. Handling, storage and accounting of office stocks of prescription medication were not in accordance with state or federal law. Mental or physical illness impairing safe practice. Revoked. July 26, 1996

LEE, WILLIAM Y., M.D. (G-15871) Atherton, CA
B&P Code §822. Stipulated Decision. Mental illness impairing safe practice. Revoked, stayed, probation and suspension until October 4, 1996, then must surrender license. June 4, 1996

Help Your Colleague By Making A Confidential Referral

If you are concerned about a fellow physician whom you feel is abusing alcohol or other drugs or is mentally ill, you can get assistance by asking the Medical Board's Diversion Program to intervene.

The intervention will be made by staff trained in chemical dependency counseling or by physicians who are recovering from alcohol and drug addiction. As part of the intervention, the physician will be encouraged to seek treatment and be given the option of entering the Diversion Program. Participation in Diversion does not affect the physician's license.

Physicians are not required by law to report a colleague to the Medical Board. However, the Physicians Code of Ethics requires physicians to report a peer who is impaired or has a behavioral problem that may adversely affect his or her patients or practice of medicine to a hospital well-being committee or hospital administrator, or to an external impaired physicians program such as the Diversion Program.

Your referral may save a physician's life and can help ensure that the public is being protected. All calls are confidential. Call (916) 263-2600.

**Medical Board of California
Physician Diversion Program
1420 Howe Avenue, Suite 14
Sacramento, CA 95825**

LEPLEY, CHARLES RICHARD, M.D. (G-44423) Rohnert Park, CA
B&P Code §§2234, 2305. Discipline by New York for psychiatric condition which impairs safe practice. Revoked. July 3, 1996

LESHNOWER, ALAN CHARLES, M.D. (G-35798) Odessa, TX
B&P Code §2305. Stipulated Decision. Discipline by Texas for failure to practice medicine in an acceptable manner consistent with public health and welfare. Revoked, stayed, 5 years' probation with terms and conditions. June 19, 1996

LOEFFLER, STACEY LEE, M.D. (G-69429) Glendale, CA
B&P Code §§2238, 2239(a), 2241, 2242(a), 2234(e), H&S Code §§11170, 11173, 11156, 11153. Issued controlled substance prescriptions for self-use. Issued fraudulent prescriptions for controlled substances. Prescribed, administered or dispensed controlled substances to an addict or a habitue. Issued prescriptions without prior good faith examinations and without legitimate medical purpose. Acts of dishonesty or corruption. Revoked. Default. October 20, 1995

LUNJANSKI, IRWIN L., M.D. (G-14572) Santa Barbara, CA
B&P Code §2234(b)(c)(d). Stipulated Decision. Violated Psychology Licensing Law by destroying medical records of 1 patient. Also failed to deal adequately with a patient's transference/counter-transference. Public Letter of Reprimand. June 6, 1996

MALONEY, J. PHILIP, M.D. (G-51319) Coalinga, CA
B&P Code §§2234, 2305. Stipulated Decision. Discipline by New Hampshire based on charges of sexual misconduct with female patients between 1989 and 1991. Revoked, stayed, 5 years' probation with terms and conditions. May 13, 1996

MCCOLE, JAMES ROMANUS, M.D. (G-23824) Pinole, CA
B&P Code §2234. Stipulated Decision. Deficiencies in record keeping and documentation on diagnosis, testing, and treatment of 2 patients. Public Reprimand. June 3, 1996

MCCORMICK, THOMAS MICHAEL, M.D. (G-23994) Las Vegas, NV
B&P Code §2305. Stipulated Decision. Discipline by Nevada for conviction in Federal District Court for 6 felony counts including: (1) making a false statement on a passport application; (2) fraudulent use of a social security number; (3) possessing a false identification document with intent to defraud the United States; (4) production of 1 or more counterfeit access devices—a Citibank Visa credit card; (5) making a materially false statement on an application for a Visa credit card to Citibank; and (6) knowingly and fraudulently concealing bankruptcy assets. Revoked, stayed, 5 years' probation with terms and conditions. July 3, 1996

MCGIVERN, BRIAN, M.D. (A-23503) Morro Bay, CA
B&P Code §§2234, 2242, 2238, H&S Code §11154(a). Stipulated Decision. Between January 1991 and January 1994, while working as a radiologist, ordered drugs used in weight control from various drug companies. The drugs were delivered to his residence, and dispensed to various co-workers and acquaintances. Failed to conduct prior good faith examinations and failed to make and maintain records for dispensation of these drugs. Revoked, stayed, 5 years' probation with terms and conditions. July 12, 1996

MIRKHANI, MANSOUR, M.D. (A-39887) Fremont, CA
B&P Code §2234. Stipulated Decision. Improperly recommended needle biopsies for 4 patients without sufficient evidence to support these recommendations. Public Reprimand. May 10, 1996

MIXTER, BRUCE ROBERT, M.D. (G-49879) Fayetteville, NC
B&P Code §141. Discipline by Colorado as the care of a patient fell below the accepted standards of medical practice. Failed to appropriately manage the patient's positive RH status and failed to transfer important information to the patient's prenatal flow sheet. Revoked. Default. July 12, 1996

MOK, MARTIN SAIWONG, M.D. (A-23360) Arcadia, CA
B&P Code §2234. Stipulated Decision. During the scheduled refill of a Medtronic pump, a patient was injected with a lethal dose of Dilaudid intrathecally. Revoked, stayed, 5 years' probation with terms and conditions, 60 days' actual suspension. May 3, 1996

MOSS, JERRY F., M.D. (G-55036) Los Angeles, CA
B&P Code §§2234, 2239. Stipulated Decision. Abuse of controlled substances impairing his ability to practice safely. Revoked, stayed, 7 years' probation with terms and conditions. June 10, 1996

NICKELS, RUSSELL A., M.D. (C-30675) Brookings, OR
B&P Code §§2234, 2305. Voluntary surrender of Oregon license to practice medicine for performing medical treatment on patients that was contrary to acceptable medical standards, that constituted a danger to patients and was inappropriate and/or unnecessary. Revoked, stayed, 7 years' probation with terms and conditions, 90 days' actual suspension. June 7, 1996

NOURIANI, MORY, M.D. (A-56215) Los Angeles, CA
B&P Code §2264. Stipulated Decision. Unprofessional conduct for aiding and abetting an unlicensed person in the practice of medicine. Allowed a surgical technician to assist in a tubal ligation. Public Letter of Reprimand. July 2, 1996

NUTTYCOMBE, HUGH, M.D. (A-20114) Glendale, CA
B&P Code §2234(b)(c)(d). Stipulated Decision. Unprofessional conduct, gross negligence, repeated negligent acts and incompetence. While on call at a medical center, failed to timely diagnose and hospitalize a 9 day-old female infant who was experiencing a sudden onset of unexplained fever. The infant was subsequently hospitalized and diagnosed as suffering from spinal meningitis. Public Letter of Reprimand. June 12, 1996

PISNANONT, PETER P., M.D. (C-38030) Mt. Vernon, NY
B&P Code §§2305, 2234. Disciplined by New York for signing the names of 2 doctors on documents to support his application for privileges and for writing prescriptions for himself in a patient's name. Revoked, stayed, 5 years' probation with terms and conditions. May 13, 1996

POLSDORFER, J. RICKER, M.D. (A-23365) Washington, DC
B&P Code §2234(b)(c)(d), 725. Stipulated Decision. Gross negligence, incompetence, excessive treatment or prescribing, and repeated negligent acts in the diagnosis and treatment of 1 patient. Revoked, stayed, 3 years' probation with terms and conditions. June 21, 1996

PRABHAKAR, RAM C., M.D. (A-36231) Jonesboro, GA
B&P Code §§2286, 2234. Stipulated Decision. Aided and abetted the unlicensed corporate practice of medicine. Public Reprimand. May 13, 1996

RAMSEYER-WEINBERG, JOANNA, M.D. (A-43327) Redding, CA
B&P Code §2234. Stipulated Decision. Failure to pursue all logical avenues of treatment for an emergency room patient's deteriorating condition. Two years' suspension, stayed, 3 years' probation with terms and conditions. July 22, 1996

RANU, GURDEEP SINGH, M.D. (A-32266) Fresno, CA
B&P Code §§2234, 2236. Convicted for failing to report suspected child abuse. Revoked, stayed, 3 years' probation with terms and conditions including 60 days' actual suspension if he doesn't satisfy condition by reviewing all active patient records for past 5 years and submit reports of suspected child abuse per Penal Code §11166. May 22, 1996

REYNOLDS, MICHAEL JAMES, M.D. (A-23823) Visalia, CA
B&P Code §2234(b)(c). Stipulated Decision. Five negligent acts in the care and treatment of obstetrical patients. Revoked, stayed, 7 years' probation with terms and conditions, 30 days' actual suspension. May 20, 1996

RICHARDSON, ROBERT E., M.D. (C-23280) Santa Rosa, CA
B&P Code §§2234(b)(c)(d), 2233. Negligence and incompetence in several cases with complications and unsatisfactory results. Public Letter of Reprimand. June 24, 1996

ROCK III, LEWIS BURNHAM, M.D. (C-41108) Seattle, WA
B&P Code §2305. Discipline by Washington for sexual misconduct. Revoked. Default. May 10, 1996

SAGMAQUEN, ROLANDA R., M.D. (A-21775) Fresno, CA
B&P Code §§2234, 2236, 2238. Stipulated Decision. Convicted for mail fraud and unlawful distribution of a controlled substance. Revoked, stayed, 5 years' probation with terms and conditions, 30 days' actual suspension. June 24, 1996

SCHOOLER, PETER CHRISTOPHER, M.D. (A-39937) New York, NY
B&P Code §2305. Discipline by New York for fraud, prescribing without an appropriate medical purpose and negligence. Revoked. Default. July 15, 1996

SCHRECONGOST, RAYMOND A., M.D. (A-26728) Lodi, CA
B&P Code §2234(b). Stipulated Decision. Improper touching during gynecological examination. Prior discipline. Revoked, stayed, 5 years' probation with terms and conditions. May 2, 1996

SCOTTON, THOMAS FRANCIS, M.D. (C-38907) Pasadena, CA
B&P Code §§2234(c), 2242, 2238, 2305. Stipulated Decision. Discipline by Pennsylvania where his medical license was revoked by default; and prescribing without a good faith exam, repeated negligent acts, and violating drug statutes. Revoked, stayed, 7 years' probation with terms and conditions, 30 days' actual suspension. June 20, 1996

SHAH, RASHMIKANT, M.D. (A-36852) Bakersfield, CA
B&P Code §2234. Stipulated Decision. Conducted unnecessary clinical tests and failed to refer psychiatric patients to neurologist for proper consultation and testing. Revoked, stayed, 2 years' probation with terms and conditions. July 1, 1996

SHELLCROFT II, JOHN W., M.D. (G-44107) Apple Valley, CA
B&P Code §2234(c). Stipulated Decision. Repeated negligent acts, made inappropriate comments to a female patient during a gynecological exam. Revoked, stayed, 5 years' probation with terms and conditions. June 5, 1996

SLOMINSKI, PAUL T., M.D. (G-29247) San Pablo, CA
B&P Code §822. Stipulated Decision. Mental illness affecting competency. Revoked, stayed, 5 years' probation with terms and conditions. Suspended indefinitely until in compliance with child support order. July 1, 1996

STALHEIM, ALAN JERARD, M.D. (A-23958) Carpinteria, CA
B&P Code §§821, 822. Failure to comply with division's order compelling a psychiatric exam and mental illness affecting competency. Revoked. Default. May 24, 1996

SUGARMAN, GERALD I., M.D. (G-8791) Sherman Oaks, CA
B&P Code §§2236, 2234. Stipulated Decision. Convicted for money laundering and bankruptcy fraud. Revoked, stayed, 32 months' probation with terms and conditions. July 23, 1996

SULLIVAN, KEVIN PAUL, M.D. (G-35765) Chicago, IL
B&P Code §2305. Stipulated Decision. Disciplined by Colorado for failure to document patient files. Public Reprimand. July 31, 1996

TALBERT, MICHAEL DAVID, M.D. (C-36274) Visalia, CA
Violated probation of prior discipline. Stipulated Decision. Revoked, stayed, 7 years' probation with terms and conditions. June 14, 1996

TING, ARTHUR JOSEPH, M.D. (G-45101) Palo Alto, CA
B&P Code §2234. Stipulated Decision. Failed to diagnose and treat a patient's dislocated elbow. One year suspension, stayed, 2 years' probation with terms and conditions. June 17, 1996

TRAHMS, ROBERT G., M.D. (C-24815) Greenbrae, CA
B&P Code §2234(c). Stipulated Decision. Repeatedly negligent in his care and treatment of several psychiatric patients. Revoked, stayed, 5 years' probation with terms and conditions. June 13, 1996

UCER, EROL, M.D. (C-38497) Grand Blanc, MI
B&P Code §§2234(a), 141(a). Disciplined by Michigan for convictions of health care fraud. Revoked. June 21, 1996

VU, LONG THIEN, M.D. (A-35868) San Diego, CA
B&P Code §2305. Stipulated Decision. Disciplined by Nebraska for failing to assess, stabilize, intubate, and handle the defibrillator on a heart attack patient. Revoked, stayed, 2 years' probation with terms and conditions. May 13, 1996

WEISS, LAWRENCE BABBIT, M.D. (G-54973) San Francisco, CA
B&P Code §§2236, 2239, 2234(e), 2238, 2237(a). Stipulated Decision. Possession of narcotic and non-narcotic controlled substances without a

written prescription and felony conviction. Revoked, stayed, 5 years' probation with terms and conditions. June 17, 1996

WILLIAMS, NOEL ALTON, M.D. (A-18629) Walnut Creek, CA
B&P Code §2234(b). Stipulated Decision. Engaged in a personal/sexual relationship with a patient while under his care and treatment. Revoked, stayed, 10 years' probation with terms and conditions. July 22, 1996

WITZIG, RICHARD A., M.D. (G-9816) Inverness, CA
B&P Code §§726, 2238, 2234(a)(b)(c), 2242(a), and H&S Code §11153(a). Engaged in a sexual relationship with a patient and prescribed a dangerous drug without a good faith prior exam. Revoked, stayed, 7 years' probation with terms and conditions. May 17, 1996

WONG, GEORGE S., M.D. (A-18144) Hayward, CA
B&P Code §§2234(b)(c)(d). Gross negligence, incompetence and repeated negligent acts while treating obstetrical patients. Revoked. July 22, 1996

DOCTORS OF PODIATRIC MEDICINE

ALEXANDER, DONALD WAYNE, D.P.M. (E-1737) Napa, CA
Violated probation of prior discipline which stated that he must pass an oral clinical exam. If he failed 3 times, his license would automatically be revoked. He failed to pass the exam in 3 tries. Revoked. May 4, 1996

HERB, GREGORY W., D.P.M. (E-2041) San Jose, CA
B&P Code §§810, 2234(a), 2236, 2261. Stipulated Decision. Presented and received payment for false and fraudulent Medi-Cal claims for office visits while providing routine, but not reimbursable, nail trimming to developmentally disabled persons at several residential care homes. Revoked, stayed, 5 years' probation with terms and conditions. July 15, 1996

SANDERS, RAYMOND, D.P.M. (E-2426) Citrus Heights, CA
B&P Code §§2234, 2239(a), 2242. Illegally obtained and used Demerol and Lidocaine substances. Violated probation of prior discipline. Revoked. Default. July 19, 1996

PHYSICAL THERAPISTS

DAVE, REKHA A. (PT-21660) Livermore, CA
B&P Code §§119(a), 480, 2630, 2633, 2660, 2660(i). Stipulated Decision. Prior to licensure as a physical therapist committed fraudulent, dishonest, and corrupt act in misrepresenting her approval as a physical therapist assistant status as being a physical therapist. Falsified documents and performed duties which require a physical therapist license. Five years' probation, 180 days' actual suspension. June 30, 1996

HOLT, WILLIAM (PT-16349) Port Saint Lucie, FL
B&P Code §§2660(l), 2661, 2662, 118, 810(a)(1)&(2). Stipulated Decision. Altered and falsified medical and billing records. One year suspension, stayed, 5 years' probation, 60 days' actual suspension. May 17, 1996

SHARP, DENNIS (PT-17450) Hemet, CA
B&P Code §§2660(d),(i), 2661, 2234(f), 490. Felony conviction of a lewd act with a child under 14 years of age. Revoked. July 11, 1996

PHYSICAL THERAPIST ASSISTANTS

DAVE, REKHA A. (AT-2817) Livermore, CA
B&P Code §§480(a)(2)&(3), 2660(i), 2660(l). Stipulated Decision. Committed a fraudulent, dishonest, and corrupt act in misrepresenting her approval as a physical therapist assistant status as being a physical therapist. Falsified documents and performed duties which require a physical therapist license. Revoked, stayed, 5 years' probation, 21 days' actual suspension. June 30, 1996

MCARDLE, CAROL ANN (AT-2470) Los Angeles, CA
Failed to comply with terms and conditions of prior discipline. Revoked. May 23, 1996

PSYCHOLOGISTS

BOXLEY, RUSSELL L., Ph.D. (PSY-5385) Pasadena, CA
B&P Code §2960. Stipulated Decision. Unprofessional conduct for

obtaining prescriptions for dangerous drugs without following accepted procedures. Revoked, stayed, 3 years' probation. July 25, 1996

DISHON, MICHAEL, Ph.D. (PSY-7689) Century City, CA
Stipulated Decision. No admissions to charges of failure to adequately supervise a psychological assistant which led to the grossly negligent treatment of 1 patient. Revoked, stayed, 3 years' probation. June 20, 1996

NOLLEY, DAVID A., Ph.D. (PSY-10531) San Jose, CA
B&P Code §2960(a)(k)(n). Convicted of Medi-Cal fraud in 1993. Revoked, stayed, 3 years' probation. June 19, 1996

RANDOLPH, ELIZABETH MARIE, Ph.D. (PSY-13339) Cotati, CA
B&P Code §2960(a). Criminal conviction in 1994 for counseling a patient to commit an act of child abuse to obtain funds for mental health treatment. Revoked. July 6, 1996

RESPIRATORY CARE PRACTITIONERS

BARNES, JEFFREY ALLEN (RCP-11126) Canoga Park, CA
B&P Code §§3750, 3750.5. Arrested for attempting to unlawfully obtain controlled substances or dangerous drugs—specifically, rock cocaine. Ordered to a drug diversion program for 6-24 months. Revoked. Default. May 19, 1996

BELL, THEODORE (RCP-13896) San Clemente, CA
Failure to comply with terms and conditions of probation under a prior discipline. Revoked. June 6, 1996

CLARK, JEFFREY MICHAEL (RCP-17353) Quartz Hill, CA
Stipulated Decision. Repeatedly failed to comply with terms and conditions of probation under a prior discipline. Revoked. July 9, 1996

GOMEZ, MARTIN (RCP-15258) Hawaiian Gardens, CA
Stipulated Decision. Failed to comply with terms of prior discipline. Revoked, stayed, 2 years' additional probation with modified terms and conditions. July 26, 1996

GRAY, KIRK DEREK (RCP-10502) Ventura, CA
B&P Code §§490, 3718, 3750, 3750(d). Convicted for possession of drug paraphernalia. Revoked, stayed, 3 years' probation with terms and conditions. June 17, 1996

JOHNSON, MOSEL (RCP-2015) Los Angeles, CA
B&P Code §§3750(d), 3750.5. Unlawful possession and use of controlled substances. Convictions for theft of personal property and non-sufficient funds. Revoked. Default. June 23, 1996

LEE, JEFFREY TUKYOUNG (RCP-13694) Los Angeles, CA
B&P Code §§475, 480, 3750, 3750(d), 3752. Convicted for lewd conduct with a child and oral copulation with a person under the age of 16. Revoked. July 9, 1996

MONTGOMERY, KERAN SUE (RCP-9725) Ventura, CA
B&P Code §§490, 2238, 2239(a), 3750, 3750.5. Stipulated Decision. Convicted for driving under the influence of alcohol on 2 occasions, for grand theft vehicle, providing false information to a police officer, possession of drug paraphernalia, and failure to comply with diversion program. Revoked. July 9, 1996

ROSE, CARL (RCP-7075) Oakland, CA
Failure to comply with terms and conditions of probation under a prior discipline. Revoked. May 25, 1996

ROSE, CLEVELAND ALEXANDER (RCP-6142) Fontana, CA
B&P Code §§490, 3750, 3750.5, 3752, 3752.5. Unlawful possession of a controlled substance, charge for attempted bodily injury, and conviction for possession of a deadly weapon. Revoked. Default. May 19, 1996

SOSA, DANIEL (RCP-8997) Whittier, CA
B&P Code §§490, 3750(g)(j), 3752, 3760(a)(c), 3761(a). Stipulated Decision. Criminally convicted for engaging in the unauthorized practice of respiratory care (a misdemeanor), and representation and repeated practice as a respiratory care practitioner without a current and valid license. Revoked, stayed, 3 years' probation, 4 days' actual suspension. July 21, 1996

VERA, RAYMOND (RCP-4369) Sepulveda, CA
B&P Code §§3754.5, 3750(j), 3760(a)(c), 3761(a). Stipulated Decision. Engaged in the unauthorized practice of respiratory care without a current and valid license. Revoked, stayed, 3 years' probation with terms and conditions. July 21, 1996

WINSHIP, GARY (RCP-11336) Oceanside, CA
B&P Code §§3750(d)(g), 3750.5(b)(c). Stipulated Decision. Convicted for driving under the influence of alcohol. Revoked, stayed, 3 years' probation with terms and conditions. July 21, 1996

SURRENDER OF LICENSE WHILE CHARGES PENDING

PHYSICIANS AND SURGEONS

BERNARDO, ELLEN ATACADOR, M.D. (A-48341) Norfolk, VA
July 15, 1996

COMAR, DAVE, M.D. (A-17667) Alhambra, CA
May 24, 1996

GRAY, WILLIAM G., M.D. (G-30499) Roanoke, VA
June 24, 1996

HAYES, SIDNEY JOSEPH, M.D. (C-34004) Joshua Tree, CA
July 29, 1996

HORVATH, CHARLES N., M.D. (C-29146) La Verne, CA
July 17, 1996

KIMBERLEY, STEPHEN LANGTON, M.D. (G-42400) Eugene, OR
June 28, 1996

LAKIN, ALAN C., M.D. (C-42149) Franklin, MI
July 12, 1996

LAWSON, DONALD A., M.D. (A-21755) Phoenix, AZ
May 20, 1996

MAGIDSON, JAMES S., M.D. (G-7609) Stony Brook, NY
July 12, 1996

MCCROSKEY, MARION E. M., M.D. (C-20525) Marietta, GA
May 28, 1996

MIGHELL, SCOTT J., M.D. (G-2594) Long Beach, CA
July 15, 1996

PARK, JANGWON, M.D. (A-33059) Garden Grove, CA
July 18, 1996

ROSENSTEIN, MELVYN, M.D. (G-28005) Culver City, CA
July 31, 1996

WILLIS, JAMES H., M.D. (G-36284) Bishop, CA
May 20, 1996

DOCTOR OF PODIATRIC MEDICINE

KNIGHT, ROBERT W., D.P.M. (E-2328) Redwood City, CA
May 8, 1996

PHYSICIAN ASSISTANT

BICKEL, DEBORAH ANN, P.A. (PA-11290) Berkeley, CA
May 2, 1996

RESPIRATORY CARE PRACTITIONERS


BATEMAN, WILLIAM LEE (RCP-10553) Van Nuys, CA
June 3, 1996

CARICUNGAN, ERNESTO (RCP-1917) Palmdale, CA
June 3, 1996

DHRUVA, HEMANG (RCP-14430) New York, NY
June 3, 1996

WESSA, JEFFREY (RCP-14349) Honolulu, HI
June 3, 1996

**Business and
Professions Code
Section 2021(b)
requires
physicians to
inform the
Medical Board in
writing of any
address change.**



MEDICAL BOARD OF CALIFORNIA

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Doug Laue, Deputy Director
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Neil Fippin, Manager, Licensing Program

TOLL FREE COMPLAINT LINE: (800)MED-BD-CA ((800)633-2322)
(Non-complaint calls to this number cannot be transferred.)

Medical Board:

Applications and Examinations	(916) 263-2499
Complaints	(800) 633-2322
Continuing Education	(916) 263-2360
Diversion Program	(916) 263-2600
Health Facility Discipline Reports	(916) 263-2382
Fictitious Name Permits	(916) 263-2384
License Renewals	(916) 263-2571
Expert Reviewer Program	(916) 263-2191

Verification of Licensure/

Consumer Information (916) 263-2382

General Information (916) 263-2466

Board of Podiatric Medicine (916) 263-2647

Board of Psychology (916) 263-2699

Affiliated Healing Arts Professions:

Complaints	(800) 633-2322
Acupuncture	(916) 263-2680
Audiology	(916) 263-2666
Hearing Aid Dispensers	(916) 263-2288
Midwives	(916) 263-2393
Physical Therapy	(916) 263-2550
Physician Assistant	(916) 263-2670
Registered Dispensing Opticians	(916) 263-2634
Respiratory Care	(916) 263-2626
Speech Pathology	(916) 263-2666

ACTION REPORT-OCTOBER 1996

For information or comments about the *Action Report*, please contact:
Candis Cohen, Editor, (916) 263-2389.

1995 - 96 Annual Report Medical Board of California

1426 Howe Avenue, Suite 54, Sacramento, CA 95825 (916) 263-2389

EXECUTIVE SUMMARY

Enforcement: The Division of Medical Quality (DMQ) developed, published and widely disseminated a Sexual Misconduct Policy Statement created to ensure that the public and profession know exactly the board's position on this matter, i.e., that sexual conduct with patients is unacceptable and will not be tolerated by the Medical Board of California.

Pursuant to SB 609 (effective 1-1-96), physician probation monitoring costs are now statutorily allowed. This means that Medical Board probationers will pay the cost of their probation monitoring rather than the general licensee population.

Three years ago, DMQ's enforcement program reached stipulated settlements in 71 disciplinary cases, thus avoiding the expense and time associated with an administrative hearing. In the 1995-96 fiscal year, the program settled 214 disciplinary cases, saving the Medical Board a tremendous amount of time and money needed to adjudicate cases and protect the public.

Licensing: To enhance the protection of consumers undergoing surgery in outpatient settings, the Division of Licensing (DOL) adopted regulations pursuant to a legislative mandate establishing standards for accreditation of such settings. The statute prohibits surgery that uses an anesthetic with the potential to render a patient at risk of losing life-protective reflexes, unless the surgery setting is accredited.

Licensed midwives must have a physician backup in case of an emergency, and the physician must have hospital privileges in obstetrics, under DOL-approved regulations. DOL has developed the standards for licensure and challenge exams.

Medical Quality Review: The DMQ's new medical expert reviewer program was implemented, and portends an excellent future that will ensure a higher level of medical peer review of complaints against physicians by using highly qualified, credentialed and motivated medical expert reviewers. More than 1,500 experts already have been approved, representing all ABMS boards.

Lawsuits: In November 1993 the California Medical Association obtained a temporary restraining order that enjoined the board from disclosing the names of physicians who had fully investigated cases pending at the Attorney General's Office. In September 1995, a Sacramento Superior Court judge denied the CMA's motion for summary judgment and dismissed the entire lawsuit. The board amended its regulations to disclose at the time of referral to the AG only the names of physicians who are charged with "egregious" misconduct. The new regulation is at the independent Office of Administrative Law for final approval.

The Medical Board's lawsuit to determine its ability to obtain peer review records in the course of a board investigation, Arnett v. Dal Cielo, should be before the California Supreme Court as we go to print. A related case, Arnett v. Pearce, also has been granted review by the California Supreme Court. After Dal Cielo is determined, we expect that Pearce will be remanded to the Court of Appeal for findings in light of the Supreme Court's decision in Dal Cielo.

PHYSICIAN AND SURGEON VALID LICENSES BY COUNTY

Alameda	3,357	Inyo	44	Monterey	683	San Luis Obispo	572	Trinity	13
Alpine	0	Kern	853	Napa	408	San Mateo	2,383	Tulare	416
Amador	52	Kings	103	Nevada	181	Santa Barbara	1,030	Tuolumne	108
Butte	381	Lake	71	Orange	7,148	Santa Clara	4,512	Ventura	1,383
Calaveras	37	Lassen	35	Placer	516	Santa Cruz	542	Yolo	537
Colusa	11	Los Angeles	23,427	Plumas	25	Shasta	362	Yuba	57
Contra Costa	2,215	Madera	72	Riverside	1,904	Sierra	2		
Del Norte	37	Marin	1,513	Sacramento	2,822	Siskiyou	63	California Total	
El Dorado	234	Mariposa	20	San Benito	28	Solano	577	78,169	
Fresno	1,451	Mendocino	199	San Bernardino	2,748	Sonoma	1,103	Out of State Total	
Glenn	8	Merced	222	San Diego	7,188	Stanislaus	661	24,961	
Humboldt	262	Modoc	6	San Francisco	4,518	Sutter	136	Valid Licenses	
Imperial	113	Mono	22	San Joaquin	749	Tehama	49	103,130	

MISSION STATEMENT OF THE MEDICAL BOARD OF CALIFORNIA

The mission of the Medical Board of California is to protect consumers through proper licensing of physicians and surgeons and certain allied health professions and through the vigorous, objective enforcement of the Medical Practice Act.

LICENSING ACTIVITY

	FY 94-95	FY 95-96		FY 94-95	FY 95-96
PHYSICIAN LICENSES ISSUED			SPECIAL PURPOSE LICENSING EXAM (SPEX)		
Federation Licensing Exam (FLEX)	1,148	2,355	Applicants passing SPEX exam	61	***
National Board Exam (NBME)	2,496	829	ORAL EXAM		
Reciprocity with other states	97	75	Applicants passing oral exam	1,032	949
Total new licenses issued	3,741	3,259	Applicants failing oral exam	54	38
Renewal licenses issued	46,655	47,134	Total	1,086	987
Renewal licenses—fee exempt *	4,008	4,214	STATEMENT OF ISSUES TO DENY LICENSE		
Total licenses renewed	50,663	51,348	Filed	4	2
PHYSICIAN LICENSES IN EFFECT			Upheld/Application Denied	3	5
California Address	77,311	78,169	Denied/Applicant Granted Probationary Cert.	3	1
Out-of-State	25,311	24,961	Stipulation/Probationary Cert. Granted	3	1
Total	102,622	103,130	Withdrawn	0	0
LICENSING EXAMINATION ACTIVITY			* Includes physicians with non-practicing license status (i.e., disabled, retired, and military).		
Federal Licensing Exam (FLEX)	**	**	** The FLEX exam is no longer administered. USMLE replaced FLEX effective June 1994.		
United States Medical Licensing Exam (USMLE)			*** The division no longer administers the Special Purpose Licensing Exam (SPEX).		
Applicants passing USMLE exam	1,474	2,038			
Applicants failing USMLE exam	139	312			
Total	1,613	2,350			

VERIFICATION ACTIVITY SUMMARY

	FY 94-95	FY 95-96		FY 94-95	FY 95-96
LICENSE STATUS VERIFICATIONS			FICTITIOUS NAME PERMITS		
Phone Verifications	214,595	181,352	Total Number of Permits in Effect	9,513	8,014
On-Line Access Verifications	209,747	275,093	Issued	1,140	1,150
Written Verifications	145,682	120,725	Renewed	3,862	3,059
Teale Data Verifications *	52,588	22,282	CONTINUING MEDICAL EDUCATION		
Verification Totals	622,612	599,452	CME Audits	768	804
Authorized Users—On-Line			CME Waivers **	575	140
Access Verifications	312	355	* Decrease is due to the use of On-Line Access Verifications.		
Non-Verification Telephone Calls	70,695	57,049	** Decrease is due to a reinterpretation of the law which caused fewer approvals of CME Waivers.		
CERTIFICATIONS AND LETTERS					
Certification Letters	2,724	1,845			
Letters of Good Standing	5,971	5,367			

REPORT VERIFICATIONS

Disciplinary reports mailed to health facilities upon written request pursuant to B&P Code §805.5	1,157	B&P Code §805 reports of Health Facility Discipline Received	Original **	113
Adverse Actions reported to the NPDB *	408		Follow up	40
NPDB reports received from insurance companies or self-insured individuals/organizations	1,176	Total Reports Received		153
		* NPDB = National Practitioner Data Bank		
		** Includes 112 reports for MDs and 1 for a podiatrist.		

DIVISION OF LICENSING

The Medical Board's licensing program processes initial applications for physician and surgeon licensure, administers written and oral examinations, issues fictitious name permits, coordinates the continuing medical education program and the licensing programs for several allied health professions, and discloses information to the public regarding disciplinary action. In June 1995 the division was reorganized, providing a more comprehensive management structure to better serve the public.

The Division of Licensing issued its first citation in September 1995 under the new citation-and-fine regulations which were adopted in 1994. Ten citations have been issued for unlicensed activity since the program was implemented, with five cases closed to date.

The division can now access the National Practitioner Data Bank (NPDB) as an additional tool for determining out-of-state disciplinary information on its physician and surgeon applicants.

Staff conducted over 800 audits of physicians selected at random to ensure compliance with the laws and regulations governing continuing medical education. The audit takes approximately four months to complete and is conducted pursuant to section 1338 of the division's regulations. All individuals selected must provide proof of completing their continuing medical education (CME) credits.

The licensing program also implemented the new Applicant Tracking System (ATS), a computerized data base designed to track physicians' applications as they satisfy each legal requirement and progress toward licensure. This new system replaced an outdated legacy system.

The division conducted site inspections at Loma Linda University Medical Center, UCSD, USC, and UCLA. The medical schools have been approved for B&P Code §§2111 and 2113 special programs which exempt physicians from licensure for fellowship training or clinical teaching opportunities, respectively, within the medical school. The inspections provide guidance to the schools and ensure they are using the programs according to the intent of the law. Site inspections also were conducted at UTESA, UNIREMHOS and INTEC medical schools in the Dominican Republic to determine whether the schools offer adequate medical education. Information gathered during these inspections will allow the division to adopt a formal position with respect to each school's status.

Two consultants were hired to evaluate specialty boards' training programs to determine if they are substantially equivalent to the American Board of Medical Specialties' training programs in scope, content and duration, as required by SB 2036. In 1995-96, the board approved one specialty board for advertising, the American Board of Pain Medicine.

AFFILIATED HEALING ARTS PROFESSIONS LICENSES ISSUED

	<u>FY</u> <u>94-95</u>	<u>FY</u> <u>95-96</u>
Acupuncturist	343	149
Audiologist	68	60
Hearing Aid Dispenser	158	221
Physical Therapist	834	835
Physical Therapy Assistant	381	517
Electroneuromyographer	0	2
Kinesiologic		
Electromyographer	3	3
Physician Assistant	256	241
Physician Asst. Supervisor	1,402	1,411
Doctor of Podiatric Medicine	75	58
Psychologist	402	387
Psychologist Assistant	675	816
Registered Dispensing		
Optician Firm	116	91
Contact Lens Dispenser	86	44
Spectacle Lens Dispenser	231	213
Research Psychoanalyst	5	9
Respiratory Care Practitioner	815	744
Speech Pathologist	376	370
Total Licenses Issued	6,226	6,171

AFFILIATED HEALING ARTS PROFESSIONS LICENSES IN EFFECT*

	<u>FY</u> <u>94-95</u>	<u>FY</u> <u>95-96</u>
Acupuncturist	3,337	3,414
Audiologist	1,151	1,170
Hearing Aid Dispenser	1,584	1,553
Physical Therapist	14,132	14,548
Physical Therapy Assistant	2,982	3,413
Electroneuromyographer	31	33
Kinesiologic		
Electromyographer	21	26
Physician Assistant	2,614	2,774
Physician Asst. Supervisor	7,439	8,195
Doctor of Podiatric Medicine	1,961	1,905
Psychologist	10,974	11,133
Psychologist Assistant	1,872	1,885
Registered Dispensing		
Optician Firm	1,347	1,204
Contact Lens Dispenser	642	578
Spectacle Lens Dispenser	2,230	2,076
Research Psychoanalyst	54	61
Respiratory Care Practitioner	12,955	13,136
Speech Pathologist	7,073	7,237
Total Licenses In Effect	72,399	74,341

* Reflects valid licenses only; does not reflect any restricted license categories (delinquent, military, inactive, suspended, temporary, etc.).

COMPLAINTS RECEIVED BASED UPON REPORTS REQUIRED BY LAW[†]

PHYSICIANS & SURGEONS

	FY 93-94	FY 94-95	FY 95-96
MEDICAL MALPRACTICE			
Insurers			
B&P Code §§801 & 801.1	974	809	870
Attorneys or Self-Reported or Employers			
B&P Code §§802 & 803.2	62	100	110
Courts			
B&P Code §803	10	21	19
Total Malpractice Reports	1,046	930	999

CORONERS' REPORTS

B&P Code §802.5	17	6	14
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CRIMINAL CHARGES & CONVICTIONS

B&P Code §803.5 (effective 1-1-96)	n/a	n/a	16
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HEALTH FACILITY DISCIPLINE

Medical Cause or Reason

B&P Code §805	124	114	112
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AFFILIATED HEALING ARTS PROFESSIONALS

	FY 94-95	FY 95-96
MEDICAL MALPRACTICE		
Insurers		
B&P Code §§801 & 801.1	19	20
Attorneys or Self-Reported or Employers		
B&P Code §§802 & 803.2	0	2
Courts		
B&P Code §803	0	1
Total Malpractice Reports	19	23

CORONERS' REPORTS

B&P Code §802.5	0	0
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CRIMINAL CHARGES & CONVICTIONS

B&P Code §803.5 (effective 1-1-96)	n/a	2
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HEALTH FACILITY DISCIPLINE

Medical Cause or Reason

B&P Code §805	1	1
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For additional copies of this report, please fax your company name, address, telephone number and contact person to: Yolanda Gonsolis, Medical Board Executive Office, at (916) 263-2387, or mail your request to her at 1426 Howe Avenue, Suite 54, Sacramento, CA 95825.

DIVISION OF MEDICAL QUALITY ACTION SUMMARY

FY 93-94 FY 94-95 FY 95-96

COMPLAINTS/INVESTIGATIONS

Complaints Received	7,902	11,465	11,497
Complaints Closed by CCICU †	5,614	11,058	9,751
Investigations			
Cases Opened	2,046	2,041	1,998
Cases Closed †	2,231	1,988	2,043
Cases referred to the AG	601	415	510
Cases referred to DAs/CAs	82	75	68

ADMINISTRATIVE FILINGS †

Interim Suspensions	16	14	28
Temporary Restraining Orders	4	5	1
Automatic Suspension Orders *	n/a	5	8
Statement of Issues to deny application	3	4	2
Petition to Compel Psychological Exam	9	11	16
Petition to Compel Competency Exam	9	4	4
Petition to Compel Physical Exam	0	0	8
Accusation/Petition to Revoke Probation	407	353	262
Total Administrative Filings	448	396	329

* Includes Automatic Suspension Orders per section 2236.1 B&P Code and section 23 Penal Code.

ADMINISTRATIVE ACTIONS †

Revocation	62	65	62
Surrender (in lieu of Accusation or with Accusation pending)	28	62	52
Suspension Only	0	2	1
Probation with Suspension	39	34	29
Probation	75	141	129
Probationary License Issued	2	3	1
Public Reprimand	9	25	67*
Other decisions	9	21	4
Total Administrative Actions	224	353	345

* Includes 30 pre-accusation Public Letters of Reprimand issued pursuant to B&P Code section 2233 (effective 1-1-94).

REFERRAL AND COMPLIANCE ACTIONS

Citation and Administrative Fines Issued *	n/a	57	152
Physicians Called in for Medical Review	138	37	44
Physicians Referred to Diversion Program †	31	18	19**
Total Review & Referral Action	169	112	215

* Regulations providing Citation-and-Fine authority were approved in May 1994 (3 citations issued to physicians in FY 93-94).

** Includes 18 Diversion Program referrals pursuant to Senate Bill 779 (effective 1-1-96).

OTHER ADMINISTRATIVE OUTCOMES

Accusation/Statement of Issues Withdrawn	44	69	67*
Accusation/Statement of Issues Dismissed	13	9	12
Statement of Issues Granted (Lic. Denied)	5	3	5
Statement of Issues Denied (Lic. Granted)	1	3	1
Petitions for Penalty Relief granted **	14	20	17
Petitions for Penalty Relief denied **	14	15	16
Petition to Compel Exams granted	20	37	16
Petition to Compel Exams denied	2	0	0

* 49 Accusations Withdrawn for the following reasons: physician passed a competency exam (24); physician met stipulated terms and conditions (10); physician was issued a citation/fine instead (6); physician died (5); or physician surrendered the license (4).

** In accordance with the Agency Statistical Profile report specifications, Penalty Relief includes Petitions for Reinstatement, Petitions for Modification of Penalty, and Petitions for Termination of Probation.

† Information required by Business and Professions Code section 2313.

DIVISION OF MEDICAL QUALITY

During the 1995-96 fiscal year, the Medical Board's enforcement program continued to demonstrate strong performance and achieve new levels of public protection. In 1996, the Federation of State Medical Boards (which ranks states by instances of physician discipline) reported that the Medical Board of California improved its national ranking dramatically when compared to enforcement programs in other states. As an example, in the 1995-96 fiscal year, 29 interim suspension orders (ISO) or temporary restraining orders (TRO) were obtained to

prevent physicians who presented clear and immediate danger to their patients from practicing while their cases were prepared for judicial review. This represents the highest ISO/TRO action ever taken by the board in a single year and does not include another eight automatic suspensions (Business and Professions Code section 2236.1) or court-ordered restrictions (Penal Code section 23). These actions reflect the intensive efforts of both the Medical Board and the Office of the Attorney General staffs, who identified and pursued these

exceptional public safety actions which require special, time-consuming efforts on the part of our investigators and deputy attorneys general.

The enforcement program successfully implemented SB 779 (which became effective 1-1-96). This new law increases the potential number of impaired physician participants in the board's Diversion Program while providing greater safeguards in the event of unsuccessful program completion.

The enforcement program continued aggressive pursuit of cost recovery with the support of a report previously issued by the State Auditor. This is reflected by the fact that in the 1992-93 fiscal year the board recovered \$54,000 of its investigative and enforcement costs, while in the 1995-96 fiscal year, the board recovered \$456,000 of those costs. The recovery of probation monitoring costs began in 1995-96 and is expected to contribute measurably in the 1996-97 fiscal year. These actions, as well as others which require that violators pay, all contribute to the avoidance of licensing fee increases while maintaining the Medical Board's financial stability.

The board's new medical consultant and medical expert reviewer system was implemented in 1995-96. The new system contributed to higher quality medical expert complaint review by qualified medical experts than ever previously achieved, while resulting in significant savings to the board's operational costs of approximately \$425,000.

Although investigative time remains higher than desirable, the overall complaint processing time has steadily declined over the past three years from 239 days in the 1992-93 fiscal year to 123 days in the 1995-96 fiscal year. Much of this is due to careful management and improved operations in the board's Central Complaint Unit.

COMPLAINTS RECEIVED†

		Fraud	Health & Safety ¹	Non-Jurisdictional ²	Competence/ Negligence ³	Other Category	Personal Conduct ⁴	Unprofessional Conduct ⁵	Unlicensed/ Unregistered	Total
Public	MD	225	184	355	4,013	1	59	1,469	112	6,418
	AH	41	7	13	134	1	10	333	95	634
B&P Code Section 800 ⁶	MD	0	8	6	1,062	1	22	42	0	1,141
	AH	0	0	0	20	0	2	4	0	26
Licensee or Professional Group ⁷	MD	20	12	15	49	3	11	65	30	205
	AH	1	1	0	2	0	0	45	27	76
Governmental Agency ⁸	MD	33	54	10	2,818	116	155	336	87	3,609
	AH	17	0	1	11	17	23	59	48	176
Anonymous/ Miscellaneous	MD	6	16	2	23	0	16	33	28	124
	AH	2	0	1	4	0	0	17	12	36
Subtotals	MD	284	274	388	7,965	121	263	1,945	257	11,497
	AH	61	8	15	171	18	35	458	182	948
Grand Totals		345	282	403	8,136	139	298	2,403	439	12,445

MD = Medical Doctor;

AH = Affiliated Healing Arts Professionals (includes: podiatrists, physician assistants, psychologists, dispensing opticians, and speech pathologists/audiologists).

(1) Health and Safety complaints, e.g. excessive prescribing, sale of dangerous drugs, etc.

(2) Non-Jurisdictional complaints are not under the authority of the board, and are referred to other agencies such as the Department of Health Services, Department of Insurance, etc.

(3) Competence/Negligence complaints are related to the quality of care provided by licensees.

(4) Personal Conduct complaints, e.g. licensee self-use of drugs/alcohol, conviction of a crime, etc.

(5) Unprofessional Conduct complaints include sexual misconduct with patients, discipline by another state, failure to release medical records, etc.

(6) B&P Code §800 includes complaints initiated based upon reports submitted to the Medical Board by hospitals, insurance companies and others, as required by law, regarding instances of health facility discipline, malpractice judgments/settlements, or other reportable activities.

(7) Licensee or Professional Group includes the following complaint sources: Other Licensees, Society/Trade Organizations, and Industry.

(8) Governmental Agency includes the following complaint sources: Internal, Law Enforcement Agency, Other California State Agencies, Other States, Other Units of Consumer Affairs, and Federal or Other Governmental Agencies.

† Information required by Business and Professions Code section 2313.

BUSINESS & PROFESSIONS CODE §2313—ADDITIONAL DATA ELEMENTS

1. Additional data for Temporary Restraining Orders (TRO) and Interim Suspension Orders (ISO):

	Orders Sought: TRO/ISO	Orders Granted: TRO/ISO
Mental Illness	5	4
Drug Prescribing Violations	2	3
Unlicensed Activity	0	0
Sexual Misconduct	5	4
Self Abuse of Drugs or Alcohol	6	10
Fraud/Dishonesty	0	1
Gross Negligence/Incompetence	3	7
Conviction of a Crime	1	0
Unprofessional Conduct	0	0
Total:	22	29

7. Dispositions of Probation Filings:	<u>MD</u>	<u>AH</u>	<u>Total</u>
Additional Suspension or Probation	5	0	5
Probation Revoked or License Surrendered	8	3	11
Petition Withdrawn/Dismissed	1	0	1

8. Petitions for Reinstatement of License:

Filed	8	3	11
Granted	8	1	9
Denied	8	3	11

9. Average and median time in processing complaints during the fiscal year, for all cases, from date of original receipt of the complaint, for each stage of discipline, through completion of judicial review:

	FY 94-95		FY 95-96	
	Avg.	Median	Avg.	Median
	(days)		(days)	
1. Complaint Unit Processing	91	28	65	7
2. Investigation	345	279	335	250
3. Attorney General Processing to preparation of an accusation	238	175	139	97
4. Other stages of the legal process (e.g. after charges filed)	538	456	494	396

10. Investigator caseloads as of June 30, 1996:

	Enforcement Field Operations Caseload:		Per Investigator
	<u>Statewide</u>		
Active Investigations	2,061		30
AG Assigned Cases *	651		9
Probation Unit Caseload:			
Monitoring Cases **	545		61
Active Investigations	74		8
AG Assigned Cases *	25		3

* These cases are at various stages of AG processing, and may require supplemental investigative work such as subpoena service, interviewing new victims or witnesses, testifying at hearings, etc.

** 183 additional monitoring cases were inactive because the probationer is out of state.

3. Consumer inquiries and complaints:

Consumer inquiries	77,217
Jurisdictional inquiries	42,469
Complaint forms sent	13,784
Complaint forms returned by consumers	5,946

4. Number of completed investigations referred to the Attorney General's Office awaiting the filing of an accusation:

Physician and Surgeon	159
Affiliated Healing Arts Professionals	32

5. Number of probation violation reports sent to the Attorney General:

	<u>MD</u>	<u>AH</u>	<u>Total</u>
General:	19	7	26

6. Petitions to Revoke Probation Filed: 17 5 22

11. Number and type of MD & AH action taken by disciplinary case type:	Revocation	Surrender	Suspension Only	Probation With Suspension	Probation	Probationary License Issued	Public Reprimand	Other Action	Total Actions by Case Type
Negligence	11 (10)	17 (15)	0	9 (7)	44 (41)	0	23 (20)	3 (2)	107 (95)
Inappropriate Prescribing	5 (4)	7 (6)	0	2 (0)	17 (16)	0	15 (15)	0	46 (41)
Unlicensed Activity	1 (0)	0	0	0	3 (3)	0	0	0	4 (3)
Sexual Misconduct	15 (10)	12 (9)	0	3 (3)	13 (10)	2 (0)	2 (2)	1 (1)	48 (35)
Mental Illness	6 (6)	2 (2)	0	2 (2)	5 (5)	0	1 (1)	0	16 (16)
Self-use of drugs/alcohol	7 (6)	6 (6)	0	2 (2)	19 (18)	1 (1)	4 (4)	0	39 (37)
Fraud	4 (4)	4 (4)	0	4 (3)	8 (7)	0	10 (10)	1 (1)	31 (29)
Conviction of a crime	5 (3)	5 (3)	0	5 (5)	8 (7)	0	0	0	23 (18)
* Unprofessional Conduct	22 (19)	8 (6)	1 (1)	7 (7)	25 (21)	0	16 (15)	0	79 (69)
Miscellaneous violations	0	1 (1)	0	0	1 (1)	0	0	0	2 (2)
Total Actions by Discipline Type	76 (62)	62 (52)	1 (1)	34 (29)	143 (129)	3 (1)	71 (67)	5 (4)	395 (345)
(Physician only) **									

* Many of the case types classified as "Unprofessional Conduct" are reciprocal action based upon discipline by another state.

** Figures in parentheses represent physician discipline only for each category. Figures outside parentheses represent combined MD & AH.

ENFORCEMENT ACTION SUMMARY FOR AFFILIATED HEALING ARTS

	FY 94-95	FY 95-96
COMPLAINTS/INVESTIGATIONS		
Complaints Received	1,041	948
Complaints Closed by CCICU †	916	703
Investigations		
Cases Opened	289	231
Cases Closed†	310	263
Cases referred to the AG	76	79
Cases referred to DAs/CAs	19	11

ADMINISTRATIVE FILINGS †

Interim Suspensions	1	2
Automatic Suspension Orders *	1	0
Statement of Issues to deny licensure	6	4
Petition to Compel Psychological Exam	0	1
Accusation/Petition to Revoke Probation	50	47
Total Administrative Filings	58	54

* Includes Automatic Suspension Orders per B&P Code section 2236.1.

ADMINISTRATIVE ACTIONS †

Revocation	16	14
Surrender (in lieu of Accusation or with Accusation pending)	12	10
Probation with Suspension	3	5
Probation	26	14
Probationary License Issued	5	2
Public Reprimand	0	4
Other decisions (e.g., warning notice)	5	1
Total Administrative Actions	67	50

REFERRAL AND COMPLIANCE ACTIONS

Citation and Administrative Fines Issued	16	2
Office Conferences Conducted	3	17
Professionals Referred to Diversion Program †	2	0
Total Review & Referral Action	21	19

OTHER ADMINISTRATIVE OUTCOMES

Accusation/Statement of Issues Withdrawn	9	4
Accusation/Statement of Issues Dismissed	2	0
Statement of Issues Granted (Lic. Denied)	5	2
Statement of Issues Denied (Lic. Granted)	6	2
Petitions for Penalty Relief granted *	6	1
Petitions for Penalty Relief denied *	5	4
Petition to Compel Psychological Exam granted	0	1

* In accordance with the Agency Statistical Profile report specifications, Penalty Relief includes Petitions for Reinstatement, Petitions for Modification of Penalty, and Petitions for Termination of Probation.

† Information required by Business and Professions Code section 2313.

DIVERSION PROGRAM

Activity *		Type of Impairment	#	%
Beginning of fiscal year	212			
Accepted into program	56	Alcohol	48	23
Completions:		Other drugs	78	37
Successful	47	Alcohol & other drugs	74	35
Unsuccessful	15	Mental illness	5	2
Active at end of year	211	Mental illness &		
Applicants **	50	substance abuse	6	3
		Total	211	100

* These statistics include doctors of podiatric medicine.

** Applicants are participants who either 1) have not been seen by a Diversion Evaluation Committee or 2) have not yet signed a Diversion Agreement.

The board's Diversion Program for impaired physicians fulfills both elements of the Division of Medical Quality's mission by helping to protect the public while rehabilitating physicians. The Diversion Program protects the public by closely monitoring physicians who are impaired as a result of alcohol and other drug addiction or mental illness. At the same time it provides physicians who suffer from substance abuse the opportunity for rehabilitation and life-long recovery.

The Diversion Program, created by statute in 1980 as an alternative to discipline by the board, allows participants, when appropriate, to continue to practice medicine. Both board-referred and self-referred candidates can participate if deemed eligible by Diversion Evaluation Committees. These committees are composed of three physicians and two public members with expertise in alcohol and other drug addiction or mental illness. Participation by self-referred physicians, who have no board action, is completely confidential from the disciplinary arm of the Medical Board. Approximately 70% of Diversion participants are self-referred. No physician's license is affected as a result of being in the Diversion Program.

On January 1, 1996 legislation went into effect that allows a physician's placement in Diversion, in lieu of discipline, if that physician is suffering from alcoholism or drug addiction. The legislation makes clear that a physician whose violations are related to the self-administration of alcohol and other drugs, where there is no evidence of patient harm, can participate in the Diversion Program. The clarifying legislation also allows the Medical Board to continue to investigate and take disciplinary action against a physician who is enrolled in the program for violations unrelated to the substance abuse.

MEDICAL BOARD OF CALIFORNIA 1995-1996

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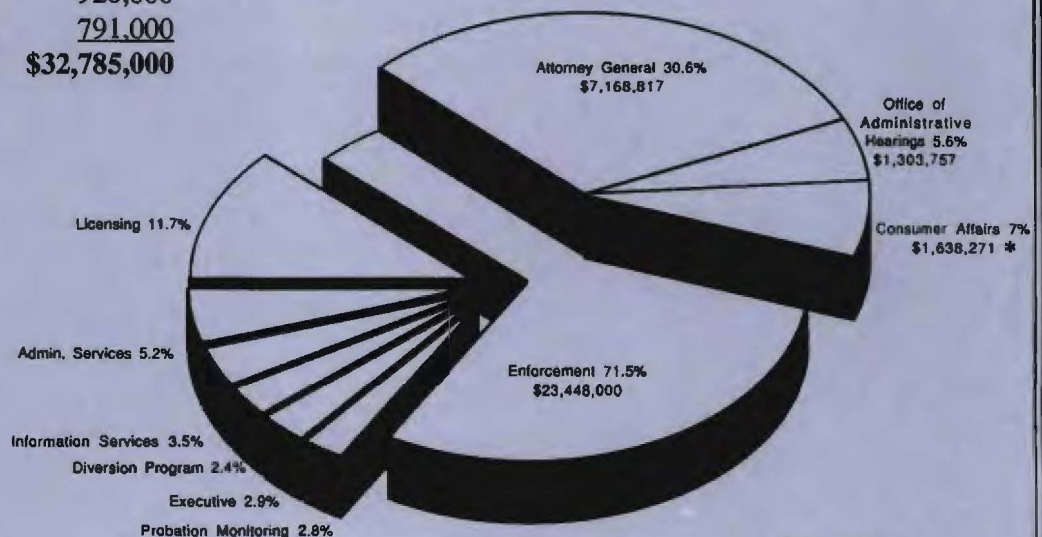
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MEDICAL BOARD OF CALIFORNIA 1995-1996 FISCAL YEAR BUDGET DISTRIBUTION

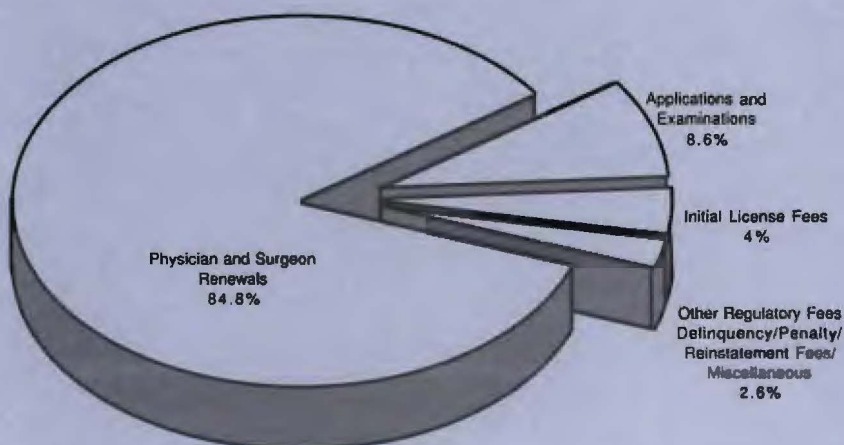
Enforcement	71.5%	\$23,448,000
Licensing	11.7%	3,831,000
Administrative Services	5.2%	1,707,000
Information Systems	3.5%	1,130,000
Executive	2.9%	950,000
Probation Monitoring	2.8%	928,000
<u>Diversion Program</u>	<u>2.4%</u>	<u>791,000</u>
Total Budget	100%	\$32,785,000



NOTE: Total amount (allocated to all programs) paid to Department of Consumer Affairs = \$2,288,088

* Amount to Department of Consumer Affairs allocated to the enforcement program only.

MEDICAL BOARD OF CALIFORNIA SOURCES OF REVENUE 1995-1996



Physician and Surgeon Renewals	84.8%	\$26,482,000
Applications and Examinations	8.6%	\$2,677,000
Initial License Fees	4.0%	\$1,269,000
Other Regulatory Fees, Delinquency/Penalty/Reinstatement Fees, <u>Miscellaneous</u>	<u>2.6%</u>	<u>\$809,000</u>
Total	100%	\$31,237,000