

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

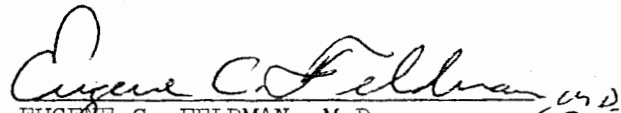
In the Matter of the Accusation)	
and Petition to Revoke Probation)	
Against:)	NO. D-2411
)	
HARRY RUDOLPH ALSLEBEN, M.D.)	L-20118
Certificate No. A-28775,)	
)	
Respondent.)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Division of Medical Quality of the Board of Medical Quality Assurance as its Decision in the above-entitled matter.

This Decision shall become effective on July 11, 1980.

IT IS SO ORDERED June 11, 1980.


 EUGENE C. FELDMAN, M.D.
 President

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

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

HARRY RUDOLPH ALSLEBEN, M.D.
710 N. Euclid, Suite 100
Anaheim, California

655 W. San Ysidro
San Ysidro, Calif.

Certificate No. A-28775

Respondent

No. 2411

L-20118

PROPOSED DECISION

This matter came on regularly for hearing before Robert A. Neher, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California on December 28, 1979, and April 11, 1980, at 9:00 a.m. David Chandler, Deputy Attorney General, represented the complainant. Respondent did not appear in person, but was represented by Donald E. Faubus, Attorney at Law. Documentary and oral evidence was introduced and the record left open for the parties to supply further documents and written arguments with points and authorities.

On April 18, 1980, complainant filed an additional declaration which was admitted into evidence as Exhibit 6. On April 24, 1980, respondent filed his written argument and points and authorities, which was marked as Exhibit B, for identification only. At that time Exhibit A, marked for identification on April 11, 1980, was admitted into evidence.

On May 6, 1980, complainant filed its argument and points and authorities which was marked as Exhibit 7, for identification only and the matter was deemed submitted on that date. The Administrative Law Judge finds the following facts:

I

Robert Rowland, made the Accusation and Petition to Revoke Probation in his official capacity as Executive Director of the Board of Medical Quality Assurance.

II

On or about July 27, 1961, respondent was issued Osteopathic Physician's and Surgeon's License No. 20 A-2744. On or about November 6, 1972, respondent elected to use the designation, M. D., and came under the jurisdiction of the Board of Medical Quality Assurance. License No. A-28775 was issued by the Board of Medical Examiners on March 21, 1975. Respondent's address of record is as set forth in the caption; however he is presently at 7958 Broadview Road, Broadview Heights, Ohio, 44147.

III

Respondent's license expired February 28, 1978, and has not been renewed.

On May 23, 1978, respondent's license was revoked for acts of gross negligence in proceeding No. D-2029, but the revocation was stayed and he was placed on probation for seven years on certain terms and conditions, including:

a. Respondent's certificate was actually suspended for six months.

b. Respondent was precluded from returning to practice until he took and passed an oral clinical examination to be administered by the Division of Licensing.

c. Respondent was to obey all laws.

d. If respondent did not comply with the terms and conditions of his probation, the division may set aside the stay and reimpose the revocation order.

IV

On or about February 11, 1979, respondent performed a needle drainage on an abcess in the right leg of Mrs. G. C. in San Ysidro, California.

This conduct constitutes the practice of medicine. At the time the above occurred, respondent's license was under suspension as he had not taken the exam specified in paragraph b. of Finding III above.

Respondent's defense that as of February 11, 1979, he had already served his six (6) month actual suspension and was therefore "not under suspension" is not meritorious. The evidence established that he was at that time on indefinite suspension since he had not taken and passed the oral clinical examination required by his probationary order. Said conduct is violative of that requirement of his probation.

V

On or about June 12, 1979, in the Municipal Court of California, County of San Diego, San Diego Judicial District, respondent pled guilty to and was convicted of a violation of section 2373 of the Business and Professions Code based on the above facts. He was placed on probation for one year and was required to pay a fine of \$250.00 plus penalty assessments.

Said conviction is in violation of respondent's probation in that he has failed to comply with the condition of his probation that he obey all laws including the laws relating to the practice of medicine.

VI

Respondent's recently asserted defense of "emergency" is found to be not established by the evidence, and is not sustained.

* * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Cause exists to suspend or revoke respondent's license pursuant to Business and Professions Code Sections 2360 and 2361 in that he has committed acts constituting unprofessional conduct as follows:

1. By his conduct and conviction set forth in Findings IV and V, respondent has violated Business and Professions Code Section 2373.

II

Cause exists to revoke respondent's probation in Case No. D-2029 in that he has violated the terms and conditions of said probation as follows:

1. By his conduct set forth in Finding IV, respondent has violated Condition B. of said probation, relating to practicing prior to passing an oral clinical examination.

2. By his conviction set forth in Finding V respondent violated Condition E. of said probation, relating to obeying all laws including the laws related to the practice of medicine.

* * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

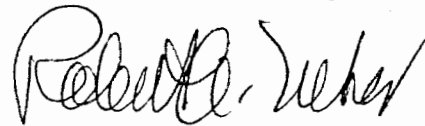
The Physician's and Surgeon's Certificate No. "A-28775" heretofore issued to the respondent, Harry Rudolph Alsleben is hereby revoked, for the causes set forth in Determination of Issues paragraph I.

II

The probation imposed on said respondent pursuant to the Board's Order in Case No. D-2029 is hereby terminated for the violations of probation set forth in Determination of Issues paragraph II; the order therein staying revocation is repealed; and the revocation previously stayed is reimposed.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates, at Los Angeles, California, and recommend its adoption as the decision of the Division of Medical Quality, Board of Medical Quality Assurance.

DATED: 9 MAY 80



ROBERT A. NEHER
Administrative Law Judge
Office of Administrative Hearings

RAN:cwr

GEORGE DEUKMEJIAN, Attorney General
DAVID CHANDLER,
Deputy Attorney General
110 West A Street, Suite 600
San Diego, California 92101
Telephone: (714) 237-7774

Attorneys for Complainant

BEFORE THE DIVISION OF MEDICAL QUALITY

BOARD OF MEDICAL QUALITY ASSURANCE

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

HARRY RUDOLPH ALSLEBEN, M.D.,
710 N. Euclid, Suite 100
Anaheim, California

655 W. San Ysidro
San Ysidro, California

Certificate No. A-28775

Respondent.

NO. D-2411

ACCUSATION AND
PETITION TO
TERMINATE PROBATION

Robert Rowland alleges:

1. He is the executive director of the Board of Medical Quality Assurance and makes and files this accusation and petition in his official capacity.

2. On or about July 27, 1961, respondent was issued Osteopathic Physician's and Surgeon's License No. 20 A-2744. On or about November 6, 1972, respondent elected to use the designation, M.D., and came under the jurisdiction of the

COPYING MADE BY THE CALIF. STATE ARCHIVES

1 Board of Medical Quality Assurance. License No. A-28775 was
2 issued by the Board of Medical Examiners on March 21, 1975.

3 3. Respondent's license expired February 28, 1978,
4 and has not been renewed.

5 4. On May 23, 1978, respondent's license was re-
6 voked in proceeding no. D-2029, but the revocation was
7 stayed and he was placed on probation for seven years on
8 certain terms and conditions, among them:

9 a. Respondent's certificate was actually suspended
10 for six months.

11 b. Respondent was required to take and pass an
12 oral clinical examination to be administered by the
13 Division of Licensing:

14 c. Respondent was to obey all laws.

15 d. If respondent did not comply with the terms
16 and conditions of his probation, the division may set
17 aside the stay and reimpose the revocation order.

18 5. Business and Professions Code^{1/} section 118(b)
19 provides the suspension or expiration of a license shall not,
20 during any period in which it may be renewed, deprive the
21 board of its authority to institute a disciplinary action
22 against the licensee.

23 6. Section 2360 and 2361 provide that a certificate
24 may be revoked if the holder is guilty of unprofessional conduct,
25 which includes, but is not limited to violating any provision
26 of the Medical Practice Act. (Section 2000 to 2528.3.)

27 1. All section references are to that code.

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7. Section 2373 provides:

"If the holder of a certificate is suspended, he shall not be entitled to practice during the term of suspension.

"Upon the expiration of the term of suspension, he shall be reinstated by the board and shall be entitled to resume his practice, unless it is established to the satisfaction of the board that he has practiced in this State during the term of suspension. In this event, the board shall revoke his certificate."

8. Respondent is guilty of unprofessional conduct as follows:

On or about February 11, 1979, respondent performed a needle drainage on an abcess in the right leg of Mrs. G [redacted] C [redacted] in San Ysidro, California.

This conduct constitutes the practice of medicine. At the time the above occurred, respondent's license was under suspension as he had not taken the exam specified in paragraph 4(b) above.

The above conduct constitutes practice during suspension and is grounds for revocation of respondent's license under section 2373, in conjunction with section 2361(c) and 2360.

9. On or about June 12, 1979, in the Municipal Court of California, County of San Diego, San Diego Judicial District, respondent pled guilty to violation of section 2373 based on the above facts. He was placed on probation for one year and was required to pay a fine of \$250.00 plus penalty assessments.

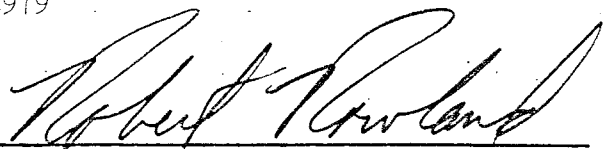
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PETITION TO REVOKE PROBATION

10. By virtue of the allegations of paragraphs 8 and 9, respondent has violated the terms of his probationary order in that he has violated the law, namely, section 2373.

WHEREFORE, complainant prays a hearing be held on the matters alleged and that the division enter an order revoking respondent's certificate.

Dated: September 24, 1979



ROBERT ROWLAND
Executive Secretary
Board of Medical Quality Assurance
Complainant

1 EVELLE J. YOUNGER, Attorney General
ROBERT McKIM BELL,
2 Deputy Attorney General
Department of Justice
3 3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010
4 Telephone: (213) 735-2045

5 Attorneys for Complainant

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BEFORE THE DIVISION OF MEDICAL QUALITY

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BOARD OF MEDICAL QUALITY ASSURANCE

9

DEPARTMENT OF CONSUMER AFFAIRS

10

STATE OF CALIFORNIA

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12 In the Matter of the Accusation
Against:

13

HARRY RUDOLPH ALSLEBEN, M.D.

14

Physician's and Surgeon's
Certificate No. A-28775,

15

16

Respondent.

17

) NO. D-2029

) STIPULATED SETTLEMENT
) OF THE CASE

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19

20

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled proceeding that the following matters are true:

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1. An accusation is presently pending against Harry Rudolph Alsleben, M.D., (hereinafter referred to as the "respondent"), said accusation having been filed with the Division of Medical Quality of the Board of Medical Quality Assurance of the State of California (hereinafter referred to as the "board") on or about June 24, 1977.

2. The complainant in said accusation, Joseph

1 Cosentino, M.D., was at the time of its filing the acting
2 executive director of the board and brought said accusation in his
3 official capacity.

4 3. On or about July 27, 1961, respondent Harry Rudolph
5 Alsleben, M.D., was issued Osteopathic Physician's and Surgeon's
6 Certificate number 20A-2744 and was placed under the jurisdiction
7 of the California Board of Osteopathic Examiners. On or about
8 November 6, 1962, respondent elected to use the designation "M.D."
9 rather than "D.O." and to come under the jurisdiction of the
10 California Board of Medical Quality Assurance. On or about
11 March 21, 1975, respondent was issued Physician's and Surgeon's
12 Certificate number A-28775.

13 4. Although entitled to and knowledgeable of his right
14 to retain legal counsel in connection with this case, respondent
15 has chosen not to do so.

16 5. Respondent has received a copy of the accusation,
17 is aware of the charges of unprofessional conduct contained in
18 said accusation, and is fully aware of his rights in this matter.

19 6. Respondent is fully aware of his right to a hearing
20 on the charges of unprofessional conduct contained in the accusa-
21 tion, his right to confront and cross-examine witnesses against
22 him, his right to reconsideration, appeal and any and all other
23 rights which may be available to him pursuant to the California
24 Administrative Procedure Act. Respondent hereby freely and
25 voluntarily waives and gives up his right to a hearing, confronta-
26 tion of witnesses, reconsideration, appeal and any and all other
27 rights which may be available to him under the California

1 Administrative Procedure Act regarding said accusation.

2 7. Respondent's certificate is subject to disciplinary
3 action for unprofessional conduct pursuant to section 2361, sub-
4 division (b) of the Business and Professions Code in that he is
5 guilty of gross negligence. The circumstances of this violation
6 are as follows:

7 From on or about October 1970 to and in-
8 cluding November 1973, respondent committed acts and
9 omissions constituting gross negligence in his advice
10 to and treatment, diagnosis, medication, monitoring,
11 and care of his patient, P [REDACTED] G [REDACTED]
12 P [REDACTED], which resulted in permanent injury to the
13 health and welfare of such patient and in a substan-
14 tial reduction to her anticipated length of life.

15 8. The Division of Medical Quality of the board shall
16 issue the following disciplinary order:

17 DISCIPLINARY ORDER

18 The respondent's certificate to practice medicine and
19 surgery in the State of California is hereby revoked; provided,
20 however, that execution of this order is hereby stayed and the
21 respondent placed on probation for a period of seven (7) years
22 upon the following terms and conditions:

23 A. Suspension

24 Respondent's certificate shall be suspended for a
25 period of six (6) months beginning on the effective date of this
26 order.

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B. Oral Clinical Examination

Respondent shall take and pass an oral clinical examination to be administered by the Division of Licensing of the board. Respondent shall be eligible to take the oral clinical examination after the completion of the suspension hereby imposed. However, notwithstanding the completion of the term of suspension, respondent shall not be permitted to return to practice on the probationary status hereby imposed until he shall have first passed the oral clinical examination.

C. Structured Environment

During the period of probation, respondent may practice medicine only in a supervised and structured environment approved in advance by the Division of Medical Quality or its designee. Any change of employment or environment in which respondent is practicing medicine must first be approved by the Division of Medical Quality or its designee.

In addition, during his period of probation, respondent shall not prescribe for, recommend the use of, or administer to any patient a drug commonly known as EDTA (ethylenediaminetetraacetic acid), in either its sodium or calcium salt forms, calcium gluconate, adrenocortico extract, chelation therapy or electrostimulator treatments, unless such prescription, recommendation, or administration is first approved by and concurred in, on a case-by-case basis, by a Board Certified Internist approved in advance for this specific purpose by the Division of Medical Quality.

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4.

1 D. Continuing Medical Education

2 Within thirty (30) days of the effective date of
3 this order, the respondent shall submit to the Division of
4 Medical Quality for its approval a program of continuing profes-
5 sional education in medical therapeutics. Upon the approval of
6 the Division of Medical Quality, the respondent shall successfully
7 complete fifty (50) hours per year of such continuing medical
8 education each year for the first two (2) years of his probation.
9 Thereafter, for the remaining five (5) years of his probation, the
10 respondent shall successfully complete twenty-five (25) hours per
11 year of such continuing medical education in medical therapeutics.
12 No credit shall be allowed by the board for continuing medical
13 education course hours which have not first been approved by the
14 Division of Medical Quality.

15 E. Obey All Laws

16 Respondent shall obey all laws of the United States,
17 the State of California, and its political subdivisions, including
18 all laws and regulations related to the practice of medicine.

19 F. Probation to be Served in California

20 Respondent's practice of medicine while in a proba-
21 tionary status shall be in the State of California. Time spent in
22 the practice of medicine in any other jurisdiction shall not be
23 effective in reducing the time of probation hereby imposed.

24 G. Probation Surveillance

25 Respondent shall fully cooperate with any representa-
26 tive of the board, including his probation surveillance officer,
27 and when requested by such representative, shall make his place of

1 practice and medical records available for inspection.

2 H. Meetings with Medical Consultant

3 Commencing within ninety (90) days of the effective
4 date of this order, respondent shall report in person annually to
5 one of the board's medical consultants at a time and place of the
6 medical consultant's choosing, for the purpose of reporting on his
7 current activities and progress towards rehabilitation.

8 I. Quarterly Reports

9 Commencing in March 1978, and at quarterly intervals
10 thereafter, respondent shall submit to the Division of Medical
11 Quality written reports, made under penalty of perjury, stating
12 what he has done in the preceding four months, and what he expects
13 to do in the following four months, to satisfy the conditions of
14 probation hereby imposed. Such reports shall include, but shall
15 not be limited to, the following information:

16 1. Respondent's residence address and
17 telephone number;

18 2. A description of respondent's employment,
19 whether medical in nature or not, and the address and
20 telephone number of such place of employment;

21 3. A description of any activity undertaken
22 by respondent with respect to his oral clinical exami-
23 nation condition of probation;

24 4. A summary of professional medical work
25 done, if any, in a supervised, structured environment
26 approved in advance by the Division of Medical Quality;
27 and

1 5. A description of continuing medical
2 education undertaken, if any, pursuant to probationary
3 condition "D."

4 The written quarterly reports required hereunder shall be sub-
5 mitted to the Division of Medical Quality in March, June,
6 September, and December during each year of probation, postmarked
7 on or before the fifteenth (15th) day of such months and addressed
8 with postage prepaid, to the Medical Consultant, Santa Ana
9 Regional Office, Board of Medical Quality Assurance,
10 343 Brookhollow Drive, Santa Ana, California 92705. Respondent
11 shall verify the accuracy of such reports by stating in writing
12 at the end of each such report, above his signature, as follows,
13 "I declare under penalty of perjury that the statements made
14 herein are true and correct." The submission by the respondent
15 in such reports of any untrue, false, or misleading information
16 shall be grounds for revocation of his probation and reimposition
17 of the order of revocation.

18 In the event respondent complies with each of the afore-
19 stated terms and conditions of probation for the full period
20 thereof, the order staying revocation shall become permanent and
21 his certificate to practice medicine shall be fully restored.

22 In the event that respondent does not comply with the
23 terms and conditions of his probation for the full period thereof,
24 the division, after notice to him and after providing him with an
25 opportunity to be heard, may set aside the stay and reimpose the
26 order of revocation or make such other order modifying or changing
27 the stay order as it shall deem proper.

1 This stipulation shall be subject to the approval of
2 the Division of Medical Quality of the board. If the Division of
3 Medical Quality fails to approve this stipulation, it shall be of
4 no force or effect for either party.

5 I HAVE READ THE ABOVE DOCUMENT. I AGREE TO THE ABOVE
6 SETTLEMENT AND STIPULATION.

7
8 DATED: March 4 1978 Harry Rudolph Alsleben, M.D.
9 HARRY RUDOLPH ALSLEBEN, M.D.
Respondent

10 EVELLE J. YOUNGER, Attorney General
11 DATED: March 14, 1978 Robert M. Bell
12 ROBERT MCKIM BELL
13 Deputy Attorney General
Attorneys for Complainant

14 DATED: 3/20/78 Robert Rowland
15 ROBERT ROWLAND
16 Executive Director
Board of Medical Quality Assurance
Complainant

17 The above stipulation is accepted by the Division of
18 Medical Quality of the Board of Medical Quality Assurance and
19 shall constitute the decision of the board in this matter. The
20 decision is to take effect on May 23, 1978.

21 DATED: May 23, 1978 DIVISION OF MEDICAL QUALITY
22 BOARD OF MEDICAL QUALITY ASSURANCE
23 Michael J.arella
24 Secretary
25
26
27

1 EVELLE J. YOUNGER, Attorney General
ROBERT McKIM BELL,
2 Deputy Attorney General
Department of Justice
3 3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010
4 Telephone: (213) 736-2045

5 Attorneys for Complainant

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8 BEFORE THE DIVISION OF MEDICAL QUALITY

9 BOARD OF MEDICAL QUALITY ASSURANCE

10 DEPARTMENT OF CONSUMER AFFAIRS

11 STATE OF CALIFORNIA

12

13 In the Matter of the Accusation
Against:

) NO. D-2029

14 HARRY RUDOLPH ALSLEBEN, M.D.
15 Physician's and Surgeon's
Certificate No. A-28775,

) ACCUSATION

16 Respondent.

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I

19

Complainant, Joseph P. Cosentino, M.D., is the Acting
20 Executive Director of the Board of Medical Quality Assurance of
21 the State of California (hereinafter referred to as the "Board"),
22 and brings this Accusation in his official capacity.

23

II

24

On or about July 27, 1961, respondent, Harry Rudolph
25 Alsleben, was issued Osteopathic Physician's and Surgeon's
26 Certificate number 20A-2744 and was placed under the jurisdiction
27 of the California Board of Osteopathic Examiners. On or about
28 November 6, 1962, respondent elected to use the designation

1 "M.D." rather than "D.O." and to come under the jurisdiction of
2 the California Board of Medical Quality Assurance. On or about
3 March 21, 1975, respondent was issued Physician's and Surgeon's
4 Certificate number A-28775.

5 III

6 Section 2361 of the Business and Professions Code
7 (hereinafter referred to as the "Code") provides, in applicable
8 part, that the Division of Medical Quality (hereinafter referred
9 to as the "Division") shall take action against any holder of a
10 certificate to practice medicine who is guilty of unprofessional
11 conduct.

12 IV

13 A. Section 2361(b) of the Code provides that unprofes-
14 sional conduct includes gross negligence.

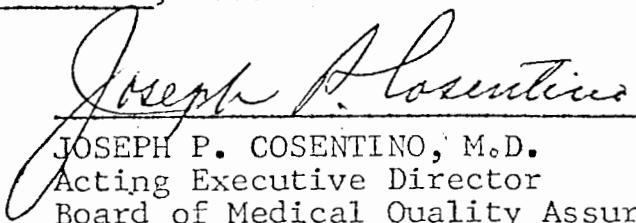
15 B. Respondent is subject to disciplinary action for
16 unprofessional conduct as defined in section 2361(b) of the Code
17 in that he is guilty of gross negligence. The circumstances of
18 this violation are as follows:

19 From on or about October 1970 to and
20 including November 1973, respondent committed acts
21 and omissions constituting gross negligence in his
22 advice to and treatment, diagnosis, medication,
23 monitoring, and care of his patient, P [REDACTED]
24 [REDACTED] P [REDACTED], which resulted in permanent injury to
25 the health and welfare of such patient and in a sub-
26 stantial reduction in her anticipated length of life.

27 WHEREFORE, the complainant prays that the Division of

1 Medical Quality hold a hearing on the matters alleged herein, and
2 following said hearing, take such disciplinary action against
3 respondent as is provided for in section 2372 of the Code, or
4 take such other and further action as may be proper.

5 DATED: JUNE 24, 1977.

6 
7 _____
8 JOSEPH P. COSENTINO, M.D.
9 Acting Executive Director
10 Board of Medical Quality Assurance
11 Department of Consumer Affairs
12 State of California

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Complainant

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