

ORIGINAL

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JANE ZACK SIMON
Deputy Attorney General
3 STATE BAR NO. 116564
455 Golden Gate Avenue
4 San Francisco, California 94102-3600
Telephone: (510) 286-0583

5 Attorneys for Complainant
6

7
8 BEFORE THE
DIVISION OF MEDICAL QUALITY
9 MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

No. D-5184

12 GABRIEL COUSENS, M.D.
200 Spring Hill Road
13 Petaluma, CA 94952

STIPULATION AND WAIVER

14
15 Physician and Surgeon Certificate No. G-21874

16 Respondent.
17

18 IT IS HEREBY STIPULATED by and between Gabriel Cousens, M.D.

19 (hereinafter "respondent"), with the counsel and advice of his attorney, Marc

20 Zimmerman, Esq., and complainant DIXON ARNETT, in his official capacity as

21 Executive Director of the Medical Board of California, by and through his attorney,

22 Daniel E. Lungren, Attorney General, by Jane Zack Simon, Deputy Attorney General,

23 as follows:

24 1. Respondent has received and read the Accusation which is
25 presently on file and pending in case No. D-5184 before the Division of Medical
26 Quality of the Medical Board of California (hereinafter referred to as "the Division").

27 A true and correct copy of said Accusation is attached hereto as "Exhibit A."

1 2. Respondent has retained Marc Zimmerman, of Hassard,
2 Bonnington, Rogers & Huber to be his attorney in said Case No. D-5184, and
3 respondent has consulted with Marc Zimmerman regarding the effect of this stipulation.

4 3. Respondent understands the nature of the charges alleged in said
5 Accusation as constituting cause for discipline against respondent's physician's and
6 surgeon's certificate.

7 4. Complainant in the Accusation, Dixon Arnett, is the Executive
8 Director of the Medical Board of California, and brought said Accusation solely in his
9 official capacity.

10 5. Respondent's license history and status, as set forth in paragraph 2
11 of the Accusation is true and correct.

12 6. Respondent is fully aware of his right to a hearing on the charges
13 and allegations contained in said Accusation, his right to reconsideration, judicial
14 review, appeal, and any and all other rights which may be accorded him pursuant to
15 the California Administrative Procedure Act and other laws of the State of California.

16 7. Respondent freely and voluntarily waives his rights to a hearing,
17 reconsideration, judicial review, appeal and any and all other rights which may be
18 accorded him by the Administrative Procedure Act and other laws of the State of
19 California with regard to the charges and allegations in said Accusation, saving his right
20 to petition for modification or termination of probation pursuant to Business and
21 Professions Code section 2307.

22 8. For purposes of entering into this stipulation, respondent admits
23 the factual allegations of the First Cause for Disciplinary Action, and further stipulates
24 that there is therefore cause for disciplinary action pursuant to Business and
25 Professions Code section 725 [excessive prescribing].

26 9. For a statement in mitigation, respondent declares that he is a
27 psychiatrist who has been licensed to practice medicine in the State of California since

1 1973 without any prior complaint having been filed against him before the Board. The
2 instant action arose from respondent's treatment of a single patient, an extremely
3 manipulative drug-seeking individual who suffered from intractable pain, which was
4 verified by CT scan and surgical findings. Respondent has demonstrated no history or
5 pattern of excessive prescribing, and in fact generally adheres to a "holistic" approach
6 to treatment, and rarely prescribes Schedule II controlled substances to his patients.
7 There is no evidence or suggestion of any pattern of excessive or inappropriate
8 prescribing, and this case represents an isolated incident. Respondent did not prescribe
9 to the patient involved for any financial gain, and he did perform good faith medical
10 examinations of the patient. Respondent has been cooperative and candid during the
11 Board's investigation.

12 10. Based upon the foregoing recitals, IT IS HEREBY STIPULATED
13 AND AGREED that the Division of Medical Quality may issue, as to said grounds for
14 disciplinary action, the following order:

15 Physician's and Surgeon's Certificate No. G-21874 issued to respondent is
16 revoked. Provided, however, that said revocation is stayed, and respondent is placed
17 on probation for a period of three (3) years upon the following terms and conditions:

18 **SPECIAL CONDITIONS**

19 A. For the entire period of probation, respondent shall maintain a
20 record of all controlled substances prescribed, dispensed or administered, showing all of
21 the following:

- 22 1) the name and address of the patient;
- 23 2) the date;
- 24 3) the character and quantity of controlled substance(s) involved; and
- 25 4) the pathology and purpose for which the controlled substance was
- 26 furnished.

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1 Respondent shall keep these records in a separate file or ledger, in
2 chronological order, and shall make them, along with corresponding patient charts and
3 records, available for inspection and copying by the Division of Medical Quality or its
4 designee, and to respondent's practice monitor, upon request.

5 B. During probation, respondent shall not prescribe, administer,
6 dispense, order or possess any controlled substances as defined by the California
7 Uniform Controlled Substances Act, except for those drugs listed in Schedules III, IV
8 and V. Respondent shall immediately surrender his current DEA permit to the Drug
9 Enforcement Administration for cancellation and reapply for a new DEA permit
10 limited to those Schedules authorized by this order.

11 Respondent shall not reapply to the Drug Enforcement Agency for an
12 unrestricted DEA permit without express indication in writing from the Division or its
13 designee that he may do so. Said indication may be made pursuant to any
14 determination under Business and Professions Code section 2307 or at the successful
15 termination of probation in this matter.

16 C. Within 90 days of the effective date of this decision and on an
17 annual basis thereafter, respondent shall submit to the Division for its prior approval
18 education courses as follows:

19 (1) During the first year following the effective date of this decision,
20 respondent shall complete at least 40 hours of educational course(s) or program(s)
21 related to controlled substances, including the management of patients with intractable
22 pain. Said program(s) or course(s) shall be in addition to the Continuing Medical
23 Education requirements for relicensure. Following the completion of each course, the
24 Division or its designee may administer an examination to test respondent's knowledge
25 of the course. Respondent shall provide proof of attendance for 65 hours of
26 continuing medical education of which 40 hours were in satisfaction of this condition
27 and were approved in advance by the Division.

1 (2) For each of the remaining years of respondent's probation,
2 respondent shall submit to the Division for its prior approval an educational program
3 or course related to controlled substances, which shall not be less than 25 hours per
4 year. Said program(s) or course(s) shall be in addition to the Continuing Medical
5 Education requirements for relicensure. Following the completion of each course, the
6 Division or its designee may administer an examination to test respondent's knowledge
7 of the course. Respondent shall provide proof of attendance for 50 hours of
8 continuing medical education of which 25 hours were in satisfaction of this condition
9 and were approved in advance by the Division.

10 D. Within 60 days of the effective date of this decision, respondent
11 shall submit to the Division for its prior approval a course in Ethics, which respondent
12 shall successfully complete during the first year of probation.

13 STANDARD CONDITIONS

14 E. Respondent shall pay to the Medical Board of California the
15 amount of \$3,000 (three thousand dollars) on or before 90 days from the effective date
16 of this decision for recovery of the actual and reasonable costs of the investigation of
17 this matter.

18 F. Respondent shall obey all federal, state and local laws, and all
19 rules governing the practice of medicine in California.

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

23 H. Respondent shall comply with the Division's probation surveillance
24 program.

25 I. Respondent shall appear in person for interviews with the
26 Division's medical consultant upon request at various intervals and with reasonable
27 notice.

1 J. In the event respondent should leave California to reside or to
2 practice outside the State, respondent must notify the Board in writing of the dates of
3 departure and return. Periods of residency or practice outside California will not apply
4 to the reduction of this probationary period.

5 K. Upon successful completion of probation, respondent's certificate
6 will be fully restored.

7 L. If respondent violates probation in any respect, the Division, after
8 giving respondent notice and opportunity to be heard, may revoke probation and carry
9 out the disciplinary order that was stayed. If an accusation or petition to revoke
10 probation is filed against respondent during probation, the Division shall have
11 continuing jurisdiction until the matter is final, and the period of probation shall be
12 extended until the matter is final.

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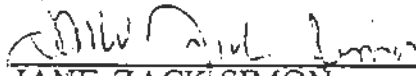
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1 11. IT IS FURTHER STIPULATED AND AGREED that the terms
2 set forth herein shall be null and void and in no way binding upon the parties hereto
3 unless and until accepted by the Division of Medical Quality, Medical Board of
4 California, as its decision in Case No. D-5184.

5 DATED: 11/5/93

DANIEL E. LUNGREN, Attorney General of
the State of California


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7 

8 JANE ZACK SIMON
9 Deputy Attorney General

10 Attorneys for Complainant

11
12 HASSARD, BONNINGTON, ROGERS &
13 HUBER

14
15 DATED: 11/8/93

16 

17 MARC ZIMMERMAN
18 Attorney for Respondent

19
20 I hereby certify that I have read the foregoing stipulation and waiver in
21 its entirety, that my attorney of record has fully explained the legal significance and
22 consequences thereof, that I fully understand all of same, and that I agree to this
23 stipulation and waiver. In witness whereof, I affix my signature this 4 day of
24 ~~October~~ ^{November}, 1993 at Petaluma, California.

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27 GABRIEL COUSENS, M.D.
Respondent

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ORDER

The foregoing stipulation and waiver is hereby adopted as the Decision of the Division of Medical Quality, Medical Board of California.

This Decision shall become effective on the 25th day of February, 1994.

IT IS SO ORDERED this 27th day of January, 1994.

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

by: *Theresa L. Claassen*
THERESA CLAASSEN
Secretary/Treasurer

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200 Spring Hill Road
13 Petaluma, CA 94952

ACCUSATION

14 Physician and Surgeon Certificate No. G21874

15 Respondent.
16

17 Complainant, Dixon Arnett, alleges that:

18 1. He is the Executive Director of the Medical Board of California,
19 State of California (hereinafter referred to as the "Board"), and makes these charges
20 and allegations in his official capacity and not otherwise.

21 2. On or about January 5, 1972, respondent GABRIEL COUSENS,
22 M.D. (hereinafter referred to as "respondent") was issued physician and surgeon's
23 certificate No. G21874 by the Board. Said certificate was in full force and effect at all
24 times material hereto and is currently renewed through May 31, 1993.

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STATUTES

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3. Business and Professions Code section 2004^{1/} provides that the Board has the responsibility for the enforcement of disciplinary provisions of the Medical Practices Act and for reviewing the quality of medical practice carried out by physician and surgeon certificate holders.

4. Section 2220 provides that the Division of Medical Quality of the Board (hereinafter "the Division") may take action against all persons guilty of violating the provisions of the Medical Practice Act (sections 2000 *et seq.*).

5. Section 2234 provides, in pertinent part, that the Division shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct included, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter; and

- (d) incompetence.

6. Section 725 provides, in pertinent part, that repeated acts of clearly excessive prescribing or administering of drugs or treatment as determined by the standard of the community is unprofessional conduct for a physician and surgeon.

7. Section 2241 provides, in pertinent part, that the prescribing or furnishing of certain drugs or compounds to an addict or habitue constitutes unprofessional conduct.

8. Health and Safety Code section 11156 provides, in pertinent part, that no person shall prescribe for or administer or dispense a controlled substance to an addict or habitual user, or to any person representing himself as such.

1. All statutory references are to the Business and Professions Code unless otherwise indicated.

1 DRUGS

2 9. The following controlled substances and/or dangerous drugs are
3 involved in this proceeding:

4 A. *Percocet*, a trade name for oxycodone and acetaminophen, is a
5 dangerous drug as defined in section 4211 and a Schedule II controlled substance and
6 narcotic as defined by section 11056, subdivision (e)(2) of the Health and Safety Code
7 and a Schedule II controlled substance as defined by section 1308.13(e)(2) of Title 21
8 of the Code of Federal Regulations.

9 B. *Valium*, a trade name for benzodiazepine, is a dangerous drug
10 as defined in section 4211 and a schedule IV controlled substance as defined by section
11 1308.14(c)(1) of Title 21 of the Code of Federal Regulations.

12 C. *Prozac*, a trade name for fluoxetine hydrochloride, is an
13 antidepressant, and is a dangerous drug as defined in section 4211.

14 FIRST CAUSE FOR DISCIPLINARY ACTION

15 7. From on or about February 8, 1991 through April, 1992,
16 respondent, a psychiatrist, undertook to care for and treat patient L.B.^{2/} for
17 anxiousness, depression and severe back pain. Additionally, respondent noted that L.B.
18 suffered from drug dependency secondary to chronic pain syndrome, and that he was at
19 that time consuming 16 percocets per day, in addition to prozac and xanax.^{3/}

20 8. During the period from February 8, 1991 through April 23, 1992,
21 respondent saw L.B. on 16 occasions. While treating L.B., respondent regularly
22 prescribed valium, prozac, percocet, in addition to occasional prescriptions for other
23 drugs. Specifically, respondent prescribed the following medications for L.B.:

24
25 2. Respondent will be given the full name of the patient involved herein pursuant to a discovery
request.

26 3. Xanax, a trade name for alprazolam, is a dangerous drug as defined in section 4211 and a
27 schedule IV controlled substance as defined by section 1308.14(c)(1) of Title 21 of the Code of Federal
Regulations, and is used to treat anxiety.

	<u>DATE</u>	<u>DRUG</u>	<u>AMOUNT</u>
1			
2	2/25/91	Valium	21
	2/25/91	Prozac	21
3	2/25/91	Valium	21
	2/25/91	Prozac	21
4	4/2/91	Prozac	90
	4/2/91	Percocet	270
5	4/16/91	Percocet	200
	4/25/91	Prozac	90
6	4/29/91	Percocet	270
	4/29/91	Valium	30
7	4/29/91	Zantac	36
	5/7/91	Valium	60
8	5/30/91	Prozac	90
	5/30/91	Valium	60
9	5/31/91	Percocet	224
	6/5/91	Zantac	36
10	6/25/91	Prozac	90
	7/30/91	Percocet	90
11	8/20/91	Percocet	45
	9/5/91	Percocet	60
12	9/16/91	Valium	60
	9/10/91	Oxycodone w/Acetaminophen	60
13	9/16/91	Valium	60
	9/21/91	Valium	120
14	9/21/91	Percocet	120
	10/22/91	Valium	120
15	10/22/91	Roboxin	60
	10/23/91	Percocet	120
16	10/24/91	Zantac	36
	11/13/91	Librium	30
17	11/21/91	Percocet	120
	12/20/91	Percocet	120
18	1/7/92	Valium	60
	1/18/92	Percocet	120
19	2/7/92	Valium	60
	2/14/92	Percocet	180
20	2/15/92	Valium	30
	2/24/92	Valium	60
21	3/18/92	Valium	90
	3/18/92	Percocet	90
22	unknown	Valium	60
	4/16/92	Percocet	90
23	6/12/92	Percocet	90
24			

25 8. From February 1991 through at least June, 1992, respondent
26 prescribed the foregoing medications to L.B. without making an effort to ascertain
27 whether L.B. was receiving other prescription medication from other physicians, or

1 filling prescriptions at other pharmacies, when in fact respondent was aware that L.B.
2 was seeing at least one other practitioner, and was using multiple pharmacies. In fact,
3 during this same time period, L.B. was receiving medication, including xanax, prozac,
4 vicodin^{4/}, valium, tylenol with codeine #4,^{5/} percocet, and methadone^{6/} from at least
5 five other physicians. Moreover, respondent made virtually no effort to obtain
6 background information regarding L.B. from his previous treating physicians. Further,
7 respondent repeatedly prescribed a dangerous narcotic, Percocet, to L.B. when he knew
8 that L.B. was an addict.

9 9. Respondent's conduct as described above constitutes repeated acts
10 of excessive prescribing and therefore constitutes cause for disciplinary action pursuant
11 to section 725 and section 2234.

12 **SECOND CAUSE FOR DISCIPLINARY ACTION**

13 10. The allegations of the first cause for disciplinary action are
14 incorporated herein by reference.

15 11. Respondent's conduct as described above constitutes incompetence
16 and therefore constitutes cause for disciplinary action pursuant to section 2234(d).

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18 **THIRD CAUSE FOR DISCIPLINARY ACTION**

19 12. The allegations of the first and second causes for disciplinary
20 action are incorporated herein by reference.

21
22 4. Vicodin, a trade name for hydrocodone bitartrate and acetaminophen, is a dangerous drug as
23 defined in section 4211 and a schedule III controlled substance as defined in section 11056(e)(4) of the
24 Health and Safety Code.

25 5. Tylenol with Codeine #4 is a trade name for a combination of acetaminophen and codeine,
26 and is a dangerous drug as defined in section 4211 and a schedule III controlled substance and narcotic
as defined by section 11056 (e)(2) of the Health and Safety Code and a schedule III controlled
substance as defined by section 1308.13(e)(2) of Title 21 of the Code of Federal Regulations.


27 6. Methadone is a synthetic narcotic analgesic, and is a dangerous drug as defined in section 4211
and a schedule II controlled substance as defined by section 11056(c)(13) of the Health and Safety Code.

1 13. Throughout his treatment of L.B., respondent was aware that L.B.
2 was addicted to pain medication. However, in spite of this knowledge, respondent
3 continued to prescribe to L.B. large quantities of percocet in addition to other narcotics
4 and dangerous drugs.

5 14. Respondent's conduct as described above constitutes inappropriate
6 prescribing to an addict, and therefore constitutes cause for disciplinary action pursuant
7 to sections 2241 of the Business and Professions Code and section 11156 of the Health
8 and Safety Code.

9 WHEREFORE, complainant prays that a hearing be held and that
10 thereafter the Board suspend or revoke respondent's physician and surgeon's certificate
11 No. G21874, or take such further action as deemed necessary and proper.

12 DATED: 4-22-93

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15 _____
16 DIXON ARNETT
17 Executive Director
18 Medical Board of California
19 State of California

20 Complainant

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	4/2/91	Percocet	270
5	4/16/91	Percocet	200
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15	10/22/91	Roboxin	60
	10/23/91	Percocet	120
16	10/24/91	Zantac	36
	11/13/91	Librium	30
17	11/21/91	Percocet	120
	12/20/91	Percocet	120
18	1/7/92	Valium	60
	1/18/92	Percocet	120
19	2/7/92	Valium	60
	2/14/92	Percocet	180
20	2/15/92	Valium	30
	2/24/92	Valium	60
21	3/18/92	Valium	90
	3/18/92	Percocet	90
22	unknown	Valium	60
	4/16/92	Percocet	90
23	6/12/92	Percocet	90
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27 whether L.B. was receiving other prescription medication from other physicians, or

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2 was seeing at least one other practitioner, and was using multiple pharmacies. In fact,
3 during this same time period, L.B. was receiving medication, including xanax, prozac,
4 vicodin^{4/}, valium, tylenol with codeine #4,^{5/} percocet, and methadone^{6/} from at least
5 five other physicians. Moreover, respondent made virtually no effort to obtain
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18 **THIRD CAUSE FOR DISCIPLINARY ACTION**

19 12. The allegations of the first and second causes for disciplinary
20 action are incorporated herein by reference.

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22 4. Vicodin, a trade name for hydrocodone bitartrate and acetaminophen, is a dangerous drug as
23 defined in section 4211 and a schedule III controlled substance as defined in section 11056(e)(4) of the
24 Health and Safety Code.

25 5. Tylenol with Codeine #4 is a trade name for a combination of acetaminophen and codeine,
26 and is a dangerous drug as defined in section 4211 and a schedule III controlled substance and narcotic
as defined by section 11056 (e)(2) of the Health and Safety Code and a schedule III controlled
substance as defined by section 1308.13(e)(2) of Title 21 of the Code of Federal Regulations.

27 6. Methadone is a synthetic narcotic analgesic, and is a dangerous drug as defined in section 4211
and a schedule II controlled substance as defined by section 11056(c)(13) of the Health and Safety Code.

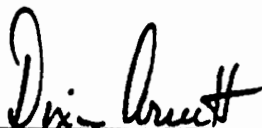
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13. Throughout his treatment of L.B., respondent was aware that L.B. was addicted to pain medication. However, in spite of this knowledge, respondent continued to prescribe to L.B. large quantities of percocet in addition to other narcotics and dangerous drugs.

14. Respondent's conduct as described above constitutes inappropriate prescribing to an addict, and therefore constitutes cause for disciplinary action pursuant to sections 2241 of the Business and Professions Code and section 11156 of the Health and Safety Code.

WHEREFORE, complainant prays that a hearing be held and that thereafter the Board suspend or revoke respondent's physician and surgeon's certificate No. G21874, or take such further action as deemed necessary and proper.

DATED: 4-22-93



DIXON ARNETT
Executive Director
Medical Board of California
State of California

Complainant

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