

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

In the Matter of the Accusation)
against:)
)
)
PHILLIP R. RAND, M.D.)
)
)
Physician's and Surgeon's)
Certificate #C-11539)
)
Respondent.)
_____)

Case No: 10-2002-139925

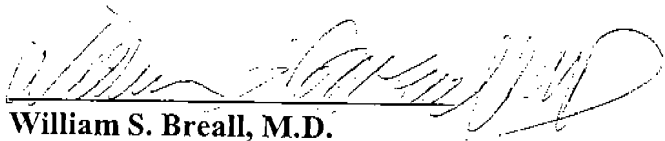
DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on April 18, 2005.

IT IS SO ORDERED April 11, 2005

MEDICAL BOARD OF CALIFORNIA



William S. Breall, M.D.
Panel B Acting Chair
Division of Medical Quality

1 BILL LOCKYER, Attorney General
 of the State of California
 2 THOMAS S. LAZAR, State Bar No. 120621
 Deputy Attorney General
 3 California Department of Justice
 110 West "A" Street, Suite 1100
 4 San Diego, California 92101
 P.O. Box 85266
 5 San Diego, California 92186-5266
 Telephone: (619) 645-2117
 6 Facsimile: (619) 645-2061
 7 Attorneys for Complainant

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

11 In the Matter of the Amended Accusation
 Against:

Case No. 10-2002-139925

12 **PHILLIP R. RAND, M.D.**
 13 3367 Fourth Avenue
 San Diego, CA 92103

**STIPULATED SURRENDER OF
 LICENSE AND ORDER**

14 Physician's and Surgeon's Certificate
 15 No. C 11539,

16 Respondent.

17
 18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
 19 above-entitled proceeding that the following matters are true:

20 **PARTIES**

21 1. Complainant David T. Thornton is the Executive Director of the Medical
 22 Board of California and is represented in the above-entitled matter by Bill Lockyer, Attorney
 23 General of the State of California, by Thomas S. Lazar, Deputy Attorney General.

24 2. Respondent Phillip R. Rand, M.D., is represented in the above-entitled
 25 matter by J. Grant Kennedy, Esq., 141 Duesenberg Drive, Suite 4, Westlake Village, CA 91362,
 26 Telephone: (805) 374-0010.

27 3. On September 16, 1948, the Medical Board of California (hereinafter
 28 "Board") issued Physician's and Surgeon's Certificate No. C 11539 to respondent Phillip R.

1 Rand, M.D. (hereinafter "respondent"). Said Certificate was in full force and effect at all times
2 relevant to the charges brought in Amended Accusation No.10-2002-139925 filed in the above-
3 entitled matter and will expire on September 30, 2006, unless renewed. On September 15, 2004,
4 an *ex parte* Interim Order of Suspension was issued immediately suspending respondent's
5 Physician's and Surgeon's Certificate No. C 11539 and prohibiting him from practicing medicine
6 in the State of California pending a noticed hearing. Respondent waived his right to that noticed
7 hearing and on September 29, 2004, an Interim Order of Suspension was issued by Presiding
8 Administrative Law Judge Steven V. Adler suspending respondent's Physician's and Surgeon's
9 Certificate No. C 11539. As a result, respondent remains suspended from the practice of
10 medicine as of the date of the execution this Stipulated Surrender of License and Order.

11 JURISDICTION

12 4. On October 24, 2003, Accusation No. 10-2002-139925 was filed against
13 respondent before the Division of Medical Quality (hereinafter "Division"). On October 24,
14 2003, respondent was served with a true and correct copy of Accusation No. 10-2002-139925,
15 together with true and correct copies of all other statutorily required documents, at his address of
16 record then on file with the Board: 3367 Fourth Avenue, San Diego, CA 92103. On or about
17 October 31, 2003, a Notice of Defense was filed on respondent's behalf by his then attorney of
18 record, Robert J. Sullivan, Esq.

19 5. On September 14, 2004, Amended Accusation No. 10-2002-139925 was
20 filed against respondent before the Division. A true and correct copy of Amended Accusation
21 No. 10-2002-139925 is attached hereto as Attachment "A" and incorporated by reference as if
22 fully set forth herein. On January 31, 2005, respondent was served with a true and correct copy
23 of Amended Accusation No. 10-2002-139925, together with a true and correct copy of the
24 Supplemental Statement to Respondent, at his address of record then on file with the Board:
25 3367 Fourth Avenue, San Diego, CA 92103.

26 ADVISEMENT AND WAIVERS

27 6. Respondent has carefully read and fully understands the charges and
28 allegations contained in Amended Accusation No. 10-2002-139925, and has fully reviewed and

1 discussed same with his attorney of record, J. Grant Kennedy, Esq.

2 7. Respondent has carefully read and fully understands the contents, force,
3 and effect of this Stipulated Surrender of License and Order, and has fully reviewed and
4 discussed same with his attorney of record, J. Grant Kennedy, Esq.

5 8. Respondent is fully aware of his legal rights in this matter including his
6 right to a hearing on the charges and allegations contained in Amended Accusation No. 10-2002-
7 139925, his right to present witnesses and evidence and to testify on his own behalf, his right to
8 confront and cross-examine all witnesses testifying against him, his right to the issuance of
9 subpoenas to compel the attendance of witnesses and the production of documents, his right to
10 reconsideration and court review of an adverse decision, and all other rights accorded him
11 pursuant to the California Administrative Procedure Act, the California Code of Civil Procedure,
12 and all other applicable laws, having been fully advised of same by his attorney of record, J.
13 Grant Kennedy, Esq. Respondent, having the benefit of counsel, hereby knowingly, intelligently,
14 freely and voluntarily waives and gives up each and every one of the rights set forth and/or
15 referenced above.

16 CULPABILITY

17 9. Respondent does not contest that, at an administrative hearing,
18 complainant could establish a *prima facie* case with respect to the charges and allegations
19 contained in Amended Accusation No. 10-2002-139925 and that he has thereby subjected his
20 license to disciplinary action. Respondent agrees that if he ever petitions for reinstatement of
21 Physician's and Surgeon's Certificate No. C 11539, all of the charges and allegations contained
22 in Amended Accusation No. 10-2002-139925, and each of them, separately and severally, shall
23 be deemed true, correct and fully admitted by respondent for purposes of any proceeding
24 involving respondent's petition for reinstatement and any other licensing proceeding involving
25 respondent in the State of California.

26 10. Respondent hereby surrenders his Physician's and Surgeon's Certificate
27 No. C 11539 to the Division for its formal acceptance. Respondent understands that by signing
28 this Stipulated Surrender of License and Order he is enabling the Division to issue an order

1 accepting the surrender of his Physician's and Surgeon's Certificate No. C 11539 without further
2 notice or opportunity to be heard.

3 CONTINGENCY

4 11. This Stipulated Surrender of License and Order shall be subject to the
5 approval of the Division. The parties agree that this Stipulated Surrender of License and Order
6 shall be submitted to the Division for its consideration in the above-entitled matter and, further,
7 that the Division shall have a reasonable period of time in which to consider and act on this
8 stipulation after receiving it. By signing this stipulation, respondent fully understands and agrees
9 that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the
10 Division considers and acts upon it.

11 12. The parties agree that this Stipulated Surrender of License and Order shall
12 be null and void and not binding upon the parties unless approved and adopted by the Division,
13 except for this paragraph, which shall remain in full force and effect. Respondent fully
14 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
15 Surrender of License and Order, the Division may receive oral and written communications from
16 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall
17 not disqualify the Division, any member thereof, and/or any other person from future
18 participation in this or any other matter affecting or involving respondent. In the event that the
19 Division, in its discretion, does not approve and adopt this Stipulated Surrender of License and
20 Order, with the exception of this paragraph, it shall not become effective, shall be of no
21 evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary
22 action by either party hereto. Respondent further agrees that should the Division reject this
23 Stipulated Surrender of License and Order for any reason, respondent will assert no claim that the
24 Division, or any member thereof, was prejudiced by its/his/her review, discussion and/or
25 consideration of this Stipulated Surrender of License and Order or of any matter or matters
26 related hereto.

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ADDITIONAL PROVISIONS

13. This Stipulated Surrender of License and Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures of the parties, may be used in lieu of original documents and signatures and, further, that facsimile copies and signatures shall have the same force and effect as originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Division may, without further notice or opportunity to be heard, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 11539 heretofore issued to respondent Phillip R. Rand, M.D., is surrendered and accepted by the Division of Medical Quality.

1. The surrender of respondent's Physician's and Surgeon's Certificate No. C 11539 and the acceptance of the surrendered license by the Division of Medical Quality shall constitute the imposition of discipline against respondent. This Stipulated Surrender of License and Order constitutes a record of the discipline and shall become a part of respondent's license history with the Division.

2. Respondent shall lose all rights and privileges as a physician and surgeon in the State of California, and shall lose all rights and privileges to practice medicine in the State of California, as of the effective date of the Division's Decision and Order.

3. Respondent shall cause to be delivered to the Division both his wall and pocket license certificates on or before the effective date of the Division's Decision and Order.


4. If respondent ever petitions for reinstatement of Physician's and Surgeon's Certificate No. C 11539, all of the charges and allegations contained in Amended Accusation No. 10-2002-139925, and each of them, separately and severally, shall be deemed true, correct and

1 fully admitted by respondent for purposes of any proceeding involving respondent's petition for
2 reinstatement and any other licensing proceeding involving respondent in the State of California.

3 ACCEPTANCE


4 I, Phillip R. Rand, M.D., have carefully read this Stipulated Surrender of License
5 and Order and enter into it freely, voluntarily, intelligently, with the benefit of counsel, with full
6 knowledge of its force and effect on my Physician's and Surgeon's Certificate No. C 11139, and
7 agree to be bound by the Decision and Order of the Division of Medical Quality.

8 DATED: 3/11/05

9 
10 PHILLIP R. RAND, M.D.
Respondent

11 I have read and fully discussed with respondent Phillip R. Rand, M.D., the terms
12 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
13 approve its form and content.

14 DATED: 3.11.05

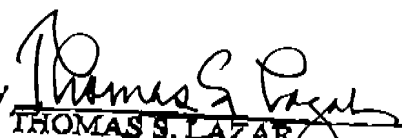
15 
16 J. GRANT KENNEDY, ESQ.
17 Attorney for Respondent

18 ENDORSEMENT

19 The foregoing Stipulated Surrender of License and Order is hereby respectfully
20 submitted for consideration by the Division of Medical Quality of the Medical Board of
21 California, Department of Consumer Affairs, State of California.

22 DATED: March 14, 2005

23 BILL LOCKYER, Attorney General
24 of the State of California

25 By 
26 THOMAS S. LAZAR
27 Deputy Attorney General

28 Attorneys for Complainant

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Attachment "A"
Amended Accusation No. 10-2002-139925

1 BILL LOCKYER, Attorney General
 of the State of California
 2 STEVEN H. ZEIGEN, State Bar No. 60225
 Deputy Attorney General
 3 California Department of Justice
 110 West "A" Street, Suite 1100
 4 San Diego, CA 92101
 5 P.O. Box 85266
 San Diego, CA 92186-5266
 6 Telephone: (619) 645-2074
 Facsimile: (619) 645-2061

7 Attorneys for Complainant

8
 9 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
 10 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
 11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 10-2002-139925

13 PHILLIP R. RAND, M.D.
 3367 Fourth Avenue
 14 San Diego, CA 92103

**AMENDED
ACCUSATION**

15 Physician and Surgeon's Certificate No. C 11539

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Ron Joseph (Complainant) brings this Accusation solely in his official
 21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
 22 Affairs.

23 2. On or about September 16, 1948, the Medical Board of California issued
 24 Physician and Surgeon's Certificate Number C 11539 to PHILLIP R. RAND, M.D. (Respondent).
 25 The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the
 26 charges brought herein and will expire on September 30, 2004, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Division of Medical Quality
3 (Division) for the Medical Board of California, Department of Consumer Affairs, under the
4 authority of the following laws. All section references are to the Business and Professions Code
5 unless otherwise indicated.

6 4. Section 2227 of the Code provides that a licensee who is found guilty
7 under the Medical Practice Act may have his or her license revoked, suspended for a period not
8 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
9 such other action taken in relation to discipline as the Division deems proper.

10 5. Section 2234 of the Code states:

11 "The Division of Medical Quality shall take action against any licensee who is
12 charged with unprofessional conduct. In addition to other provisions of this article,
13 unprofessional conduct includes, but is not limited to, the following:

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

17 "(b) Gross negligence.

18 "(c) Repeated negligent acts. To be repeated, there must be two or more
19 negligent acts or omissions. An initial negligent act or omission followed by a separate
20 and distinct departure from the applicable standard of care shall constitute repeated
21 negligent acts.

22 "(1) An initial negligent diagnosis followed by an act or omission medically
23 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
24 act.

25 "(2) When the standard of care requires a change in the diagnosis, act, or
26 omission that constitutes the negligent act described in paragraph (1), including, but not
27 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
28 conduct departs from the applicable standard of care, each departure constitutes a separate

1 and distinct breach of the standard of care.

2 "(d) Incompetence.

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

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

7 6. Section 2234 of the Code states:

8 "The Division of Medical Quality shall take action against any licensee who is
9 charged with unprofessional conduct. In addition to other provisions of this article,
10 unprofessional conduct includes, but is not limited to, the following:

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

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16 negligent acts or omissions. An initial negligent act or omission followed by a separate
17 and distinct departure from the applicable standard of care shall constitute repeated
18 negligent acts.

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20 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
21 act.

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23 omission that constitutes the negligent act described in paragraph (1), including, but not
24 limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's
25 conduct departs from the applicable standard of care, each departure constitutes a separate
26 and distinct breach of the standard of care.

27 "(d) Incompetence.

28 "(e) The commission of any act involving dishonesty or corruption which is

1 substantially related to the qualifications, functions, or duties of a physician and surgeon.

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

4 7. Section 2241 of the Code states:

5 "Unless otherwise provided by this section, the prescribing, selling, furnishing,
6 giving away, or administering or offering to prescribe, sell, furnish, give away, or
7 administer any of the drugs or compounds mentioned in Section 2239 to an addict or
8 habitué constitutes unprofessional conduct.

9 "If the drugs or compounds are administered or applied by a licensed physician
10 and surgeon or by a registered nurse acting under his or her instruction and supervision,
11 this section shall not apply to any of the following cases:

12 "(a) Emergency treatment of a patient whose addiction is complicated by the
13 presence of incurable disease, serious accident or injury, or the infirmities attendant upon
14 age.

15 "(b) Treatment of addicts or habitués in state licensed institutions where the
16 patient is kept under restraint and control, or in city or county jails or state prisons.

17 "(c) Treatment of addicts as provided for by Section 11217.5 of the Health and
18 Safety Code."

19 8. Section 2242 of the Code states:

20 "(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
21 4022 without a good faith prior examination and medical indication therefor, constitutes
22 unprofessional conduct.

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

26 "(1) The licensee was a designated physician and surgeon or podiatrist serving in
27 the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if
28 the drugs were prescribed, dispensed, or furnished only as necessary to maintain the

1 patient until the return of his or her practitioner, but in any case no longer than 72 hours.

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

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

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

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

14 "(4) The licensee was acting in accordance with Section 120582 of the Health and
15 Safety Code."

16 9. Section 2266 of the Code states: "The failure of a physician and surgeon to
17 maintain adequate and accurate records relating to the provision of services to their patients
18 constitutes unprofessional conduct."

19 10. Section 725 of the Code states:

20 "Repeated acts of clearly excessive prescribing or administering of drugs or
21 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts
22 of clearly excessive use of diagnostic or treatment facilities as determined by the standard
23 of the community of licensees is unprofessional conduct for a physician and surgeon,
24 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.
25 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
26 California Intractable Pain Treatment Act shall be subject to disciplinary action for
27 lawfully prescribing or administering controlled substances in the course of treatment of a
28 person for intractable pain."

1 11. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
2 part:

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

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

20 FIRST CAUSE FOR DISCIPLINE

21 (Gross Negligence, Repeated Negligent Acts, Incompetence)

22 13. Respondent is subject to disciplinary action under sections 2234 (b), (c),
23 and (d) in that during his care and treatment of patients A.P. and C.M. respondent committed
24 gross negligence, repeated negligent acts and/or incompetence. The circumstances are as
25 follows:

26 Patient A.P.

27 A. On or about August 7, 2004, respondent performed a vaginal suction
28 abortion on patient A. P. Prior to the procedure respondent performed an ultra sound and

1 determined the gestation of the fetus to be about 20 weeks. Despite performing a second
2 trimester abortion, respondent gave A.P. little or no analgesia or anesthesia for pain

3 B. The procedure took about five minutes after which respondent told the
4 patient she would bleed a little which was normal. The patient was taken to the recovery
5 room, which consisted of several futon like beds, only a foot or so off the floor. She
6 stayed in the recovery room for about thirty minutes, during which time she began to
7 bleed heavier, began to get the chills, and began feeling dizzy. Respondent had already
8 left the facility, leaving only two medical assistants to watch the patient. There were no
9 other licensed medical personnel on the premises, nor was there any emergency
10 equipment like a crash cart. There was no oxygen in the recovery room, nor was there
11 any I.V.s

12 C. At approximately 5:45 p.m. the medical assistant watching A.P. called
13 respondent on the telephone to tell him about the patient's condition. Respondent was en
14 route to his home in Chula Vista. He told the medical assistant to call 911 if the patient's
15 condition did not improve. When A. P.'s bleeding did not stop, the medical assistant
16 called the fire department. Paramedics arrived in about ten minutes.

17 D. When the paramedics arrived they found only two medical assistants in the
18 clinic with A.P., who was bleeding from the vaginal area onto the mattress of her bed.
19 A.P.'s blood pressure was 80/40, her pulse was 160 and she looked pale and weak. She
20 had no I.V. hooked up, nor had she received any oxygen. When A. P. was lifted to a
21 gurney, there was a large pool of blood on the bed. A.P. was taken to St. Joseph's
22 hospital.

23 Patient C.M.

24 E. Respondent treated C.M. between August 2000 and August 2002. During
25 that time, there were approximately 9 actual office visits, with the patient complaining of
26 weight management, leg and hip pain. Respondent made objective findings of phlebitis,
27 muscle tear, ligament injury, severe anxiety, failure and depression. Respondent treated
28 the patient with drugs, lots of drugs.

1 F. Of the approximately nine visits C.M. made to respondent's office in that
2 two year period, respondent noted her weight on five occasions, but made reference to a
3 weight problem only on the visit of June 11, 2001. On only three of the visits did
4 respondent record C.M.'s blood pressure. On only three of the visits respondent noted the
5 patient's anxiety.

6 G. Between January 17, 2001 and January 30, 2003, respondent wrote more
7 than 100 prescriptions for C.M. to four different pharmacies. Respondent advised C.M.
8 to fill the prescriptions at different pharmacies and to tell them she was going on
9 vacation, to avoid detection as to the amount of medication she was receiving. The
10 majority of the prescriptions were for the short term weight loss medication, Phentermine,
11 and the anti-anxiety medication Alprazolam (Xanax). There were also prescriptions for
12 Vicodin.

13 H. Between January and September 2002, respondent prescribed C.M. 1031
14 Alprazolam tablets, far in excess of the prescribed dosage of 1-2 tablets per day. Between
15 January and November 2001 respondent prescribed C.M. 480 Phentermine tablets, again
16 in excess of the prescribed dosage.

17 14. Respondent committed gross negligence, repeated acts of negligence
18 and/or incompetent in the care, treatment, and management of patient A.P. by reason of, but not
19 limited to, the following:

20 A. Respondent failed to give the patient intravenous fluids despite her anemia
21 and multiparity

22 B.. Respondent failed to give the patient adequate analgesia or anesthesia
23 despite performing a second trimester procedure.

24 C. Respondent failed to adequately monitor the patient's vital signs during
25 and after the procedure.

26 D. Respondent failed to establish an I.V. to the patient.

27 E. Respondent failed to give the patient oxygen.

28 ///

1 F. Respondent left the patient in the hands of unlicensed medical personnel
2 prior to establishing the patient was free of complications.

3 G. Respondent placed the patient in an unacceptable recovery room.

4 15. Respondent committed gross negligence, repeated acts of negligence
5 and/or incompetent during his care, treatment, and management of patient C.M. by reason of, but
6 not limited to, the following:

7 A. Respondent failed to perform a history and physical which included an
8 assessment of symptoms and psychological function and substance abuse history.

9 B. Respondent excessively prescribed Alprazolam, giving C.M. at least 4 mg.
10 per day between August 2000 and August 2002, without any notation as to the amount of
11 the drug she was taking, nor any reassessment, nor any attempt to wean her to the lowest
12 effective dosage.

13 C. Respondent excessively prescribed Phentermine, which may cause
14 psychological dependence, over a two year period without reassessing the patient's need
15 for the drug.

16 D. Respondent prescribed to a known addict, knowing she was receiving an
17 excessive amount of medication and advising her to fill the prescriptions at different
18 pharmacies.

19 E. Respondent failed to refer C.M. for a psychological consultation.

20 F. Respondent failed to develop an appropriate treatment plan to treat C.M.'s
21 weight problem including low-calorie diet, exercise, and behavior modifying support,
22 with limited use of anorexic drugs.

23 SECOND CAUSE FOR DISCIPLINE

24 (Failure to Maintain Adequate and Accurate Records)

25 16. Respondent is subject to disciplinary action under section 2266 in that
26 during his care and treatment of patient A.P. he failed to maintain adequate and accurate records.
27 Paragraphs 13 (B) through (D), and 14 (C) are incorporated as if fully set forth herein.

28 ///

THIRD CAUSE FOR DISCIPLINE

(Dishonest Acts)

17. Respondent is subject to disciplinary action under section 2234(e) in that at the time respondent renewed his certificate on or about July 23, 2002, he signed under penalty of perjury that he had documentation reflecting his having taken an average of 25 hours of CME for each calendar year his license was effective, and that he had taken 100 hours of CME within the past four years. Respondent can document the completion of only one hour of CME since 1999.

FOURTH CAUSE FOR DISCIPLINE

(Prescribing to an Addict)

18. Respondent is subject to disciplinary action under section 2241 in that during his care and treatment of C.M. respondent prescribed to an addict. Paragraph 13 (E) through (13) (H) is incorporated by reference as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Prescribing Without Good Faith Examination)

19. Respondent is subject to disciplinary action under section 2242 in that during his care and treatment of C.M. respondent wrote prescriptions for controlled substances and other medications without first performing a good faith examination, and/or without medical indication. Paragraph 13 (E) through (H) is incorporated by reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

20. Respondent is subject to disciplinary action under section 2266 in that during his care and treatment of patient C.M. he failed to maintain adequate and accurate records. Paragraphs 13 (E) through (H) are incorporated as if fully set forth herein.

DISCIPLINE CONSIDERATIONS

21. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about May 6, 1999, in a prior disciplinary action entitled In the Matter of the Reprimand Against PHILLIP R. RAND, M.D. before the Medical

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Board of California, in Case Number 09-1995-56923, Respondent entered into an agreement with the Medical Board and a Public Letter of Reprimand was issued on May 6, 1999, which required among other things that respondent complete the PACE prescribing course which he completed in 1999. Respondent was also required to pass an oral clinical examination on prescribing practices.

PRAYER

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

- 1. Revoking or suspending Physician and Surgeon's Certificate Number C 11539, issued to PHILLIP R. RAND, M.D.;
- 2. Revoking, suspending or denying approval of PHILLIP R. RAND, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 3. Ordering PHILLIP R. RAND, M.D. to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 9/14/04


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

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Rand Amended Acc.wpd
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