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

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

Case No. D1-2006-176260

**ANDREW RUTLAND, M.D.**  
**1771 West Romneya Drive, Suite A**  
**Anaheim, CA 90801**

**SECOND AMENDED ACCUSATION  
AND PETITION TO REVOKE  
PROBATION**

**Physician's and Surgeon's Certificate**  
**No. G 24947**

Respondent.

Complainant alleges:

**PARTIES**

1. Linda K. Whitney (Complainant) brings this Second Amended Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about July 9, 1973, the Medical Board of California issued Physician's and Surgeon's Certificate No. G 24947 to ANDREW RUTLAND, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

3. In a disciplinary action entitled, "In the Matter of the Reinstatement of Revoked Certificate of ANDREW RUTLAND," Case No. 20-2006-176260; OAH No. L2007050947, the

1 Medical Board of California, Department of Consumer Affairs, State of California (Board) issued  
2 a decision, effective October 25, 2007, in which respondent's Physician's and Surgeon's  
3 Certificate No. G 24947, was reinstated and revoked. The revocation was stayed and  
4 respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5)  
5 years, with various terms and conditions. A true and correct copy of that decision is attached as  
6 Exhibit A, and is incorporated by reference.

#### 7 JURISDICTION

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

11 5. Section 2227 of the Code provides that a licensee who is found guilty under the  
12 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
13 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
14 action taken in relation to discipline as the Division<sup>1</sup> deems proper.

15 6. Section 2234 of the Code states:

16 "The Division of Medical Quality shall take action against any licensee who is charged with  
17 unprofessional conduct. In addition to other provisions of this article, unprofessional conduct<sup>2</sup>  
18 includes, but is not limited to, the following:

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

22  
23 <sup>1</sup>California Business and Professions Code section 2002, as amended and effective January 1,  
24 2008, provides that, unless otherwise expressly provided, the term "Board" as used in the State  
25 Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical Board of  
California," and references to the "Division of Medical Quality" and "Division of Licensing" in  
the Act or any other provision of law shall be deemed to refer to the Board.

26 <sup>2</sup>Unprofessional conduct under Code section 2234 is conduct which breaches the rules or ethical  
27 code of the medical profession, or conduct which is unbecoming to a member in good standing  
28 of the medical profession, and which demonstrates an unfitness to practice medicine (*Shea v.*  
*Board of Medical Quality Assurance* (1978) 81 Cal.App.3d 564, 575).

1       "(b) Gross negligence.

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

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

7       "(2) When the standard of care requires a change in the diagnosis, act, or omission that  
8 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
9 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
10 applicable standard of care, each departure constitutes a separate and distinct breach of the  
11 standard of care.

12       "(d) Incompetence.

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

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

16       7. Section 2216.2, subdivision (a), of the Code states:

17       "It is unprofessional conduct for a physician and surgeon to fail to provide adequate  
18 security by liability insurance, or by participation in an indemnity trust, for claims by patients  
19 arising out of surgical procedures performed outside of a general acute care hospital as defined in  
20 subdivision (a) of Section 1250 of the Health and Safety Code.

21       8. Section 2240 of the Code states, in pertinent part:

22       "(a) Any physician and surgeon who performs a scheduled medical procedure outside of a  
23 general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety  
24 Code, that results in the death of any patient on whom that medical treatment was performed by  
25 the physician and surgeon, or by a person acting under the physician and surgeon's orders or  
26 supervision, shall report, in writing on a form prescribed by the board, that occurrence to the  
27 board within 15 days after the occurrence.

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1       “(b) Any physician and surgeon who performs a scheduled medical procedure outside of a  
2 general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety  
3 Code, that results in the transfer to a hospital or emergency center for medical treatment for a  
4 period exceeding 24 hours, of any patient on whom that medical procedure was performed by the  
5 physician and surgeon, or by a person acting under the physician and surgeon’s orders or  
6 supervision, shall report, in writing, on a form prescribed by the board that occurrence, within 15  
7 days after the occurrence. The form shall contain all the following information:

8       “(1) Name of the patient’s physician in the outpatient setting.

9       “(2) Name of the physician with hospital privileges.

10       “(3) Name of the patient and patient identifying information.

11       “(4) Name of the hospital or emergency center where the patient was transferred.

12       “(5) Type of outpatient procedure being performed.

13       “(6) Events triggering the transfer.

14       “(7) Duration of the hospital stay.

15       “(8) Final disposition or status, if not released from the hospital, of the patient.

16       “(9) Physician’s practice specialty and ABMS certification, if applicable.

17       “(c) The form described in subdivision (b) shall be constructed in a format to enable the  
18 physician and surgeon to transmit the information in paragraphs (5) to (9), inclusive, to the board  
19 in a manner that the physician and surgeon and the patient are anonymous and their identifying  
20 information is not transmitted to the board. The entire form containing information described in  
21 paragraphs (1) to (9), inclusive, shall be placed in the patient’s medical record.

22       “....

23       “(f) The failure to comply with this section constitutes unprofessional conduct.”

24       / / /

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**FIRST CAUSE FOR DISCIPLINE**  
**(Gross Negligence)**

9. Respondent has subjected his Physician's and Surgeon's Certificate No. G 24947 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of patient Y.C., as more particularly alleged herein:

(a) On or about July 28, 2009, at approximately 11:00 a.m., Patient Y.C.<sup>3</sup>, a 30-year-old woman, presented to respondent at a medical clinic located at 789 South San Gabriel Boulevard, San Gabriel, California, 91776, which had a sign bearing Respondent's name in front, for the purpose of having an abortion;

(b) Respondent performed a history and physical examination with the assistance of An Li Chang, who acted as a Chinese translator because Y.C. did not speak English;

(c) Respondent estimated a gestational age of 16 to 16.5 weeks based on the physical examination and one ultrasound measurement of the biparietal diameter (i.e., the diameter of the skull) of the fetus;

(d) Respondent obtained two signed consent forms from patient Y.C. for a first trimester abortion, although neither was witnessed;

(e) Patient Y.C. was moved to a procedure room where respondent performed a pelvic examination;

(f) Respondent placed the speculum and gave patient Y.C. a paracervical block<sup>4</sup> with lidocaine;

(g) During an interview with the Board on or about November 9, 2009, respondent stated that he diluted the lidocaine solution by mixing 5 cc of 2% lidocaine with 35 cc of saline;

(h) Shortly after receiving the paracervical block, patient Y.C. began to have a reaction;

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<sup>3</sup> Patient Y.C. is referenced by her initials for privacy reasons.

<sup>4</sup>Regional anesthesia resulting from the injection of local anesthetic to the cervix used to provide analgesia during gynecological procedures.

1 (i) Dr. Lars Hansen and an acupuncturist Dr. Yuan, who both work in the same office as  
2 respondent, were called into the room and the three began performing cardiopulmonary  
3 resuscitation (CPR) on Y.C.;

4 (j) Chiang called 911 and paramedics were dispatched at 1:19 p.m.;

5 (k) Emergency personnel arrived on the scene at approximately 1:20 p.m. and patient  
6 Y.C. was found to be in full cardiac arrest;

7 (l) Emergency personnel observed that none of Respondent, Dr. Hansen, or the  
8 acupuncturist was caring for patient Y.C.;

9 (m) Paramedics performed life saving measures and took patient Y.C. to the San Gabriel  
10 Medical Center where she died six days later;

11 (n) An autopsy determined the cause of death to be sequelae of anoxic/ischemic  
12 encephalopathy as a consequence of cardiopulmonary arrest due to lidocaine toxicity;

13 (o) Respondent committed gross negligence in his care and treatment of patient Y.C.,  
14 which included, but was not limited to the following:

15 (i) The patient consent forms do not specifically pertain to the stated planned  
16 procedure (second trimester abortion), are not witnessed, and are not in the patient's language;

17 (ii) Respondent performed or intended to perform a surgical procedure in a facility  
18 inadequately equipped to handle emergencies.

19 (iii) The emergency kit that was available in the office at the time of the incident did  
20 not meet applicable standard of care criteria in that it contained expired medications and was  
21 otherwise insufficient;

22 (iv) None of the personnel on site have current CPR certification based on the  
23 evidence and documentation in this case;

24 (v) Respondent failed to recognize lidocaine toxicity and failed to respond in a  
25 timely manner in performing appropriate resuscitative measures and obtaining the assistance of  
26 emergency personnel; and,

27 (vi) There was a significant delay between the time of patient Y.C.'s reaction to the  
28 paracervical block and the time emergency personnel were called.

**SECOND CAUSE FOR DISCIPLINE**  
**(Gross Negligence – Homicide)**

10. The above acts constitute homicide under the applicable statutes, and are an extreme departure from the applicable standard of care, as well as gross negligence under Code section 2234(b).

**THIRD CAUSE FOR DISCIPLINE**  
**(Repeated Negligent Acts)**

11. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24947 to disciplinary action under Code sections 2227 and 2234, as defined by section 2234(c), of the Code, in that Respondent's acts and omissions set forth above constitute repeated negligent acts in the care and treatment of patient Y.C.

**FOURTH CAUSE FOR DISCIPLINE**  
**(Incompetence)**

12. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24947 to disciplinary action under sections 2227 and 2234, as defined by section 2234(d), in that Respondent's acts and omissions set forth above demonstrate incompetence in his care and treatment of patient Y.C.

**FIFTH CAUSE FOR DISCIPLINE**  
**(Failure to Obtain Malpractice Insurance)**

13. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24947 to disciplinary action under sections 2227 and 2234, as defined by section 2216.2(a), of the Code, in that he does not have, and did not have, liability insurance at the time of his treatment of Y.C.

**SIXTH CAUSE FOR DISCIPLINE**  
**(Failure to Report)**

14. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 24947 to disciplinary action under sections 2227 and 2234, as defined by section 2240(a),

1 (b), and (f), in that he failed to report patient Y.C.'s transfer to a hospital/emergency room, and  
2 then failed to report the death of patient Y.C. to the Board.

3  
4 **CAUSE TO REVOKE PROBATION**  
5 **(Failure To Obey All Laws)**

6 15. At all times after the effective date of respondent's probation, Condition 2, stated:

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

10 16. Respondent's probation is subject to revocation because he failed to comply with  
11 Probation Condition 2, in that respondent has failed to obey all federal, state and local laws, as  
12 well as, all rules governing the practice of medicine in California, as set forth above.

13  
14 **DISCIPLINE CONSIDERATIONS**

15 17. To determine the degree of discipline, if any, to be imposed on respondent,  
16 Complainant alleges that the following disciplinary actions have been taken against respondent's  
17 Physician's and Surgeon's Certificate:

18 (a) On or about July 30, 1998, respondent and the Board entered into a Stipulation For  
19 Clinical Training and Evaluation in Investigation Nos. 04-1994-37525 and 04-96-67144. The  
20 agreement provided that upon respondent's successful completion of the clinical training program  
21 and examination, Investigation Nos. 04-94-37525 and 04-96-67144 would be closed.

22 (b) On or about April, 29, 2002, in a disciplinary matter entitled, "In the Matter of the  
23 Accusation Against: Andrew Rutland, M.D.," Case Nos. 18-1999-101122; L-2001070507, the  
24 Board issued an order partially suspending respondent's Physician's and Surgeon's Certificate  
25 No. G 24947.

26 (c) On or about July 3, 2002, in a disciplinary matter entitled, "In the Matter of the Ex  
27 Parte Petition for Interim Suspension Order Against: Andrew Rutland, M.D.," Case Nos. 18-  
28



2002-134647; 18-2002-134903; 18-2002-134650; 18-2002-134651; 18-2002-134646, the Board issued a decision suspending respondent's Physician's and Surgeon's Certificate No. G 24947.

(d) On or about October 24, 2002, the Board entered into a "Stipulation for Surrender."

(f) On or about October 25, 2007, in a disciplinary matter entitled, "In the Matter of the Reinstatement of Revoked Certificate of: Andrew Rutland," Case Nos. L2007050947; 20-2006-176260, the Board issued a decision reinstating respondent's Physician's and Surgeon's Certificate No. G 24947. The newly reinstated certificate was revoked, however, the revocation was stayed and respondent was placed on probation for five (5) years with various terms and conditions.

#### PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G 24947, issued to ANDREW RUTLAND, M.D.;

2. Revoking, suspending or denying approval of Andrew Rutland, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Andrew Rutland, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring;

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

DATED: July 28, 2010

  
LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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**Exhibit A**  
**October 25, 2007,**  
**Decision**  
**In the Matter of the Reinstatement of Revoked Certificate of: Andrew Rutland**

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

In the Matter of the Reinstatement  
of Revoked Certificate of:

ANDREW RUTLAND

Physician's and Surgeon's  
Certificate No. G-24947

Respondent.

OAH No: L2007050947

Case No: 20-2006-176260

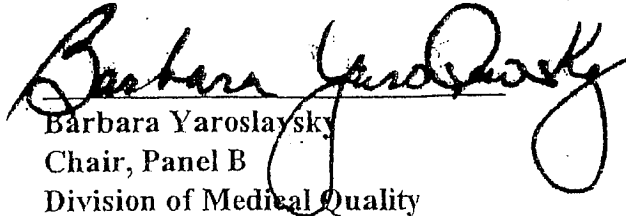
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective at 5:00 p.m. on October 25, 2007.

DATED September 25, 2007

MEDICAL BOARD OF CALIFORNIA

  
Barbara Yaroslavy  
Chair, Panel B  
Division of Medical Quality

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

In the Matter of the Petition for Reinstatement  
of Revoked Certificate of:

OAH No. L2007050947

ANDREW RUTLAND,

Petitioner.

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings, on August 8, 2007, at Los Angeles, California.

Petitioner, Andrew Rutland (Petitioner) was present and was represented by Peter Osinoff, Attorney at Law.

Pursuant to the provisions of Government Code Section 11522, the Attorney General of the State of California was represented by Klint James McKay, Deputy Attorney General.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Factual Findings:

1. On or about July 9, 1973, the Medical Board of California (Board) issued Physician and Surgeon Certificate No. G 24947 to Petitioner.

2. Petitioner attended medical school at Howard University where he graduated with honors. He performed his residency at Los Angeles County, University of Southern California (USC) Medical Center. After serving a fellowship in gynecological oncology at USC, he served in the United States Air Force, retiring as a Lieutenant Colonel. He remains a member of the Air Force Reserve today. Petitioner became board certified in obstetrics and gynecology in 1977. In 1982, he joined a medical group in Inglewood, California where he remained for 10 years. He then maintained a private practice for another 10 years. Petitioner also holds a law degree.

3. In a Stipulation for Clinical Training and Evaluation, Board Investigation Nos. 04-94-37525 and 04-96-67144, finalized on July 30, 1998, in *In the Matter of the Investigation of Andrew Rutland*, Petitioner agreed to attend a physician assessment and clinical education program, approved by the Board or its designee, in exchange for the closing of the investigations. Petitioner successfully completed the course offered by the Physician Assessment and Clinical Education (PACE) program at the University of California, San Diego.

4. On April 29, 2002, in *In the Matter of the Accusation Against Andrew Rutland, M.D.*, Case No. 18-1999-101122, Administrative Law Judge Ralph B. Dash issued an Interim Order of Suspension restricting Petitioner's physician's and surgeon's certificate as follows:

Respondent shall not perform any surgical procedure at any hospital, unless there is an independent medical doctor present at all times to observe and proctor Respondent. The proctor must have unrestricted surgical privileges at the hospital, and must be competent in the relevant field of surgery. If a volunteer cannot be found, Respondent shall bear the cost of the proctor.

5. At the time Judge Dash issued his interim suspension order, the operative pleading was the Second Amended Accusation. On June 28, 2002, a Third Amended Accusation was filed, which contained the addition of numerous allegations involving several additional patients to those referenced in the Second Amended Accusation.

6. On July 3, 2002, Administrative Law Judge Roy W. Hewitt issued an *Ex Parte* Interim Suspension Order based on the allegations in the Third Amended Accusation. According to that Order, Petitioner's physician and surgeon's certificate was suspended, and Petitioner was ordered not to "practice medicine or supervise physician's assistants in the State of California." On August 26, 2002, Petitioner entered into a stipulation that the Interim Suspension Order would remain in effect until the case was either settled or resolved by a hearing on the merits.

7. In a Decision effective October 24, 2002, the Board accepted Petitioner's surrender of his physician and surgeon's certificate in resolution of the Third Amended Accusation. Petitioner also agreed to pay \$3,160 in discovery costs. In addition, he agreed to pay \$37,000 in investigation and prosecution costs prior to the re-issuance of his license if he chose to seek reinstatement. Petitioner further agreed to the following:

For the purpose of resolving the Third Amended Accusation, Respondent hereby admits to the charges involving the B[ . . . ] matter, also known as "K.B.", as set forth in paragraphs 12 (except sub-paragraphs Q and R) and 13 (except sub-paragraphs K and O) of the Third Amended Accusation. Further, Respondent agrees that, at a hearing, Complainant could also establish a factual basis for the one or more of the other charges in the Third Amended Accusation.

8. Paragraphs 12 and 13 of the Third Amended Accusation contained allegations of gross negligence, repeated negligent acts and incompetence in Petitioner's care and treatment of three obstetrical patients. Two of those cases involved neonatal deaths in January 1997 and July 1999, respectively. One of those babies had been delivered by forceps delivery. The sub-paragraphs Petitioner refused to admit alleged charting errors and alterations.

9. Petitioner is deeply remorseful over the baby who died following the forceps delivery, and he has vowed never to deliver another baby using forceps again. Although he feels very badly about the other baby's death, he subsequently learned that, according to the autopsy report, the baby died after a pediatrician who was attempting to resuscitate the child perforated a blood vessel with a catheter inserted through the infant's umbilicus. That case was complicated by virtue of the mother being an insulin-dependent diabetic. Petitioner has vowed never to treat a diabetic obstetrical patient without the patient concurrently seeing a peri-natologist.

10. Petitioner believes some of his patients may have misunderstood his recommendations for surgery and become frightened by his strong feelings about it. To avoid that recurring in the future, he will include a second opinion option in his informed consent forms.

11. Petitioner has been named as a defendant in approximately 15 to 18 civil lawsuits. Many of those were prosecuted by the same plaintiff's attorney. Several of those cases were consolidated. The plaintiffs' attorney selected what he considered to be the strongest case to try first. After 3.5 weeks of trial, a defense verdict was returned. All of the other consolidated cases were subsequently voluntarily dismissed without payment by Petitioner. In June 2005, the plaintiffs' attorney wrote a letter indicating that most of the lawsuits were targeted against "an unscrupulous manufacturer of medical equipment" which had "used and abused" Petitioner. In that letter, the plaintiffs' attorney minimized Petitioner's involvement in the harm caused to the patients who filed lawsuits. Of the 15-18 civil cases filed against Petitioner in his more than 30 years of medical practice, he has settled only three for monetary sums.

12. Petitioner has worked with Rev. Jerdail Lauder, the Pastor of New Jerusalem Christian Center and the National President of the United States Pastors Association, in creating medical seminars and workshops for parishioners. Petitioner has served as a keynote speaker and panel member on many occasions, providing health-related information to attendees. He performed those functions without remuneration. Many of those who attended the seminars and workshops were indigent. Petitioner treated those patients without charge. Petitioner has also provided diversity training at churches and universities, again without remuneration.

13. Petitioner took the Medical Record Keeping course at PACE in February of this year, and an ethics course offered by The Institute for Medical Quality/California Medical Association in March of 2006.

14. Since he surrendered his medical license, Petitioner has kept up with developments in obstetrics and gynecology. His daughter began an OB/GYN residency at Loma Linda Medical Center at approximately the same time he surrendered his license. (She subsequently became chief resident.) Petitioner devoted his time toward helping her by studying with her. From the time she began her residency, Petitioner's daughter had her journals and compendiums sent to Petitioner's home, including three journals, a compendium and a newspaper from the American Board of Obstetrics and Gynecology. Petitioner has read each of those publications. He also discusses his daughter's cases with her (without the disclosure of any confidential information). In addition, he has learned to cross-reference literature on the Internet to obtain other scholarly articles, and he reads additional medical literature in medical libraries.

15. Petitioner's daughter considers her father to be a "phenomenal doctor." She described him as thorough and meticulous, and his thinking and teaching as methodical. Having observed him in the operating room via videotapes and DVD's while she was in medical school, she had high praise for his surgical approach and clinical thinking. She claimed Petitioner can "sense a patient." Petitioner educated his daughter to give her patients every option and to give them enough information to make an informed decision.

16. Petitioner's daughter is presently practicing obstetrics and gynecology in Virginia. She plans to return to California to open a practice with Petitioner should his license be reinstated. Petitioner is near retirement age and would very much like to conclude his medical career in practice with his daughter.

17. Petitioner raised and cared for his granddaughter after her father died and her mother (Petitioner's daughter) was performing her residency at Loma Linda Medical Center.

18. Petitioner enjoys a good reputation for honesty.

19. On June 2, 2005, Petitioner was involved in an automobile accident when another motorist traveling in the opposite direction crossed into Petitioner's lane. Petitioner suffered neck, back and hip injuries and was confined to a wheelchair. Petitioner's injuries have resolved for the most part, and he takes pain medication only infrequently. He considers himself physically fit for medical practice, and he is willing to undergo a medical examination before returning to practice.

#### LEGAL CONCLUSIONS

1. Cause exists to grant the Petition pursuant to the provisions of Business and Professions Code section 2307 by reason of Findings 4 through 15.

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2. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) Petitioner's burden required a showing that he was no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.) Petitioner sustained his burden of proof.

3. Business and Professions Code section 2307, subdivision (e) states in pertinent part:

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

4. California Code of Regulations, title 16, section 1657 states:

When considering a petition for reinstatement or a petition for modification of penalty, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, may consider all activities of the petitioner since the disciplinary action was taken and shall also consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) for which the petitioner was disciplined;
- (2) Evidence of any act(s) or crime(s) committed subsequent to act(s) or crime(s) for which the petitioner was disciplined which also could be considered as grounds for denial under [Business and Professions] Code Section 480.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2) above.
- (4) The extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed.
- (5) Petitioner's activity during the time the certificate was in good standing.
- (6) Evidence, if any, of the rehabilitation submitted by the petitioner.
- (7) Petitioner's professional ability and general reputation for truth.



5. Of the numerous lawsuits filed against Petitioner, the Board's 1998 investigation, and the disciplinary action which led to Petitioner's license surrender, liability was established with respect to three tragic incidents, which were admitted by Petitioner. He subsequently learned he was not at fault in connection with one of those three incidents. With respect to the others, although they are now temporally remote, Petitioner continues to feel the effects of the incidents today. As to the child who died following a forceps delivery, he continues to empathize with his patient's pain and sorrow over the loss of her child, and he has vowed to never allow a similar situation arise, by refusing to perform forceps deliveries for the remainder of his career.

6. Before surrendering his license, Petitioner enjoyed a medical career lasting more than three decades. He served his community not only in his office and in the hospital, but in community service as well. That service included treating indigent patients without charge. Since suffering license discipline, Petitioner has worked toward his rehabilitation by taking and completing a medical record keeping course and an ethics course, and by maintaining a current store of knowledge via continuous review of the medical literature. In addition, he cared for and raised his grandchild in order for his daughter to be free to study and work in order to enter the medical profession.

7. Although Petitioner has satisfied the criteria set forth in Business and Professions Code section 2307 and California Code of Regulations, title 16, section 1657, the fact that his license surrender rendered him unable to work in a "hands-on" setting for an extended period of time, and the fact that he suffered severe and debilitating injuries in an automobile accident approximately two years ago, raise legitimate concerns about his ability to practice medicine safely. To assuage those concerns, Petitioner will be required to undergo and pass a physical examination and a medical competency examination as condition precedents to practice. In addition, he will be required to retain the services of an independent practice monitor to ensure his continued safe practice of medicine. (See, Govt. Code § 11522.)

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Andrew Rutland for reinstatement of his revoked Physician and Surgeon's Certificate No. G 24947 is granted subject to the following:

The newly reinstated certificate is hereby revoked. However, the revocation is stayed and Petitioner is placed on probation for five years upon the following terms and conditions:

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1. Notification

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

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

2. Obey All Laws

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

3. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

4. Probation Unit Compliance

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

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

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

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5. Interview with the Division or its Designee

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

6. Residing or Practicing Out-of-State

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

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

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

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7. Failure to Practice Medicine - California Resident

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

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

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

8. License Surrender

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

9. Probation Monitoring Costs

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

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#### 10. Oral and/or Written Examination

Within 60 calendar days of the effective date of this Decision, Petitioner shall take and pass an oral and/or written examination, administered by the Probation Unit. The Division or its designee shall administer the oral and/or written examination in a subject to be designated by the Division or its designee and the oral examination shall be audio tape recorded.

If Petitioner fails the first examination, Petitioner shall be allowed to take and pass a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days.

Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this Decision is a violation of probation. Petitioner shall pay the costs of all examinations. For purposes of this condition, if Petitioner is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the Division or its designee.

Petitioner shall not practice medicine until Petitioner has passed the required examination and has been so notified by the Division or its designee in writing. This prohibition shall not bar Petitioner from practicing in a clinical training program approved by the Division or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

#### 11. Medical Evaluation and Treatment

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Division or its designee, Petitioner shall undergo a medical evaluation by a Division-appointed physician who shall consider any information provided by the Division or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Division or its designee.

Following the evaluation, Petitioner shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Division or its designee.

If Petitioner is required by the Division or its designee to undergo medical treatment, Petitioner shall, within 30 calendar days of the requirement notice, submit to the Division or its designee for prior approval the name and qualifications of a treating physician of Petitioner's choice. Upon approval of the treating physician, Petitioner shall, within 15 calendar days, undertake medical treatment and shall continue such treatment until further notice from the Division or its designee.

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The treating physician shall consider any information provided by the Division or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Petitioner shall have the treating physician submit quarterly reports to the Division or its designee indicating whether or not Petitioner is capable of practicing medicine safely. Petitioner shall provide the Division or its designee with any and all medical records pertaining to treatment, that the Division or its designee deems necessary.

If, prior to the completion of probation, Petitioner is found to be physically incapable of resuming the practice of medicine without restrictions, the Division shall retain continuing jurisdiction over Petitioner's license and the period of probation shall be extended until the Division determines that Petitioner is physically capable of resuming the practice of medicine without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions is a violation of probation.

Petitioner shall not engage in the practice of medicine until notified in writing by the Division or its designee of its determination that Petitioner is medically fit to practice safely.

## **12. Monitoring - Practice**

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

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

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

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

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

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

In lieu of a monitor, Petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at Petitioner's expense during the term of probation.

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

#### 13. Solo Practice

Petitioner is prohibited from engaging in the solo practice of medicine.

#### 14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Petitioner violates probation in any respect, the Division, after giving Petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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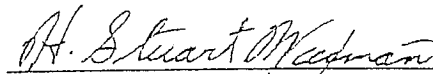
15. Compliance With Terms of October 24, 2002 Stipulation and Order

Petitioner shall comply with any and all provisions of the Stipulation and Order in Case No. 18-1999-101122, effective October 24, 2002, required for re-licensure unless the Board or its designee agrees, in writing, to waive such provision(s).

16. Completion of Probation

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

DATED: September 4, 2007



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H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings