CMA ON-CALL—(800) 592-4CMA
The California Medical Association's Fax-On-Demand Service

Document #1315
The Compassionate Use Act of 1996
The Medical Marijuana Initiative

CMA Legal Counsel
March 1997

Proposition 215, "The Compassionate Use Act of 1996," was passed by a vote of the people on November 5, 1996, and became effective on November 6, 1996. This document contains a discussion of the questions most likely to be asked about the law.

What did the law formerly prohibit?

Under former state law, a patient was prohibited from obtaining, possessing, or cultivating, marijuana for any purpose, including medical treatment purposes. **The same continues to be true under federal law.** Marijuana is currently classified as a Schedule I drug, which means that it has no generally recognized medical use.

What does Proposition 215 allow patients to do?

Proposition 215 provides that patients, who possess or cultivate marijuana for personal medical treatment on the oral or written recommendation or approval of a physician, are exempt from punishment under state law.

What if the patient is too ill to cultivate marijuana him or herself?

The law anticipates this situation. It allows the patient's "primary caregiver" to possess or cultivate marijuana for the patient's personal medical use. A "primary caregiver" is defined as the individual designated by the patient who has consistently assumed responsibility for the patient's housing, health, or safety.

What types of medical conditions are covered by the law?

Although Proposition 215 does not contain an exclusive list of specific medical diseases or conditions, it is clear that the law was intended to apply only to serious medical problems. The intent language specifically states that one of the law's purposes is as follows:

> To insure that **seriously ill** Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit for the use of marijuana in the treatment of **cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief**. [Emphasis added.]

© 1997 California Medical Association

How are patients or caregivers supposed to obtain marijuana?

Proposition 215 does not explicitly authorize any individual or entity (such as cannabis buyers' clubs) to sell marijuana to a patient or caregiver, even with a physician's written or oral recommendation. In some cases, the operator of such a club has been designated by a number of patients as the patients' "primary caregiver." It is unclear whether this application of the term "primary caregiver" will be approved by state appellate courts. However, the original law appeared to contemplate that, in most cases, patients and caregivers (such as family members and/or partners) would obtain marijuana by growing their own.

Does the law contain any protections for physicians who give their patients oral or written "recommendations" for the purpose of enabling their patients to obtain marijuana for medical purposes?

Proposition 215 contains a provision which protects physicians from being "punished or denied any right or privilege" for having recommended marijuana to a patient for medical purposes. Therefore, a physician cannot be criminally or civilly punished under **state law** for giving a patient an oral or written "recommendation" for the medical use of marijuana (at least for a serious medical condition); nor can the physician be subject to loss of license or other administrative sanction under **state law**. However, it appears that physicians who act in reliance on the legislation may in some cases be subject to serious liability under **federal law**.

Federal law establishes a clear prohibition against knowingly or intentionally distributing, dispensing, or possessing marijuana. See 21 U.S.C. §§841-44. The penalty for a first-time violation of these provisions in the case of less than 50 kilograms of marijuana, is imprisonment for a term of up to five years, a fine of up to $250,000.00, or both. The penalty for a violation committed after a prior drug conviction is imprisonment for a term of up to ten years, a fine of $500,000.00, or both. 21 U.S.C. § 841(b)(1)(D). Federal law gives an extremely broad scope to the terms "distribute" and "dispense." In addition, a person who aids and abets another in violating federal law can be punished to the same extent as the individual who actually commits the crime.

Research indicates that a physician can violate federal law by issuing a prescription for a substance, such as marijuana, for which federal law recognizes no medicinal uses. See United States v. Black, 512 F.2d 864 (9th Cir. 1975); United States v. Davis, 564 F.2d 840 (9th Cir. 1977). The Davis decision may pose a particular problem for physicians. In that case, the Court of Appeals focused on the physician's "creating the means" for the unlawful transfer.[1] Therefore, if a physician gives a patient a writing for the purpose of enabling the patient to go to a cannabis buyers' club to obtain marijuana or cooperates with a buyers' club by telephone, federal prosecutors may argue the physician has "created the means" by which the patient obtains marijuana, or to have aided and abetted the patient in doing so.

---

[1] See also United States v. Tighe 551 F.2d 18 (3rd Cir. 1977) (offense of dispensing is completed by physician when patient receives prescription and not the actual drug); United States v. Oquendo, 505 F.2d 1307 (5th Cir. 1975) (conviction of heroin possessor for "distribution" upheld because the definition of "distribution" in the federal statutory scheme is broad enough to include acts that may be traditionally considered aiding and abetting).

Physicians may run the same risks by 1) providing the patient with a written recommendation or 2) voluntarily offering to testify in court on the patient's behalf (and subsequently doing so voluntarily)for the purpose of enabling the patient, if prosecuted by state authorities, to avoid punishment and retain homegrown marijuana. Federal prosecutors may argue that, but for the physician's "recommendation," the patient would have not cultivated marijuana or would not have been permitted by state authorities to retain and use the homegrown plant. Thus, the argument goes, a physician has still "created the means" by which the patient has obtained marijuana under state law, and federal criminal liability may be a possibility.

Other federal sanctions are also possible. If a physician were to provide a written or oral recommendation as authorized in Proposition 215, the federal government might well act to revoke the physician's DEA registration through an administrative procedure. This would seriously hinder the physician's ability to provide proper medical care to his or her patients. Physicians should also be aware that, effective January 1, 1997, a felony conviction relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance results in mandatory exclusion from Medicare and Medi-Cal programs. 42 U.S.C. §1320a7(a)(4).

Does this mean that I cannot even *discuss* the risks and benefits of marijuana as an alternative or adjunctive treatment? Can't I still provide my patients with information about marijuana if I think that information might be helpful to them?

CMA believes that physicians should be free to conduct a good faith discussion with a patient about the risks and benefits of any potential medical treatment. It does not appear that such a discussion would violate the federal drug laws, nor is there any evidence that the federal government intends to punish physicians who engage in such discussions with their patients. Indeed, at the repeated request of CMA, on February 27, 1997, the federal government sent a letter to 250 medical organizations and medical groups around the country which clarifies the government's position on this question.

That letter confirmed that, both before and after the enactment of Proposition 215, "nothing in federal law prevented a physician, in the context of a legitimate physician-patient relationship, from merely discussing with a patient the risks and alleged benefits of the use of marijuana to relieve pain or alleviate symptoms." The government stressed that patients must "look to their physician as their primary source of knowledge about a wide variety of potential health hazards and treatments." Therefore, the letter continued, physicians are encouraged "to talk with patients about their concerns and answer inquiries about any procedure, treatment, substance, or device that may affect a patient's health. Physicians are also encouraged to share their knowledge and their professional expertise regarding the risks, benefits, and legality of any potential medical treatment or modality. No "gag rule" stops physicians from engaging in these discussions."

However, the letter cautioned that "such discussions have their limits." The government warned that "Physicians may not **intentionally** provide their patients with oral or written statements **in order to** enable them to obtain controlled substances in violation of federal law." This statement makes it clear that physicians , in the context of a legitimate physician-patient relationship, may engage in a classic physician-patient dialogue, but **may not** actively and deliberately cooperate with a cannabis

buyers' club or otherwise act for the purpose of enabling the patient to obtain or cultivate marijuana in violation of federal law.

I am still not clear whether I can or cannot recommend marijuana to a particular patient. What exactly can I say and do?

The words "recommend" and "recommendation" have caused widespread confusion. A "recommendation" can take many different forms and can be issued for various reasons. Therefore, it is probably better not to use the term when trying to answer the question of what a physician can/cannot say and do with regard to marijuana.

As a general rule, CMA believes that a physician should safely be able to conduct in good faith a traditional physician-patient conversation in the physician's office as follows:

- The physician provides the patient with any scientific evidence of which the physician knows that reflects upon the possible health risks and therapeutic benefits of marijuana for use in the patient's condition.

- The physician attempts to answer any questions and/or inquiries the patient may have about the potential risks and benefits of marijuana, including informing the patient that those potential risks and benefits have not been fully tested in, or even fully identified by, properly-controlled clinical trials.

- The physician describes (without identifying information) his or her knowledge of the experiences of other patients with the same condition who have used marijuana for therapeutic purposes.

- The physician provides (particularly upon the patient's request) the physician's professional expertise concerning the possible balance of risks and benefits in the patient's particular case, but advises the patient that the physician cannot lawfully recommend that the patient obtain it for medical use.

- The physician advises the patient that, notwithstanding Proposition 215, the cultivation, possession and use of marijuana, even for medical purposes, is illegal under federal law.[2] The physician should further state that he or she cannot take any action for the purpose of enabling the patient 1) to obtain marijuana—such as by the physician's cooperating in any way with a cannabis buyers' club—or 2) to cultivate marijuana and retaining the homegrown

---

[2]Generally, physicians are not required to be familiar with, nor warn patients about, the legal consequences of a patient's health care treatment decision. However, there has been much controversy and confusion about the legality of the therapeutic use of marijuana, and many patients may think that, if their physician believes marijuana on balance may be beneficial for them, they can cultivate, obtain, and use marijuana **without risk of any punishment**. They may not understand that they could still be subject to prosecution under federal law. Therefore, if the physician engages in a conversation with a patient, such as that described above, the physician should ensure that the patient understands what legal risks exist for the patient under federal law.

product free of state prosecution—such as by the physician's issuing a written "recommendation" whose ostensible purpose is to provide the patient with a defense against state prosection or by voluntarily offering to testify on the patient's behalf in court.[3]

As with all physician-patient discussions, the above conversation should be documented in the medical record.[4] Such recordation will ensure that this, like all information that relates to the patient's health care, will be available for the future reference of the physician or other health care providers. In addition, if a patient should use marijuana and suffer an untoward side effect[5] (or be prosecuted under federal law), the physician can demonstrate that he or she warned the patient of that possibility.

Furthermore, since—despite this conversation—some patients may still not fully understand that they may be subject to **federal** prosecution for using medical marijuana, a physician may wish further to document that conversation by providing the patient with an informational sheet or form as follows:

Dear Patient,

You are currently under my care for the treatment of ______________________ [name of diagnosis].

I have shared with you any information and professional expertise that I have concerning the possible health risks and therapeutic benefits of marijuana when used in a case such as yours.

I have informed you that 1) it is unlawful under federal law to possess, cultivate, or use marijuana (even for medical purposes), 2) you could be subject to serious punishment under federal law for engaging in such acts, and 3) I cannot lawfully recommend that you obtain marijuana for medical use.

____

[Name of Physician]

---

[3] A physician may be required by subpoena to appear to testify in court. We believe that a physician who, in response to such compulsion, merely testifies to the content of the physician-patient office dialogue, should not be subject to punishment under federal law.

[4] Of course, a patient has a right under state law to obtain a copy of this conversation by requesting a copy of his or her medical record. However, since a separate statutory scheme requires physicians to provide patients with their medical records on request, we believe that the physician-patient conversation described above should not be construed as deliberately assisting the patient to obtain marijuana, even if the patient, on his or her own, decides to take the medical record to a buyers' club, unless there is clear evidence that the physician is conspiring in the patient's plan.

[5] Because marijuana has not been tested fully in properly-controlled clinical trials, physicians should be extremely cautious when undertaking to discuss the risks and benefits of its medical use. A physician may be at risk of malpractice liability if a patient suffers an adverse effect, of which the physician was unaware, that would likely have been identified if such testing had taken place.

The physician may also wish to have the patient sign the form to acknowledge that he or she has received and read it. The physician should retain a copy of the form in the patient's medical record.

Patients have asked me to sign and/or complete different types of forms that relate to the patient's use of marijuana for medical reasons. Can I provide a patient with such a form?

Patients may bring you several different types of forms which confirm that 1) the physician approves, advises or recommends that the patient use marijuana for medical purposes and/or 2) the patient intends to use marijuana for medical purposes, and nevertheless, the physician will continue to monitor and provide treatment to the patient. **We generally do not recommend that physicians sign or complete these types of forms.**

Physicians would be well-advised to avoid providing a patient with any writing whose sole or primary **credible** purpose is to enable the patient to obtain marijuana at a buyers' club or some other source, or to be able to cultivate marijuana and retain the homegrown product. If the most believable answer to the question "Why did you give this writing to the patient?" is "To enable the patient to obtain marijuana," then the physician may be subject to liability under federal law. It must be remembered that whether or not a physician is deliberately attempting to help a patient obtain marijuana is a question of fact, and the physician's subjective intent must be determined on the facts of each case. The actual wording on a form may not be the only factor that is taken into account in making this determination.

Physicians should especially avoid making any written statements which "warrant" or "certify" that a particular patient is "in compliance" with the new law. It has come to our attention that certain individuals/organizations may be distributing forms which contain such statements. The physician has no way of knowing whether a particular patient, who possess or cultivates marijuana, is actually "in compliance with" the law. For example, a patient may be cultivating marijuana for more than his or her personal medical use. Such cultivation is not authorized by the new law. More importantly, the only purpose of such a "certification" is to assist the patient in 1) obtaining marijuana or 2) being able to cultivate and retain marijuana without punishment/seizure by state authorities.

What if one of my patients gets involved in some sort of an accident as a result of using marijuana for medical purposes?

The Initiative does not 1) supersede legislation prohibiting persons from engaging in endangering conduct nor 2) condone the diversion of marijuana for non-medical purposes. Therefore, if a patient using marijuana drives an automobile and injures another individual in an accident, the patient's physician could in theory be sued by the injured party (and/or by an injured patient him or herself) claiming that the physician, who had discussed the potential health risks and therapeutic benefits of marijuana with the patient, had not adequately warned the patient not to engage in such endangering activity.

If a physician chooses to discuss with a patient the risks and benefits of marijuana, the physician should be sure to warn the patient not to engage in dangerous activities, such as driving, operating large machinery, etc., while under the influence of marijuana and should scrupulously document the

conversation in the patient's medical record. In addition, if the physician knows or has reason to believe that the patient will not heed the physician's advice, the physician may be well-advised to warn the patient's family or other individuals who are likely to occupy an automobile with the patient about the patient's condition. Physicians should be aware that a failure to warn may result in the physician's being liable to the patient if the patient is injured, as well as to third parties who are injured by the patient.

Why did CMA oppose Proposition 215?

CMA believes that seriously ill patients should not be offered a therapy whose efficacy may be illusory and which in some cases may actually worsen the patient's medical condition. CMA has consistently maintained its position that marijuana should be available for therapeutic use as a Schedule II drug **only if** there are properly controlled studies proving that it is efficacious. Proposition 215 was not contingent upon the results of such studies and, consistent with our position on similar legislation in the past, CMA opposes the "medicalization" of marijuana unless and until there is objective proof that such use is scientifically justifiable. CMA does not believe that such proof is currently available. However, CMA encourages studies which will determine appropriate protocols for the prescriptive use of cannabinoids. CMA and its Technical Advisory Committee on Medical Marijuana are actively investigating ways to facilitate properly-controlled clinical trials to determine the risks and benefits of marijuana as a therapeutic agent.

We hope this information is helpful to you. CMA is unable to provide specific legal advice to each of its more than 30,000 members. For a legal opinion concerning a specific situation, consult your personal attorney.

For information on other legal issues, use CMA ON-CALL, or look to CMA's *California Physician's Legal Handbook*. This book contains legal information on a variety of subjects of everyday importance to practicing physicians. Written by CMA's Legal Department, the book is now available in an easy-to-update binder format. Also, CMA attorneys have recently published the *Physician's Managed Care Manual*, which provides practical, business, and legal information regarding managed care contracts. To order your copy of either book, call (800) 882-1CMA, or order CMA ON-CALL Document #1715 for a free order form.

Resolution 107a-97
MEDICAL MARIJUANA

RESOLVED: That the CMA urge that carefully designed, controlled clinical trials of the effectiveness of inhaled marijuana for medical indications be allowed to proceed immediately, and that the CMA urge the AMA to assist in making such studies possible; and be it further

RESOLVED: That CMA immediately initiate efforts at the federal level to facilitate the availability of inhaled marijuana for use in conducting clinical research to determine the medical efficacy of marijuana and urge AMA to assist in that effort; and be it further

RESOLVED: That CMA oppose any governmental threats against physicians arising from discussion of medical marijuana in the context of an established physician-patient relationship.

ACTION: Substitute resolution adopted as amended for combined Resolutions 107-97, 113-97, 124-97 and 132-97

***

State of California

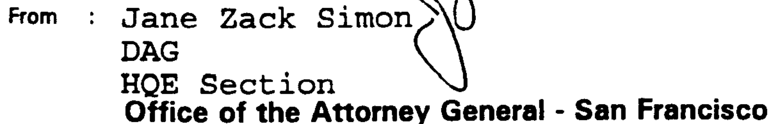
Department of Justice
50 Fremont Street, Suite 300
San Francisco, CA 94105

Memorandum

To : John Gordnier
Sacramento

Date : April 14, 1997

Telephone: CALNET (8) 531-6286
(415) 356-6286
FACSIMILE: (415) 356-6257



From : Jane Zack Simon
DAG
HQE Section
Office of the Attorney General - San Francisco

Subject : Newport Accusation

Attached is a copy of the first amended accusation against Robert Newport, M.D. The Medical Board filed an accusation against Dr. Newport last month based on allegations that Dr. Newport inappropriately diagnosed and treated his son for mental illness, and inappropriately permitted his son to have access to large amounts of prescription medication. The son overdosed on the medication, and died.

The portion of the case that interests you is the Second Causes for Discipline involving Patient E.T. In July, 1996 (pre-Proposition 215) Dr. Newport's "prescribed" marijuana to a patient with serious mental illness. (A copy of the "prescription is attached.) I have pled the accusation as a simple quality of care case, and have alleged that Dr. Newport departed from the standards of medical practice in several respects. First, it was a departure to prescribe marijuana to a patient with the type of mental illness this patient had, since marijuana is known to exacerbate the symptoms. Second, Dr. Newport failed to conduct the requisite good faith medical examination prior to prescribing to the patient. Finally, Dr. Newport's failure to formulate a treatment plan and schedule follow-up visits was a departure form the standards of practice.

John Lancara, the chief of enforcement for the Board, has authorized me to sign the amended accusation on behalf of the Executive Director. I have served Dr. Newport with the amended accusation, and the document is now a public record.

DANIEL E. LUNGREN, Attorney General
of the State of California
JANE ZACK SIMON, SBN 116564
Deputy Attorney General
California Department of Justice
50 Fremont Street, Suite 300
San Francisco, California 94105-2239
Telephone: (415) 356-6286

Attorneys for Complainant

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT R. NEWPORT, M.D.
603 Mission Street, Suite A
Santa Cruz, CA 95060

Physician's and Surgeon's Certificate No. A22211,

Respondent.

Case No. 03 95 48211

FIRST AMENDED ACCUSATION

The Complainant alleges:

PARTIES

1. Complainant, Ron Joseph, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this first amended accusation solely in his official capacity. This first amended accusation will supersede the accusation previously filed in this case.

2. On or about September 13, 1966, Physician's and Surgeon's Certificate No. A22211 was issued by the Board to Robert R. Newport (hereinafter "respondent"). On April 13, 1984, an Accusation was filed against respondent, and on December 19, 1984, a Stipulated Decision became effective under which respondent's certificate was revoked, stayed, and respondent was placed on seven years probation with terms and conditions. On

December 19, 1991, the probation was terminated. At all times relevant to the charges brought herein, this license has been in full force and effect. Unless renewed, it will expire on July 31, 1997.

JURISDICTION

3. This first amended accusation is brought before the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):

A. Section 2227 of the Code provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act.

B. Section 2234 of the Code provides that unprofessional conduct includes, 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.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

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

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

C. Section 725 provides that repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a

physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

D. Section 2238 provides that a violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

E. Section 2242(a) provides that prescribing, dispensing, or furnishing of dangerous drugs as defined in section 2411 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct.

F. Section 11007 of the Health and Safety Code provides that a controlled substance, unless otherwise specified, means any drug, substance or immediate precursor which is listed in any schedule in section 11054, 11055, 11056, 11057 or 11058.

G. Section 11153 of the Health and Safety Code provides, in pertinent part, that a prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. Section 11153 further states that an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized treatment is not a legal prescription.

H. Section 125.3, subdivisions (a) and (c) state, in pertinent part, that in any order issued in resolution of a disciplinary proceeding before any board within the department [of Consumer Affairs], the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or

its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

I. Section 16.01 of the 1996-97 California Budget Act provides as follows:

> "(a) No funds appropriated by this act may be expended to pay any Medi-Cal claim for any service performed by a physician while that physician's license is under suspension or revocation due to a disciplinary action of the Medical Board of California.
>
> "(b) No funds appropriated by this act may be expended to pay any Medi-Cal claim for any surgical service or other invasive procedure performed on any Medi-Cal beneficiary by a physician if that physician has been placed on probation due to a disciplinary action of the Medical Board of California related to the performance of that specific service or procedure on any patient, except in any case where the board makes a determination during its disciplinary process that there exist compelling circumstances that warrant continued Medi-Cal reimbursement during the probationary period.
>
> "(c) The State Department of Health Services shall ensure that no Medi-Cal claim is paid in violation of subdivision (a) or (b)
>
> "(d) The Medical Board of California shall work with the State Department of Health Services to provide all information necessary to accomplish the purposes of this section. The board and the department shall report to the Legislature, upon the conclusion of each calendar quarter of the 1996-97 fiscal year, the number of physicians on probation who are not receiving Medi-Cal reimbursement as a result of this section, and the number of physicians on probation who continue to be eligible for Medi-Cal reimbursement as a result of a determination of the board."

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

FIRST CAUSES FOR DISCIPLINE

(Patient C.N.)

4. The causes for discipline charged herein occurred while respondent was in private practice as a psychiatrist in Santa Cruz, California.

1 5. C.N.[1] was respondent's son. C.N. was born on April 10, 1978.
2 From early childhood, C.N. experienced developmental, emotional and behavioral
3 difficulties. In approximately 1989, when C.N. was 11 years old, he saw a psychiatrist who
4 diagnosed a form of depression. C.N. did not receive continuing therapy or treatment, and
5 respondent and his then-wife disagreed with the diagnosis.

6 6. In October, 1993, C.N. was hospitalized following ingestion of a large
7 amount of alcohol. In late 1993, respondent's former wife, C.N.'s mother, who is not a
8 physician or a health care provider, reached the conclusion that C.N. suffered from attention
9 deficit disorder (ADD). She reported her conclusion to respondent, who agreed with it.
10 Respondent undertook to treat C.N. for ADD, and in November, 1993, began to prescribe
11 imipramine[2] to C.N. Respondent referred C.N. to another physician for a physical
12 examination, but assumed sole responsibility for treating C.N. for the presumed ADD.

13 7. In approximately February, 1994, respondent purchased 1,000 tablets of
14 imipramine from a drug wholesaler, and provided the entire amount to his former wife, with
15 whom C.N. was living, for C.N.'s use.

16 8. In the spring and early summer of 1994, C.N. appeared increasingly
17 despondent, sleepy and depressed and was overeating. In May, 1994, C.N. experienced
18 deep grief and depression following the suicide overdose of a popular rock star.

19 9. In June, 1994, C.N.'s mother left for a week, leaving C.N. at home with
20 the 1,000 tablet bottle of imipramine.. On or about June 22, 1994, C.N., 16 years old,
21 committed suicide by taking an overdose of imipramine.

22 10. In providing C.N. with access with large, lethal amounts of imipramine,
23 particularly in light of C.N.'s history of a diagnosis of depression and symptoms indicating
24 depression, respondent has subjected his license to discipline pursuant to sections 2234(b)
25 (gross negligence); 725 (excessive prescribing or administering of drugs.)
26
27 1. The patient is referred to by initial to protect confidentiality.
28 2. Imipramine is a dangerous drug as defined in section 4211 of the Business and Professions Code.

11. In undertaking to diagnose, treat and prescribe for his son as alleged, particularly in light of C.N.'s medical, emotional and psychiatric history, respondent has subjected his license to discipline pursuant to section 2234(b) (gross negligence.)

12. In accepting and adopting a diagnosis of attention deficit disorder from a non-physician lay person, without having conducted his own examination, evaluation and supplementary diagnostic procedures, respondent has subjected his license to discipline pursuant to section 2234(b) (gross negligence.)

SECOND CAUSES FOR DISCIPLINE

(PATIENT E.T.)

13. On July 23, 1996, respondent saw patient E.T., a 31 year old man with a long history of mental illness, polysubstance abuse, cannabis dependence, noncompliance with medical treatment, criminal offenses and psychiatric hospitalizations. E.T. had a prior diagnosis of schizoaffective disorder. When symptomatic, E.T. was delusional, unable to care for himself, and assaultive toward others and toward property.

14. When E.T. saw respondent on July 23, 1996, he advised respondent that he was currently on a 2 year criminal probation, that he was seeing county physicians, and was taking psychotropic medications. E.T. told respondent that he wanted to discuss marijuana, that marijuana was helpful to him, and that he wanted to use marijuana. During the one hour session, E.T. gave respondent a disjointed and scattered history, and his conversation deteriorated into psychotic rambling, including E.T.'s contention that he was married to the actress Jodie Foster, and that the "government" was attempting to control him with electromagnetic rays.

15. Respondent made no effort to contact E.T.'s treating physicians or probation officer, or to verify E.T.'s report of his medical and psychiatric history. Respondent noted symptoms of active psychosis, and made a diagnosis of bipolar affective disorder. Respondent issued prescription renewals for the desipramine and trazadone previously issued by other physicians. In addition, based on E.T.'s request, respondent

wrote a "prescription" for marijuana[3]. The "prescription" stated: "E___ is a manic-depressive with psychic pain, agitation & insomnia. Marijuana would be useful for mild tranquilization and to assist with side effects of his antipsychotic meds." Respondent later stated that he issued the prescription in order to assist E.T. with his probation officer. Respondent did not document the marijuana "prescription" in E.T.'s medical record.

16. Respondent made no plans to see E.T. for a return visit, and made no plans to follow-up on him. Respondent made no treatment plan for E.T..

17. In prescribing marijuana, a substance known to exacerbate symptoms of psychotic illness, worsen paranoia and hallucinations, to E.T. as alleged, respondent has subjected his license to disciplinary action pursuant sections 2234 (unprofessional conduct),2234(b) (gross negligence), 2234(c) (negligence) and 2234(d) (incompetence.)

18. In prescribing to E.T. as alleged, respondent prescribed without a good faith prior medical examination and/or without medical indication. Respondent's conduct as alleged is cause for disciplinary action pursuant to sections 2234(b) (gross negligence), 2234(c) (negligence), 2234(d) (incompetence), 2238 (violation of drug statutes) and/or, 2242(a) (prescribing without good faith prior examination and medical indication) of the Business and Professions Code, and section 11153 (prescribing of controlled substance without legitimate medical purpose) of the Health and Safety Code.

19. In failing to formulate a treatment plan and follow-up treatment for E.T., respondent has subjected his license to disciplinary action pursuant to sections 2234(unprofessional conduct), 2234(b) (gross negligence), 2234(c) (negligence), and 2234(d) (incompetence).

PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Division issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number

---

3. Marijuana (cannabis sativa L.) is a Schedule I controlled substance as defined in Health and Safety Code section 11054.

1 A22211 heretofore issued to respondent Robert R. Newport;

2 2. Revoking, suspending or denying approval of the respondent's authority

3 to supervise physician's assistants, pursuant to Business and Professions Code section 3527;

4 3. Ordering respondent to pay the Division the actual and reasonable costs

5 of the investigation and enforcement of this case and, if placed on probation, the costs of

6 probation monitoring;

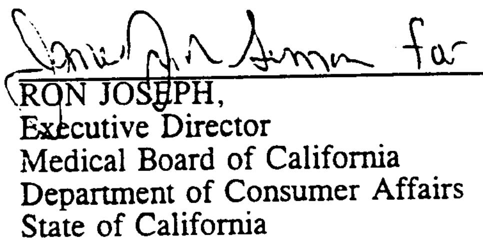
7 4. Taking such other and further action as the Division deems necessary

8 and proper.

9 DATED: April 11, 1997.

10

11



12

13 RON JOSEPH,
Executive Director
Medical Board of California
14 Department of Consumer Affairs
State of California

15 Complainant

16

17

18

19

20

21

22

23

24

25

26

27

28

DECLARATION OF SERVICE

Re: *In the Matter of the Accusation Against:*
Robert R. Newport, M.D.

Medical Board of California Case No.: 03 95 48211

I Cynthia Sheppard, declare:

I am employed in the County of San Francisco, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 50 Fremont Street, Rm. 300, San Francisco, California 94105.

On April 11, 1997, I served the attached

FIRST AMENDED ACCUSATION

by placing said copy thereof in an envelope addressed as follows:

NAME/ADDRESS	CERT. NUMBER
Robert R. Newport, M.D. 603 Mission Street, Suite A Santa Cruz, CA 95060	P 419 958 527

th[illegible] each said envelope was then sealed, certified and deposited in [illegible]e United States Mail at San Francisco, California, on April 11, 1997 as certified mail with postage fully prepaid thereon and return receipt requested; that there is regular communication and delivery service by United States mail between the place of mailing and the place so addressed.

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on April 11, 1997 at San Francisco, California.

Cynthia Sheppard — Cynthia Sheppard (Signature)

P 419 958 527

US Postal Service
Re[illegible] Certified Mail
[illegible]verage Provided.
Do not use for International Mail (See reverse)

Sent to	Robert R. Newport, M.D.
Street & Number	603 Mission St., Ste. A
Post Office, State, & ZIP Code	Santa Cruz, CA 95060
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	4/11/97 First Amended Accusation & Supplemental Statement to Resp.

PS Form 3800, April 1995

Cultivation Contract

To Whom It May Concern:

In accordance with 11362.5 of California's Health & Safety Code is hereby assigned caregiver rights [Sec (e)] by the San Francisco Cannabis Cultivators Club (CCC). These rights include the cultivation (49 plant limit), processing and transportation of medical marijuana for bona fide patients who have recommendations from their doctor.

Caregiver is not permitted to divert this marijuana to any other entity other than the CCC. Furthermore, caregiver pledges high quality-- pesticide and mold-free marijuana-- at production costs.

Dennis Peron

Signature required to validate