

IN THE MATTER

OF

**BARRY GERALD LEW, M.D.
CO-02-03-1203-A**

**COMMISSIONER'S
SUMMARY
ORDER**

TO: BARRY GERALD LEW, M.D.
118-72 Beaty Avenue
Norwalk, CA 90650

BARRY GERALD LEW, M.D.
340 Woodland Drive
Sedona, AZ 86336

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction (The Superior Court of Los Angeles, Judicial District, County of Los Angeles, State of California, by an Order Restricting Practice of Medicine, pursuant to California Penal Code, Section 23, having superseded the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs) has made a finding substantially equivalent to a finding that the continued practice of medicine by BARRY GERALD LEW, M.D. (the Respondent), who was authorized to practice medicine in New York state on August 30, 1963, by the issuance of license number 091051 by the New York State Education Department, in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in documents of the Superior Court of Los Angeles, Judicial District, County of Los Angeles, State of California and California Penal Code, Section 23, that are attached hereto as Appendix "A" and made a part of hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, BARRY GERALD LEW, M.D., Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine.

Any practice of medicine in the State of New York in any other jurisdiction where that practice of medicine is dependent on a valid New York State license to practice medicine in violation of this Commissioner's Summary Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530 and may constitute unauthorized medical practice, a felony defined by N.Y. Educ. Law §6512.

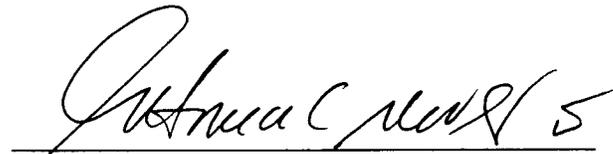
This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty days after the final conclusion of the proceeding in the State of California. The hearing will be held pursuant to the provisions of NY. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing, together with a Statement of Charges to be provided to the Respondent after the final conclusion of the California proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of
Professional Medical Conduct, New York State
Department of Health, 433 River Street, Suite 303, Troy,
NY 12180-2299 via Certified Mail, Return Receipt
Requested, of the final conclusion of the Maryland
proceeding immediately upon such conclusion.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS
MATTER.

DATED: Albany, New York

July 3 ,2002


ANTONIA C. NOVELLO, M.D. M.P.H., Dr. P.H.
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

||

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FILED
LOS ANGELES SUPERIOR COURT

FEB 06 2002

JOHN A. CLARKE, CLERK

Stale
DISTRICT DEPUTY

**SUPERIOR COURT OF LOS ANGELES JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

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THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

(D1) GERALD BARRY LEW, M.D., and
(D2) WILLIAM FRANCIS PUGLIESE, P.A.
Defendants.

RON JOSEPH, Executive Director
MEDICAL BOARD OF CALIFORNIA,
DIVISION OF MEDICAL QUALITY
and
RICHARD L. WALLINDER, JR., Executive Officer
PHYSICIAN ASSISTANT COMMITTEE of the
MEDICAL BOARD OF CALIFORNIA,
DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA,
Intervenors.

) Case No. NA 051-705
)
)
) [Proposed]
)
)
) **ORDER RESTRICTING
PRACTICE OF MEDICINE**
)
) **DEFENDANT 1: GERALD
BARRY LEW, M.D.**
) [Penal Code § 23]

TO THE TO THE PARTIES IN THE ABOVE-ENTITLED ACTION:

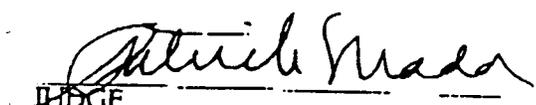
The Court having read and considered the "Ex Parte Application to Intervene by State Licensing Agencies re: Restrictions on Practice," filed with the Court on February 6, 2002, by Ron Joseph, Executive Director of the Medical Board of California (Board), through counsel, Attorney General of the State of California Bill Lockyer, by Deputy Attorney General Nancy Ann Stoner, and having heard and considered any objections raised by counsel on behalf of the Defendant No. 1, BARRY G. LEW, M.D.,

1 **IT IS HEREBY ORDERED THAT**, Defendant No. 1, BARRY G. LEW, M.D.,
2 Physician and Surgeon Certificate No. E 3909, is prohibited from practicing or attempting to
3 practice any aspect of medicine during the pendency of this criminal action ~~and/or during the~~
4 ~~pendency of any administrative or disciplinary action initiated by the Board~~. Such prohibition
5 includes, but is not limited to:

- 6 • advertising, by any means, or billing or holding himself out as practicing or
- 7 available to practice medicine, or being able to supervise or be supervised by
- 8 others who practice medicine;
- 9 • being present in any location or office setting in which medicine may be practiced
- 10 for any purpose except as a patient or as a visitor of a family member who is a
- 11 patient; and
- 12 • possessing, ordering, purchasing, receiving, prescribing, furnishing,
- 13 administering, or otherwise distributing or using controlled substances or
- 14 dangerous drugs, as defined by federal or state law.

15
16 **IT IS FURTHER ORDERED** that Defendant No. 1, BARRY G. LEW, M.D.,
17 immediately surrender to the Board or its representative for safekeeping, all indicia of
18 defendant's license to practice as a physician and surgeon, as contemplated by Business and
19 Professions Code Section 119, including but not limited to, defendant's wall certificate and
20 wallet card issued to him by the Board.

21 DATED: Feb. 6, 2002

22
23
24 
25 JUDGE
26 Superior Court of Los Angeles
27
28

1 BILL LOCKYER, Attorney General
of the State of California
2 NANCY ANN STONER, State Bar No. 072839
Deputy Attorney General
3 300 South Spring Street, Suite 1702
Los Angeles, California 90013
4 Telephone: (213) 897-6793
Facsimile: (213) 897-1071

5 Attorneys for Intervenors:
6 RON JOSEPH, Executive Director
MEDICAL BOARD OF CALIFORNIA,
7 DIVISION OF MEDICAL QUALITY
and
8 RICHARD L. WALLINDER, JR., Executive Officer
PHYSICIAN ASSISTANT COMMITTEE of the
9 MEDICAL BOARD OF CALIFORNIA

ORIGINAL FILED
FEB 06 2002
LOS ANGELES
SUPERIOR COURT

10
11 **SUPERIOR COURT OF LOS ANGELES JUDICIAL DISTRICT**
12 **COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,
15 v.
16 (D1) GERALD BARRY LEW, M.D., and
(D2) WILLIAM FRANCIS PUGLIESE, P.A.
17 Defendants.

18
19 RON JOSEPH, Executive Director
MEDICAL BOARD OF CALIFORNIA,
DIVISION OF MEDICAL QUALITY
20 and
21 RICHARD L. WALLINDER, JR., Executive Officer
PHYSICIAN ASSISTANT COMMITTEE of the
MEDICAL BOARD OF CALIFORNIA,
22 DEPARTMENT OF CONSUMER AFFAIRS,
23 STATE OF CALIFORNIA,
24 Intervenors.

) Case No. NA 051-705
)
) **EX PARTE APPLICATION TO**
) **INTERVENE BY STATE**
) **LICENSING AGENCIES**
)
) **RE: RESTRICTION ON**
) **PRACTICE; MEMORANDUM**
) **OF POINTS AND**
) **AUTHORITIES;**
) **DECLARATION**
)
) [Penal Code § 23]
)
) DATE: February 6, 2002
) TIME: 1:30 p.m.
) PLACE: South District-Long Beach
) DEPT: D
) 415 W. Ocean Blvd.
) Long Beach, CA 90802

26 **TO THE CLERK OF THE ABOVE-ENTITLED COURT:**

27 **PLEASE TAKE NOTICE** that on February 6, 2002, at 1:30 p.m., or as soon
28 thereafter as the matter may heard in Department D of the above-entitled court, Ron Joseph, in

EX PARTE APPLICATION TO INTERVENE BY STATE LICENSING AGENCIES
MEM. P&A'S; DECL.

1 his official capacity as the Executive Director of the Medical Board of California (Board),
2 Division of Medical Quality, and Richard L. Wallinder, Jr., in his official capacity as the
3 Executive Officer of the Physician Assistant Committee, Medical Board of California,
4 Department of Consumer Affairs, will voluntarily appear before this Court, through counsel,
5 California Attorney General, Bill Lockyer, by Deputy Attorney General Nancy Ann Stoner, and
6 seek to intervene under the authority of Penal Code Section 23, to request an Order prohibiting
7 Defendant No.1, GERALD BARRY LEW, M.D., (Physician and Surgeon Certificate No.
8 G34168), and Defendant No. 2, WILLIAM PUGLIESE, P.A., (Physician Assistant License No.
9 PA 12876), from practicing or attempting to practice any aspect of medicine during the pendency
10 of this action and/or during the pendency of any administrative or disciplinary action initiated by
11 their respective Board or Committee. Such prohibition includes, but is not limited to:

- 12 • advertising, by any means, or billing or holding themselves out as practicing or available
13 to practice medicine, or being able to supervise or be supervised by others who practice
14 medicine;
- 15 • being present in any location or office setting in which medicine may be practiced for any
16 purpose except as a patient or as a visitor of a family member who is a patient; and
- 17 • possessing, ordering, purchasing, receiving, prescribing, furnishing, administering, or
18 otherwise distributing or using controlled substances or dangerous drugs, as defined by
19 federal or state law.

20 It is further requested that upon Order of this Court, the defendants shall immediately
21 surrender to their licensing agency, or its representative, for safekeeping all indicia of
22 defendants' licenses to practice as a Physician and Surgeon, and as a Physician Assistant, as
23 contemplated by Business and Professions Code Section 119, including but not limited to,
24 defendants wall certificates and wallet cards.

25 This Order is requested in the interest of justice and as a condition of any bail, or own
26 recognizance release, because, if allowed to practice or attempt to practice medicine, the
27 defendants would endanger the public health, safety and/or welfare.

28 This application is based upon the attached memorandum of points and authorities,

1 declaration of counsel, supporting exhibits submitted under separate cover, all files and records
2 in this matter and any other evidence as may be presented at the hearing on this application.

3 DATED: February 5, 2002

4 Respectfully submitted,

5 BILL LOCKYER, Attorney General
6 of the State of California

7 

8 NANCY ANN STONER
9 Deputy Attorney General

10 Attorneys for Intervenors
11 RON JOSEPH, Executive Director
12 MEDICAL BOARD OF CALIFORNIA,
13 DIVISION OF MEDICAL QUALITY
14 and

15 RICHARD L. WALLINDER, JR., Executive Officer
16 PHYSICIAN ASSISTANT COMMITTEE of the
17 MEDICAL BOARD OF CALIFORNIA
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MEMORANDUM OF POINTS AND AUTHORITIES

THE COURT IS EMPOWERED TO RESTRICT THE USE OF A PROFESSIONAL LICENSE AS A CONDITION OF BAIL OR OWN RECOGNIZANCE RELEASE WHERE, AS HERE, THE DEFENDANTS POSE A DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE AND THE CHARGED CRIMES ARE SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF THE LICENSE

INTRODUCTION

Defendant No. 1: Barry Gerald Lew, M.D.

BARRY GERALD LEW, M.D., (Defendant No. 1) was issued Physician and Surgeon Certificate No. E3909 on June 9, 1977, by the Medical Board of California (Board). The license is valid and will not expire until March 31, 2003. At the time of the acts alleged in the criminal complaint, Dr. Lew's license was on probation for prior misconduct (Exhibit 1, copy of License Certification).¹ Effective June 26, 1998, the Board had revoked Dr. Lew's license, however that revocation was stayed and the license was placed on four (4) years probation, with certain terms and conditions (Exhibit 2, copy of prior discipline Decision). Two of those terms included: (1) take a course in prescribing practices; and (2) have his practice monitored, including chart review for taking patient histories, documenting physical examinations, developing a diagnosis and treatment program for his patients, with particular attention being paid to the area of prescribing steroid (anabolic) therapy (Exhibit 3, copy of Monitoring Plan of Supervision). The allegations underlying that disciplinary order, which Dr. Lew did not contest, involved excessive prescribing controlled substances and anabolic steroids, without medical indication, to two patients over several years, between 1992 to 1995.

Prior to this criminal complaint being filed, the Board filed an Accusation and Petition to Revoke Probation (Accusation) against Defendant Lew on June 14, 2001 (Medical Board Case No. D1-1995-55664; a true and accurate copy is provided as Exhibit 4 in support of this Application). That Accusation is based on allegations that Dr. Lew and/or his Physician Assistant, William

All exhibits supporting this request are submitted under separate cover for the court's and counsels' convenience.

1 Francis Pugliese (Defendant No. 2) were grossly negligent, repeatedly negligent, incompetent, and
2 violated the drug prescribing laws, among other violations, in their care and treatment of at least nine
3 (9) patients. Each of these patients received prescriptions for dangerous and addicting controlled
4 substances, including Vicodin and Valium, without any medical indication or physical examination
5 conducted or documented in their records. At least two of these patients were known addicts and
6 some of the patients underwent excessive, unnecessary tests with no follow-up of abnormal results.
7 The dates of these alleged violations span from 1993 to 1999.

8 The criminal complaint alleges additional, recent violations that mostly occurred in 1999.
9 Other than the allegations concerning one undercover operative, Lisa Voisard, all of the patients in
10 the criminal proceeding are different from the patients involved in the Board's Accusation (counts
11 20-22 in the criminal complaint; paragraphs nn-pp in the Accusation, pages 18-19). This complaint
12 charges that on at least ten occasions, undercover operatives were prescribed the controlled substance
13 Phentermine, also known as "Fastin,"² without a legitimate medical purpose. The criminal
14 complaint also alleges misconduct that far exceeds the scope of the violations alleged in the Board's
15 Accusation: purchasing drugs through a pharmaceutical company that gives a kickback for each
16 prescription sold at the doctor's office; allowing the Physician Assistant to obtain the controlled
17 substances and sell or prescribe them at the doctor's office; allowing employees to document false
18 diagnoses in patients' charts; splitting fees generated from the Physician Assistant's illegal
19 prescribing of controlled substances; fraudulently billing Medi-Cal for medical services that were
20 not provided. For purposes of public protection, and his obligations as a physician, it does not
21 matter whether Dr. Lew personally committed the charged acts, or allowed his Physician Assistant
22 to commit them at his medical office: he is responsible for the medical services performed, or not
23 performed, by the Physician Assistant. (Bus. & Prof. Code §§ 3501, subdiv. (f), and 3502.1, Title
24 16, California Code of Regulations, §1399.541.) This long and uninterrupted history of
25 misconduct shows that Defendant Lew does not know how to practice medicine safely, can not be
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27 ² According to the Physician's Desk Reference (54 Edition 2000), Fastin is a
28 Schedule IV drug that is occasionally used for the short term treatment of obesity, as an adjunct
to diet. It is chemically and pharmacologically related to amphetamines and shares the side
effects and drug abuse potential of that group (pp. 3003-3004).

1 trained or monitored to correct his prescribing practices, will not conform his behavior to the limits
2 of the law, and can not be trusted to deal honestly with the public fisc or his patients' lives.

3
4 **Defendant No. 2: William Francis Pugliese, P.A.**

5 WILLIAM FRANCIS PUGLIESE, P.A., (Defendant No. 2) was issued Physician Assistant
6 License No. PA 12876 on March 6, 1992, by the Physician Assistant Committee (Committee). That
7 license was valid at the time of the acts alleged in the criminal complaint and it is not due to expire
8 until April 30, 2003 (Exhibit 1, copy of License Certification). Although Pugliese does not have a
9 prior disciplinary history, an Accusation is currently pending against him. The Accusation was filed
10 by the Executive Officer of the Committee on June 21, 2001, and is a companion case to the
11 Accusation and Petition to Revoke Probation filed against Defendant No. 1, Dr. Lew (Physician
12 Assistant Committee Case No. 1E-1999-101315; a true and accurate copy is provided as Exhibit 5
13 in support of this Application). The Accusation charges that Pugliese, as a Physician Assistant, and
14 Dr. Lew, as his supervising physician, were grossly negligent, repeatedly negligent, incompetent,
15 and violated the drug prescribing laws, among other violations, in their care and treatment of at least
16 nine (9) patients, each of whom received prescriptions for dangerous and addicting controlled
17 substances without any medical indication or physical examination conducted or documented in their
18 records. The dates of these alleged violations span from 1993 to 1999.

19 Thus, within one year of receiving his license, Defendant Pugliese violated the public trust
20 and endangered the patients who came to see him. The criminal complaint alleges misconduct that
21 goes beyond an inability to practice medicine safely. It involves allegations of falsifying records,
22 making money off of endangering people's health by improperly prescribing controlled substances,
23 and defrauding the limited resources of the Medi-Cal system that subsidizes health care for the poor.
24 The allegations indicate Defendant Pugliese is unable to handle the responsibilities entrusted in him,
25 and he is too dishonest to practice medicine safely, with the health and welfare of the public in mind.

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28 ////

1 **ARGUMENT**

2 The Medical Board of California and the Physician Assistant Committee are authorized by
3 the Legislature to voluntarily appear in criminal proceedings and make recommendations regarding
4 specific conditions of bail, pre-trial release, probation or sentencing that protect the public, including
5 orders prohibiting a defendant from engaging in licensed activities. Specifically, Penal Code section
6 23 provides:

7 In any criminal proceeding against a person who has been issued a license to
8 engage in a business or profession by the state agency pursuant to provisions of the
9 Business and Professions Code. . . , the state agency which issued the license may
10 voluntarily appear to furnish pertinent information, make recommendations regarding
11 specific conditions of probation, or provide assistance necessary to promote the
12 interests of justice and protect the interests of the public, or may be ordered by the
13 court to do so, if the crime charged is substantially related to the qualifications,
14 functions, or duties of the licensee.

15 Section 23 is a liberally designed statute adopted by the Legislature to promote public
16 protection and to assist the court or magistrate to accomplish that end. The statute recognizes that
17 licensing agencies, such as the Medical Board of California and Physician Assistant Committee,
18 have a compelling and urgent interest in cases in which licensees are charged with crimes
19 substantially related to the qualifications, functions, and duties of their profession.

20 This Court may place restrictions upon a defendant as a condition of bail. Penal Code section
21 1275 provides in relevant part:

22 (a) In setting, reducing, or denying bail, the judge or magistrate shall take
23 into consideration the protection of the public, the seriousness of the offense
24 charged, the previous criminal record of the defendant, and the probability of his or
25 her appearing at trial or hearing of this case. The public safety shall be the
26 primary consideration. (Emphasis added.)

27 Similarly, Penal Code section 1318 expressly provides that a defendant must promise to obey
28 "all reasonable conditions" imposed by the court as a condition of release pending trial. In *In Re*
York (1995) 9 Cal.4th 1133, the Supreme Court stated that the "reasonable conditions" contemplated
by the statute went beyond merely assuring a defendant's appearance in court for specified future
dates, but instead empowered a court to impose appropriate conditions for reasons of public safety
pending trial. The only limitation on this power is that the court must make a specific individualized
determination as to the appropriateness of the condition with respect to the defendant.

1 This discretion to curtail a defendant's dangerous practices is like the court's broad discretion
2 to impose conditions of probation prohibiting a person from engaging in any occupational,
3 vocational, or professional activity, whether or not regulated by state licensing agencies, if it relates
4 to the crime for which he was charged or convicted, or forbids conduct related to possible future
5 criminality. In both situations, the conditions serve to protect the public. (*People v. Keefer* (1973)
6 35 Cal.App.3d 156, 168-169 (defendant precluded from heating business after theft conviction);
7 *People v. Frank* (1949) 94 Cal.App.2d 740, 741-742 (pediatrician could not practice medicine after
8 lewd act conviction); also *People v. Lewis* (1978) 77 Cal.App.3d 455, at 463-464 (defendant could
9 not drive taxis or bartend after pimping conviction).)

10

11 **Basis of Request for Suspension of Right to Practice**

12 Through this appearance, the Executive Officers of the Medical Board and Physician
13 Assistant Committee request that this Court exercise its authority to order, as a provision of bail or
14 O.R. release, that Defendants Lew and Pugliese shall be prohibited from engaging in the practice of
15 medicine, and any related licensed activity, until disciplinary action can be taken and a decision
16 rendered by the Board and/or Committee. Unless restricted, their licenses entitle them to purchase
17 and prescribe more drugs, "examine" patients, bill for services allegedly rendered, and perform
18 surgeries and other medical procedures included within the practice of medicine.

19 Ample reasons exist for the Court to impose such an order. Defendant Lew is a recalcitrant
20 physician who endangers patients with his long-term, undisciplined prescribing of controlled
21 substances that not only are addictive, but also are harmful when prescribed without medical
22 indication and proper monitoring. Measures short of suspension have not worked to stop these
23 practices. According to the allegations in the criminal complaint, Defendant Lew engaged the
24 assistance of another untrustworthy licensee, Defendant Pugliese, to profiteer from the illegal sale
25 and prescribing of drugs from Lew's medical office. Together they defrauded the health care system
26 for the poor by falsely billing Medi-Cal for extensive physical examinations that did not occur.
27 "There is no other profession in which one passes so completely within the power and control of
28 another as does the medical patient." (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d

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1 or attempting to practice any aspect of medicine as a Physician Assistant during the pendency of this
2 action and/or during the pendency of any administrative or disciplinary action initiated by the
3 Committee.

4 DATED: February 5, 2002

5 Respectfully submitted,

6 BILL LOCKYER
7 Attorney General

8 
9 NANCY ANN STONER,
10 Deputy Attorney General

11 Attorneys for Intervenors

12 RON JOSEPH, Executive Director
13 MEDICAL BOARD OF CALIFORNIA,
14 DIVISION OF MEDICAL QUALITY
15 and

16 RICHARD L. WALLINDER, JR., Executive Officer
17 PHYSICIAN ASSISTANT COMMITTEE of the
18 MEDICAL BOARD OF CALIFORNIA

19 DEPARTMENT OF CONSUMER AFFAIRS
20 STATE OF CALIFORNIA
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1 BILL LOCKYER, Attorney General
of the State of California
2 NANCY ANN STONER, State Bar No. 072839
Deputy Attorney General
3 300 South Spring Street, Suite 1702
Los Angeles, California 90013
4 Telephone: (213) 897-6793
Facsimile: (213) 897-1071

5 Attorneys for Intervenors:
6 RON JOSEPH, Executive Director
MEDICAL BOARD OF CALIFORNIA,
7 DIVISION OF MEDICAL QUALITY
and
8 RICHARD L. WALLINDER, JR., Executive Officer
PHYSICIAN ASSISTANT COMMITTEE of the
9 MEDICAL BOARD OF CALIFORNIA

10
11 SUPERIOR COURT OF LOS ANGELES JUDICIAL DISTRICT
12 COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,

15 v.

16 (D1) GERALD BARRY LEW, M.D., and
17 (D2) WILLIAM FRANCIS PUGLIESE, P.A.
18 Defendants.

19 RON JOSEPH, Executive Director
MEDICAL BOARD OF CALIFORNIA,
20 DIVISION OF MEDICAL QUALITY
and
21 RICHARD L. WALLINDER, JR., Executive Officer
PHYSICIAN ASSISTANT COMMITTEE of the
22 MEDICAL BOARD OF CALIFORNIA,
23 DEPARTMENT OF CONSUMER AFFAIRS,
STATE OF CALIFORNIA,
24 Intervenors

) Case No. NA 051-705
)
) **DECLARATION OF COUNSEL**
) **NANCY ANN STONER**
) **IN SUPPORT OF EX PARTE**
) **APPLICATION TO**
) **INTERVENE BY STATE**
) **LICENSING AGENCIES**
)
) **RE: RESTRICTION ON**
) **PRACTICE**
) [Penal Code § 23]
)
) DATE: February 6, 2002
) TIME: 1:30 p.m.
) PLACE: South District-Long Beach
) DEPT:
) 415 W. Ocean Blvd.
) Long Beach, CA

25 I, NANCY ANN STONER, hereby declare:

26 1. I am an attorney licensed to practice in the State of California and am employed with
27 the California Department of Justice as a Deputy Attorney General in the Health Quality
28 Enforcement Section in Los Angeles.

1 2. In this capacity, I am the attorney of record assigned to make an appearance in this
2 case on behalf of Ron Joseph, Executive Director of the Medical Board of California, and on behalf
3 of Richard L. Wallinder, Jr., Executive Officer of the Physician Assistant Committee.

4 3. As counsel for the Board and Committee, I was informed of this arraignment by
5 Deputy Attorney General Alexandra Ramsburg Kirk. On February 4, 2002, I reviewed a copy of the
6 Felony Complaint that was filed on behalf of the Bureau of Medi-Cal Fraud and Elder Abuse in this
7 matter (Case No. NA 051-705).

8 4. I also reviewed a certified copy of the prior Decision and Order of the Medical Board
9 of California, and the attached Stipulation and underlying Accusation, in Board case No. 11-95-
10 55664. True and correct copies of those documents are attached as Exhibit 2 in support of the
11 Board's *Ex Parte* Application to Intervene by State Licensing Agencies re: Restriction on Practice
12 (Application). True and correct copies of the Monitoring Plan of Supervision that are part of the
13 Board's enforcement file for this disciplinary order are also attached as Exhibit 3 in support of the
14 Application. The attached Memorandum of Points and Authorities accurately summarizes pertinent
15 parts of those documents.

16 5. I reviewed, and accurately summarized the pertinent parts of, the Accusation and
17 Petition to Revoke Probation (Medical Board Case No. D1-1995-55664) that is currently pending
18 against Defendant Lew. A true and accurate copy of that document is attached as Exhibit 4 in
19 support of the Application. Likewise, I reviewed, and accurately summarized the pertinent parts of,
20 the Accusation (Physician Assistant Committee Case No. 1E-1999-101315) that is currently pending
21 against Defendant Pugliese. A true and accurate copy of that document is attached as Exhibit 5 in
22 support of this Application.

23 6. As a member of the Health Quality Enforcement Section, I am personally familiar
24 with the fact that the pending administrative Accusations against Defendants Lew and Pugliese were
25 recently reassigned to a fellow Deputy Attorney General in this section, Robert McKim Bell, after
26 the previously assigned Deputy Attorney General, Mark T. Roohk, left the office. A hearing date
27 has not been scheduled for these administrative matters.

28 7. After reviewing the pending disciplinary Accusations and the prior Decision against

1 Defendant Lew, it is apparent that the criminal charges recently filed against Defendants Lew and
2 Pugliese involve new and very serious matters that are not part of the existing disciplinary case or
3 underlying investigation. Unless a criminal conviction is obtained, the Board and Committee would
4 have to put on the same evidence, witnesses and exhibits that must be used in this criminal
5 proceeding in order to prove the charges.

6 8. A Petition for an Interim Suspension Order pursuant to Government Code section
7 11529 is the procedure the Board and Committee can utilize to temporarily suspend the defendants'
8 licenses in order to protect the public's safety while a disciplinary action is pending. However, the
9 procedure is time consuming, costly, and largely duplicates the criminal proceedings if undertaken
10 prior to a conviction. The evidence supporting the criminal case and pending administrative charges
11 must be converted into documentary evidence and witness declarations that are submitted to an
12 administrative law judge. Time is necessary to investigate the new allegations and to prepare the
13 petition and declarations.

14 9. It is the position of the Executive Director of the Medical Board of California that
15 Barry Gerald Lew, M.D., is unsafe to practice medicine and should be deprived of that privilege
16 pending completion of these criminal proceedings and any proceedings by the Board itself.
17 Likewise, it is the position of the Executive Officer of the Physician Assistant Committee that
18 William Pugliese is unsafe to practice as a Physician Assistant and should be deprived of that
19 privilege pending completion of these criminal proceedings and any proceedings by the Committee
20 itself. This Court's exercise of authority under sections 1275 (release of defendant on bail) and 1318
21 (regarding own recognizance [O.R.] release), in conjunction with section 23 of the Penal Code,
22 addresses both the interest of justice and the need for prompt public protection. The Board and the
23 Committee respectfully request, through counsel, that this Court issue such an order at this time.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed this 6th day
25 of February, 2002, in Los Angeles, California.

26
27 
28 NANCY ANN STONER
Deputy Attorney General
Declarant

DECLARATION OF COUNSEL IN SUPPORT OF EX PARTE APPLICATION

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2 MARK T. ROOHK, State Bar No. 132698
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *June 14 2001*
BY *Samuel S. Mendenhall*

6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. D1-1995-55664

14 BARRY LEW, M.D.
15 5600 Atlantic Avenue
16 Long Beach, California 90805

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

Physician and Surgeon's Certificate No. G34168

Respondent.

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about June 9, 1977, the Medical Board of California issued
24 Physician and Surgeon's Certificate ("License") Number G34168 to Barry Lew, M.D.
25 ("Respondent"). Except as otherwise alleged below, the License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on March 31, 2001, unless renewed.

27 //

28

1 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
2 California Intractable Pain Treatment Act shall be subject to disciplinary action for
3 lawfully prescribing or administering controlled substances in the course of treatment of
4 person for intractable pain.”

5 7. Section 2241 of the Code states in pertinent part:

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

10 “...”

11 8. Section 2242 of the Code states in pertinent part:

12 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section
13 4022 without a good faith prior examination and medical indication therefor, constitutes
14 unprofessional conduct.

15 “...”

16 9. Section 2238 of the Code states:

17 “A violation of any federal statute or federal regulation or any of the statutes or
18 regulations of this state regulating dangerous drugs or controlled substances constitutes
19 unprofessional conduct.”

20 10. Section 2266 of the Code states: “The failure of a physician and surgeon to
21 maintain adequate and accurate records relating to the provision of services to their patients
22 constitutes unprofessional conduct.”

23 11. Section 3527, subdivision (d), of the Code provides in pertinent part that
24 the Division may, in conjunction with an action it has commenced against a physician and
25 surgeon, order the suspension or revocation of, or the imposition of probationary conditions
26 upon, an approval to supervise a physician's assistant, for unprofessional conduct, which
27 includes, but is not limited to, a violation of the Medical Practice Act or a violation of the
28 regulations adopted by the Physician Assistant Committee or the Board.

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12. Section 1399.545 of Title 16 of the California Code of Regulations

provides:

- (a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.
- (b) A supervising physician shall delegate to a physician assistant only those task and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.
- (c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.
- (d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.
- (e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:
 - (1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;
 - (2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;
 - (3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For

1 protocols governing procedures, the protocol shall state the information to be
2 given the patient, the nature of the consent to be obtained from the patient, the
3 preparation and technique of the procedure, and the follow-up care. Protocols
4 shall be signed and dated by the supervising physician and the physician assistant.
5 The supervising physician shall review, countersign, and date a minimum of 10%
6 sample of medical records of patients treated by the physician assistant
7 functioning under these protocols within thirty (30) days. The physician shall
8 select for review those cases which by diagnosis, problem, treatment or procedure
9 represent, in his or her judgment, the most significant risk to the patient;

10 (4) Other mechanisms approved in advance by the [Physician Assistant
11 Committee].

12 ...
13 (g) The supervising physician has continuing responsibility to follow the progress
14 of the patient and to make sure that the physician assistant does not function
15 autonomously. The supervising physician shall be responsible for all medical
16 services provided by a physician assistant under his or her supervision.

17 13. The following sections of the California Health and Safety Code are
18 relevant to this Accusation:

19 a. Section 11153 provides as follows:

20 "(a) A prescription for a controlled substance shall only be
21 issued for a legitimate medical purpose by an individual practitioner acting in the
22 usual course of his or her professional practice. The responsibility for the proper
23 prescribing and dispensing of controlled substances is upon the prescribing
24 practitioner, but a corresponding responsibility rests with the pharmacist who fills
25 the prescription. Except as authorized by this division, the following are not legal
26 prescriptions:

27 "(1) an order purporting to be a prescription which is issued not
28 in the usual course of professional treatment or in legitimate and authorized

1 research; or

2 "(2) an order for an addict or habitual user of controlled
3 substances, which is issued not in the course of professional treatment or as part
4 of an authorized narcotic treatment program, for the purpose of providing the user
5 with controlled substances, sufficient to keep him or her comfortable by
6 maintaining customary use."

7 b. Section 11156 provides as follows: "[n]o person shall prescribe for:
8 or administer, or dispense a controlled substance to an addict or habitual user, or to any
9 person representing himself as such, except as permitted by this division."

10 c. Section 11157 provides as follows: "[n]o person shall issue a
11 prescription that is false or fictitious in any respect."

12 d. Section 11171 provides as follows: "[n]o person shall prescribe,
13 administer, or furnish a controlled substance except under the conditions and in the
14 manner provided by this division."

15 14. The following medications are dangerous drugs within the meaning of
16 Business and Professions Code section 4022 and, where indicated, controlled substances within
17 the meaning of Health and Safety Code sections 11056 and 11057:

18 a. Vicodin, a trade name for hydrocodone and acetaminophen, a
19 Schedule III controlled substance per section 11056;

20 b. Valium, a trade name for diazepam, a Schedule IV controlled
21 substance per section 11057;

22 c. Xanax, a trade name for alprazolam, a Schedule IV controlled
23 substance per section 11057;

24 d. Tylenol #3, a trade name for acetaminophen with codeine, a
25 Schedule III controlled substance per section 11056;

26 e. Soma, a trade name for carisoprodol.

27 15. Section 125.3 of the Code provides, in pertinent part, that the Division
28 may request the administrative law judge to direct a licensee found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case.

3 16. Section 14124.12 of the Welfare and Institutions Code states, in pertinent
4 part:

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

18

19

FIRST CAUSE FOR DISCIPLINE

20

(Gross Negligence)

21

22

23

17. Respondent is subject to disciplinary action under section 2234,
subdivision (b) of the Code in that he has committed acts of gross negligence. The circumstances
are as follows:

24

Patient L.D.

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a. This patient presented to Respondent's office on nine (9)
occasions, the first on or about March 12, 1999, and the last on or about September 7,
1999. The medical record for the first visit indicates the patient had a history of left knee
surgery, and had five (5) pins in that knee with a complaint of pain. There is no

1 indication that a physical examination was conducted during this visit, and the only
2 indication of a history is a one page "health questionnaire" filled out by the patient.
3 Treatment consisted of prescriptions for Vicodin ES #60 and Valium 10mg #30. There
4 does not appear to be a signature on this record.

5 b. The patient returned eight (8) times to Respondent's office. No
6 information other than knee pain, and on one occasion each, an ear infection and anxiety,
7 is documented for any of these visits. No physical examination is ever documented.
8 Vicodin and Valium in the strength and amount referenced above are dispensed during all
9 of these visits. The records for five (5) of the visits are stamped with the signature of
10 Respondent's Physician Assistant, William Pugliese ("PA"). There are no counter-
11 signatures by Respondent found in any of the records, and it is unclear as to whether
12 Respondent ever personally saw this patient.

13 c. Respondent is subject to discipline for his treatment of this patient
14 in that he failed to obtain or document an adequate history; he failed to perform or
15 document a good faith physical examination; he prescribed Vicodin and Valium without
16 documenting any examination or medical indication; and he failed to countersign the
17 work or otherwise supervise the acts of his PA.

18 Patient M.J.

19 d. This patient presented to Respondent's office on approximately
20 forty-two (42) occasions, the first on or about September 3, 1996, and the last on or about
21 September 1, 1999. The medical record for the first visit includes weight, blood pressure,
22 and temperature, and a complaint of low blood pressure and right hip pain. There is no
23 indication that a physical examination was conducted during this visit, and no other
24 evidence that a history was taken. Treatment consisted of prescriptions for Vicodin ES
25 #60 and Valium 10mg #60. There does not appear to be a signature on this record.

26 e. The next recorded visit for this patient is on or about April 15,
27 1997. The full text of the record for this visit indicates "Patient needs refills" and Valium
28 and "Codine 3" are listed, along with a reference to "CBC." Respondent also ordered

1 and/or performed an extensive series of chemistry studies on this date, none of which
2 (with the exception of CBC) are mentioned anywhere else in the records.

3 f. On the next four visits, between May 9, 1997, and August 14,
4 1997, the records contain little more than the following, "Patient in for refill, Valium";
5 the fourth visit, on or about August 14, 1997, also includes a complaint of "pinched nerve
6 and back pain." At the following visit, on or about September 9, 1997, the record
7 indicates an anxiety complaint, sore throat, seizure disorder, and "Patient wants refills on
8 medication." Valium is again prescribed. Respondent also ordered nerve conduction
9 studies, performed the same day; although some abnormality is noted, there is no
10 documented justification for ordering these studies, nor is there any further mention of
11 them in the records.

12 g. Over the next several visits, between December 31, 1997, and
13 September 1, 1998, the records consist of brief references to anxiety, hip pain, and back
14 pain, along with multiple entries which consist entirely of "Patient wants refills on
15 medication!" Valium continues to be prescribed, along with Vicodin, Soma, and Motrin.
16 Many of the records for these visits are unsigned.

17 h. On or about October 1, 1998, the record indicates the patient
18 complained of neck and low back pain, numbness down one leg, and "both hands fall
19 asleep." Respondent ordered numerous electro-diagnostic studies, completed the same
20 day, which included an abnormal electromyograph ("EMG") which showed evidence of
21 cervical radiculopathy, as well as nerve conduction studies which showed both a diffuse
22 neuropathy as well as a compressive neuropathy. Again, there is no further mention of
23 these studies in the records, and no follow-up by Respondent was ever documented.

24 i. Over the next several visits, between October 9, 1998, and April 8,
25 1999, the records again consist of brief references to anxiety and back and leg pain.
26 Vicodin, Valium, and Soma are prescribed. Again, many of the records for these visits
27 are unsigned. The record for the next visit, on or about April 30, 1999, consists of
28 nothing but prescriptions for Vicodin and Valium, and is stamped with the signature of

1 the PA. Of note is a patient complaint of "diabetes" on the April 8, 1999, record, which
2 includes no further information or evidence of treatment.

3 j. Over the final seven (7) visits, the majority of the records contain
4 the stamped signature of the PA. None of these are countersigned by Respondent. None
5 of these, with one exception, contain more than brief references to the patient complaint
6 (there are two more references to diabetes). The exception is the visit occurring on or
7 about August 16, 1999, the record of which indicates the patient fell and injured his right
8 side. A follow up radiology study performed two days later showed two fractured ribs.
9 There is no indication in the records that Respondent ever followed up on this with any
10 kind of treatment.

11 k. Respondent is subject to discipline for his treatment of this patient
12 in that he failed to obtain or document an adequate history; he failed to perform or
13 document a good faith physical examination; he prescribed Vicodin, Valium, and Soma
14 without documenting any examination or medical indication; he ordered unnecessary tests
15 and studies on three occasions (April 15, 1997; September 9, 1997; October 1, 1998) and
16 failed to follow up on abnormal results; he failed to properly address the issue of diabetes
17 with either documentation, monitoring, or testing; he failed to document appropriate
18 treatment of the fractured ribs; and he failed to countersign the work or otherwise
19 supervise the acts of his PA.

20 Patient K.B.

21 1. According to the records, Respondent first saw this patient in
22 August 1993. During that time, Respondent hospitalized the patient for cellulitis in the
23 lower right leg, seizure disorder, and substance abuse. The hospitalization confirmed all
24 diagnoses. Respondent's office record of September 10, 1993, indicates "No medications
25 given, not to be seen in this office again."

26 m. On or about May 9, 1996, the patient again presented to
27 Respondent's office, complaining of seizure disorder and chest pain. There is no
28 indication that a physical examination was conducted during this visit, and no other

1 evidence that a history was taken. Subsequently, the patient returned to Respondent's
2 office approximately twenty-five (25) times on an erratic basis between May 1996 and
3 September 1, 1999. Several of the record entries consist of nothing more than weight,
4 temperature, and/or blood pressure, the patient's complaint(s), and whether or not
5 medications were prescribed; the medications which were prescribed included Vicodin
6 and Valium. Other entries consist of nothing more than the statements "Patient wants
7 refill on medications" or "Patient wants to speak to the M.D." Up until October 29, 1998,
8 most of the entries are unsigned. Beginning that date, several of the entries contain the
9 stamped signature of the PA. None of these are countersigned by Respondent.

10 n. On or about May 5, 1999, Respondent ordered electro diagnostic
11 testing, including nerve conduction studies and a somatosensory evoked response study.
12 All test results were normal. On or about June 3-4, 1999, Respondent ordered several
13 other studies of the arteries, deep venous system, and heart, none of which were
14 abnormal. None of the results of these tests were documented in the records, and the
15 records contain no documented justification for ordering them. On or about September 1,
16 1999, the patient presented complaining of diarrhea "for the last month," lower back pain,
17 anxiety, insomnia, and asking for a medication refill. Respondent ordered full chemistry
18 panels, the results of which were unremarkable.

19 o. Respondent is subject to discipline for his treatment of this patient
20 in that he failed to obtain or document an adequate history; he failed to perform or
21 document a good faith physical examination; he prescribed Vicodin and Valium to a
22 known addict, and Valium to an individual with a history of seizure disorder, without
23 documenting any examination or medical indication; he ordered excessive tests and
24 studies on three occasions without documented justification; and he failed to countersign
25 the work or otherwise supervise the acts of his PA.

26 Patient S.B.

27 p. According to the records, Respondent first saw this patient on or
28 about January 29, 1997, however, the record for this visit notes "Patient wants to talk to

1 Billy, fell over handle bars on bike," which implies the patient had already presented to
2 Respondent's office and had prior dealings with the PA. There is no indication that a
3 physical examination was conducted during this visit, and no other evidence that a history
4 was taken. Treatment included prescriptions of Vicodin ES #30 and Valium 10mg #60.
5 There does not appear to be a signature on this record.

6 q. Subsequently, the patient returned to Respondent's office twenty-
7 nine (29) times, the last visit occurring on or about September 1, 1999. On at least twenty
8 of those visits Vicodin and Valium were prescribed. The patient's complaints usually
9 involve lower extremity and back pain and anxiety. Other entries consist of little more
10 than variations on the statements "Patient wants refill on medications" or "Patient wants
11 to speak to the M.D." Up until February 4, 1999 most of the entries are unsigned.
12 Beginning that date, several of the entries contain the stamped signature of the PA. None
13 of these are countersigned by Respondent.

14 r. X-rays ordered by Respondent and taken on or about March 10,
15 1997, indicated broad based disc bulges at L3-4 and L4-5, however there is no indication
16 in the records that Respondent ever followed up on these findings.

17 s. The record for the February 24, 1998, visit indicates "Patient wants
18 to be hospitalized," presumably for pain. This was done on or about February 26, 1998.
19 According to Respondent's history and physical upon admission, the patient's past
20 medical history was "significant for intravenous drug abuse on methadone maintenance."
21 Internal medicine and orthopedic consultations were obtained. The orthopedist
22 recommended bed rest, physical therapy in the form of hot packs, ultrasound, and
23 massage, as well as exercise. Also recommended were nerve conduction studies. The
24 patient was discharged on or about March 2, 1998; Respondent's discharge summary
25 implies that the above recommendations were followed and the patient improved.

26 t. On or about September 22, 1998, nerve conduction studies were
27 again ordered by Respondent, and no contributing neuropathies in the upper or lower
28 extremities were found, although a somatosensory evoked response study that same day

1 did suggest a problem with the lower extremities. Nevertheless, on or about April 5,
2 1999, Respondent again ordered nerve conduction studies of the upper and lower
3 extremities, as well as a somatosensory evoked response study. These studies were
4 entirely normal.

5 u. Respondent is subject to discipline for his treatment of this patient
6 in that he failed to obtain or document an adequate history; he failed to perform or
7 document a good faith physical examination; he prescribed Vicodin and Valium to a
8 known addict, without documenting any examination or medical indication; he failed to
9 otherwise discuss and properly treat this patient's lower extremity pain; he ordered
10 unnecessary tests and studies on at least one occasion (April 5, 1999) and without
11 documented justification on other occasions; and he failed to countersign the work or
12 otherwise supervise the acts of his PA.

13 Patient D.G.

14 v. This patient presented to Respondent's office on eight (8)
15 occasions, the first on or about February 18, 1999, and the last on or about August 24,
16 1999. At the first visit, the patient complained of back and knee injuries causing pain.
17 There is no indication that a physical examination was conducted during this visit, and
18 the only indication of a history is a one page "health questionnaire" filled out by the
19 patient. Treatment consisted of prescriptions for Vicodin ES #60 and Valium 10mg #30.
20 Subsequent entries include two further references to pain, two requests for refills, and two
21 entries with nothing more than a blood pressure reading and Vicodin and Valium
22 prescriptions (March 18, 1999), and a reference to Lotrel (August 24, 1999). None of the
23 entries are signed.

24 w. Respondent is subject to discipline for his treatment of this patient
25 in that he failed to obtain or document an adequate history; he failed to perform or
26 document a good faith physical examination; he prescribed Vicodin and Valium without
27 documenting any examination or medical indication; and he failed to countersign the
28 work or otherwise supervise the acts of his PA.

1 Patient F.F.

2 x. This patient presented to Respondent's office on approximately
3 thirty-one (31) occasions, the first on or about June 2, 1997, and the last on or about
4 August 26, 1999. At the first visit, the patient complained of severe migraine headaches.
5 The medical record includes weight, blood pressure, and temperature. There is no
6 indication that a physical examination was conducted during this visit, and no other
7 evidence that a history was taken. Treatment consisted of prescriptions for Vicodin ES
8 #40. There does not appear to be a signature on this record.

9 y. Of the remaining thirty (30) visits, ten times the patient complained
10 of anxiety, seven times she complained of migraines or headaches, six times she
11 complained of back pain, and twice she complained of insomnia. On none of these
12 occasions does the record indicate further history or a physical examination was
13 performed. Fourteen times the patient came in requesting refills on medication. Valium
14 was first prescribed during the second visit, on or about June 24, 1997; subsequently,
15 Vicodin and Valium were prescribed after eighteen visits, occasionally supplemented or
16 supplanted by Xanax or Soma. Fifteen times, the record of the visit consists of nothing
17 other than the prescription and either a request for a refill or nothing further. Many of the
18 entries have no signature. Fourteen times, the entry contains the stamped signature of the
19 PA. None of these are countersigned by Respondent.

20 z. Respondent is subject to discipline for his treatment of this patient
21 in that he failed to obtain or document an adequate history; he failed to perform or
22 document a good faith physical examination; he prescribed Vicodin, Valium, Xanax, and
23 Soma without documenting any examination or medical indication; and he failed to
24 countersign the work or otherwise supervise the acts of his PA.

25 Patient J.R.

26 aa. This patient presented to Respondent's office on approximately
27 thirty-four (34) occasions, the first on or about July 22, 1998; and the last on or about
28 September 7, 1999. At the first visit, the patient complained of low back pain. The

1 medical record includes weight, blood pressure, and temperature, as well as a brief history
2 note of "muscle spasm, back pain, patient takes Flexiril, Motrin, and Vicodin." There is
3 no indication that a physical examination was conducted during this visit, and the only
4 other evidence of a history is in a one page questionnaire. Treatment consisted of
5 prescriptions for the above named substances, including Vicodin ES #30. There does not
6 appear to be a signature on this record.

7 bb. On or about August 3, 1998, the patient came in wanting a "letter
8 for court" regarding his back pain; Vicodin was again prescribed. On or about August 24,
9 1998, the patient came in complaining of breaking his thumb; x-rays were ordered.
10 Neither of these records were signed. However, at the next visit, on or about September
11 18, 1998, Respondent noted and signed a two-page history and examination, ordered full
12 chemistry panels (which were essentially normal), and again prescribed Vicodin.

13 cc. The next three visits, the patient came in complaining of pain, and
14 Vicodin was prescribed. At the third visit, on or about November 5, 1998, Respondent
15 ordered nerve conduction studies and a somatosensory evoked response study, both of
16 which were abnormal for the lower extremities. The records for these three visits are
17 signed by Respondent.

18 dd. Thereafter, the patient returned to Respondent's office twenty-
19 seven (27) times. Most of these records consist only of a complaint of pain, usually
20 involving the back, and on twelve of these visits, a prescription for Vicodin; as of July 16,
21 1999, Soma is often added. Most of these records are unsigned. Beginning May 27,
22 1999, many of the records contain the stamped signature of the PA. None of these are
23 countersigned by Respondent. There is no indication that Respondent ever followed up
24 on the studies ordered in November 1998. On or about July 16, 1999, Respondent again
25 ordered nerve conduction studies and a somatosensory evoked response study, without
26 any documented justification. These studies were entirely normal.

27 ee. Respondent is subject to discipline for his treatment of this patient
28 in that he prescribed Vicodin and Soma without documenting any adequate examination

1 or medical indication; he ordered tests and studies without sufficient justification on at
2 least one occasion (November 5, 1998) and then failed to follow up on abnormal
3 findings; he subsequently ordered additional tests and studies with no justification
4 whatsoever (July 16, 1999); and he failed to countersign the work or otherwise supervise
5 the acts of his PA.

6 Patient D.D.

7 ff. This patient presented to Respondent's office on approximately
8 sixty-six (66) occasions, the first on or about November 22, 1994, and the last on or about
9 September 2, 1999. According to the records, the patient was a "no show" on multiple
10 occasions. At the first visit, the patient complained of cough, congestion, and headache.
11 The medical record includes patient's age, height, weight, blood pressure, and
12 temperature. There is no indication that a physical examination was conducted during this
13 visit, and the only evidence of a history is in a one page "permit for treatment."
14 Treatment consisted of several prescriptions, including Tylenol #3 #30. There does not
15 appear to be a signature on this record.

16 gg. Between the first visit and July 1, 1996, the patient returned to
17 Respondent's office over thirty (30) times. Her complaints included body itching, cough,
18 congestion, headache, toothache, anxiety, chest pain, shoulder pain, hip pain, abdominal
19 pain, insomnia, lower back pain, and arthritic pain. With one exception, none of the
20 records for these visits include a history or physical examination, or any additional
21 information beyond the complaint, temperature, weight, blood pressure, and whatever
22 medications were prescribed, usually including Tylenol #3. Only one of the notes has a
23 signature. The one exception is a visit for September 21, 1995, which has extensive notes
24 regarding the patient's complaints and their history, including justification for the
25 prescription of Tylenol #3 and other medications. This record is signed, although it is
26 unclear by whom.

27 hh. During this period, Respondent hospitalized the patient on three
28 occasions for pelvic and/or abdominal pain: December 3, 1995; March 7, 1996; and April

1 13, 1996. The first visit resulted in a laparoscopy performed by another physician; there
2 is no copy of the operative report in Respondent's records. The second visit resulted in a
3 laparotomy and bowel reconstruction performed by another physician; these procedures
4 are noted in Respondent's discharge summary. The third visit included treatment of pain
5 and nausea which developed subsequent to the previous procedures.

6 ii. For the patient's visit on or about July 1, 1996, there is another
7 extensive note, which appears to be signed by a physician assistant other than Mr.
8 Pugliese. A similar note is found two visits later, on or about August 15, 1996. For the
9 remaining thirty (30) visits, the records consist of little more than the patient's
10 complaint(s), weight, temperature, and/or blood pressure, and the medication(s)
11 prescribed, which usually included Tylenol #3, but later also included Soma. Six times
12 the record consists of nothing else than the patient's request for refills. Most of these
13 records are unsigned, but beginning May 3, 1999, several of the entries contain the
14 stamped signature of the PA. None of these are countersigned by Respondent. During
15 this period, Respondent hospitalized the patient on four more occasions, the first three
16 (between September 1996 and April 1997) for abdominal pain, rule out obstruction.

17 jj. Respondent is subject to discipline for his treatment of this patient
18 in that he failed to obtain or document an adequate history; he failed to perform or
19 document a good faith physical examination; he prescribed Tylenol #3 and Soma without
20 documenting any examination or medical indication; he prescribed Tylenol #3 to a patient
21 with a long history of bowel surgeries, adhesions, and obstructions, without advising the
22 patient of the potential problems of using an opioid with codeine under such conditions,
23 or providing any bowel regimen to offset said problems; and he failed to countersign the
24 work or otherwise supervise the acts of his PA.

25 Patient D.G.2

26 kk. According to the medical records, Respondent saw this patient
27 approximately thirty (30) or more times between September 1993 and January 1997. On
28 or about November 30, 1993, Valium 5mg #30 was prescribed. The records contain no

1 further justification for Valium after that date. Nevertheless, Respondent prescribed
2 Valium 10mg to this patient on fourteen (14) other occasions between 1995 and 1998.

3 ll. The Board received two sets of medical records for this patient,
4 one set from the patient herself which accompanied her complaint, and one set from
5 Respondent which was specifically requested once an investigation was opened. The two
6 sets are not identical, specifically, the set received from Respondent has numerous
7 additions to the majority of the entries.

8 mm. Respondent is subject to discipline for his treatment of this patient
9 in that he prescribed Valium without documenting any medical examination or indication,
10 and in that he altered the medical records after the fact by including additional
11 information not present in the original version of those records, and without noting the
12 date of the additions and alterations.

13 Undercover operation

14 nn. On or about August 5, 1999, Medical Board Probation Investigator
15 Lisa Voisard presented to Respondent's office using the name "Toni Jones". Investigator
16 Voisard completed a two page medical questionnaire, and was then called into the
17 examination area by a female who took her weight and blood pressure. The female asked
18 Investigator Voisard why she was seeing the doctor, and Investigator Voisard replied she
19 wanted to discuss it with the doctor. Investigator Voisard was then taken to an
20 examination room, and was seen by Respondent. Respondent asked Investigator Voisard
21 why she was there, and Investigator Voisard replied she wanted Valium. Respondent had
22 the door to the exam room closed, and then asked why she wanted Valium. Investigator
23 Voisard replied she liked taking it. Respondent asked if there was anything wrong with
24 her and she replied in the negative. Respondent told Investigator Voisard that he was
25 trying to find a reason to give her Valium, and asked if she was anxious or depressed, to
26 which Investigator Voisard again replied in the negative. Respondent asked if she had
27 taken Valium before and she replied in the affirmative. Respondent once again asked if
28 there was anything wrong with her, and she replied that sometimes she gets upset with her

1 adult son. Respondent asked if the Valium was for her only, and she replied in the
2 affirmative. Respondent asked if she had ever been addicted to prescription drugs and
3 she replied in the negative. Respondent then agreed to write a prescription for Valium
4 5mg #30, but first he told Investigator Voisard he wanted to listen to her heart; he had her
5 turn around, he lifted up the back of her shirt, placed the stethoscope on her back, told her
6 to turn around and face him, and placed the stethoscope on her chest, over her shirt.
7 Respondent then handed her the Valium prescription.

8 oo. On or about August 18, 1999, Investigator Voisard returned to
9 Respondent's office, again using the name "Toni Jones". After she was called into the
10 examination area, she was met by a male who was later identified as PA Pugliese. The
11 PA asked her what the matter was, and she replied she was here to see the doctor. The
12 PA asked what she needed and she replied she needed more Valium. The PA asked if she
13 wanted the 5mg pills and she replied she actually wanted the 10mg pills. The PA asked if
14 she wanted 30 pills and she replied in the affirmative. Investigator Voisard then asked if
15 she could get some Vicodin as well. The PA asked which strength, and she replied she
16 wanted the stronger, and asked if she could buy the drugs there at the office. The PA
17 quoted her a price, then returned with two plastic bottles. While Investigator Voisard was
18 waiting for the medication, Respondent passed by the exam room, and they said hello to
19 each other. Investigator Voisard paid for the Valium and Vicodin and left the office. At
20 no time during this visit did she undergo a physical examination of any kind.

21 pp. Respondent is subject to discipline for his treatment of the patient
22 in the undercover operation in that he failed to obtain or document an adequate history; he
23 failed to perform or document a good faith physical examination; he prescribed Valium
24 without medical indication; and he failed to countersign the work or otherwise supervise
25 the acts of his PA.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts)

3 18. Respondent is subject to disciplinary action under section 2234,
4 subdivision (c) of the Code in that he has committed repeated acts of negligence. The
5 circumstances are as follows:

6 a. Paragraph 17, subparagraphs (a)-(b), (d)-(j), (l)-(n), (p)-(t), (v), (x)-
7 (y), (aa)-(dd), (ff)-(ii), (kk)-(ll), and (nn)-(oo) are incorporated by reference as if set forth
8 in full at this point.

9 b. As to patient L.D., Respondent is subject to discipline in that he
10 failed to obtain or document an adequate history; he failed to perform or document a good
11 faith physical examination; he prescribed Vicodin and Valium without documenting any
12 examination or medical indication; and he failed to countersign the work or otherwise
13 supervise the acts of his PA.

14 c. As to patient M.J., Respondent is subject to discipline in that he
15 failed to obtain or document an adequate history; he failed to perform or document a good
16 faith physical examination; he prescribed Vicodin, Valium, and Soma without
17 documenting any examination or medical indication; he ordered unnecessary tests and
18 studies on three occasions (April 15, 1997; September 9, 1997; October 1, 1998) and
19 failed to follow up on abnormal results; he failed to properly address the issue of diabetes
20 with either documentation, monitoring, or testing; he failed to document appropriate
21 treatment of the fractured ribs; and he failed to countersign the work or otherwise
22 supervise the acts of his PA.

23 d. As to patient K.B., Respondent is subject to discipline in that he
24 failed to obtain or document an adequate history; he failed to perform or document a good
25 faith physical examination; he prescribed Vicodin and Valium to a known addict, and
26 Valium to an individual with a history of seizure disorder, without documenting any
27 examination or medical indication; he ordered excessive tests and studies on three
28 occasions without documented justification; and he failed to countersign the work or

1 otherwise supervise the acts of his PA.

2 e. As to patient S.B., Respondent is subject to discipline in that he
3 failed to obtain or document an adequate history; he failed to perform or document a good
4 faith physical examination; he prescribed Vicodin and Valium to a known addict, without
5 documenting any examination or medical indication; he failed to otherwise discuss and
6 properly treat this patient's lower extremity pain; he ordered unnecessary tests and studies
7 on at least one occasion (April 5, 1999) and without documented justification on other
8 occasions; and he failed to countersign the work or otherwise supervise the acts of his
9 PA.

10 f. As to patient D.G., Respondent is subject to discipline in that he
11 failed to obtain or document an adequate history; he failed to perform or document a good
12 faith physical examination; he prescribed Vicodin and Valium without documenting any
13 examination or medical indication; and he failed to countersign the work or otherwise
14 supervise the acts of his PA.

15 g. As to patient F.F., Respondent is subject to discipline in that he
16 failed to obtain or document an adequate history; he failed to perform or document a good
17 faith physical examination; he prescribed Vicodin, Valium, Xanax, and Soma without
18 documenting any examination or medical indication; and he failed to countersign the
19 work or otherwise supervise the acts of his PA.

20 h. As to patient J.R., Respondent is subject to discipline in that he
21 prescribed Vicodin and Soma without documenting any adequate examination or medical
22 indication; he ordered tests and studies without sufficient justification on at least one
23 occasion (November 5, 1998) and then failed to follow up on abnormal findings; he
24 subsequently ordered additional tests and studies with no justification whatsoever (July
25 16, 1999); and he failed to countersign the work or otherwise supervise the acts of his PA.

26 i. As to patient D.D., Respondent is subject to discipline in that he
27 failed to obtain or document an adequate history; he failed to perform or document a good
28 faith physical examination; he prescribed Tylenol #3 and Soma without documenting any

1 examination or medical indication; he prescribed Tylenol #3 to a patient with a long
2 history of bowel surgeries, adhesions, and obstructions, without advising the patient of
3 the potential problems of using an opioid with codeine under such conditions, or
4 providing any bowel regimen to offset said problems; and he failed to countersign the
5 work or otherwise supervise the acts of his PA.

6 j. As to patient D.G.2, Respondent is subject to discipline for his
7 treatment of this patient in that he prescribed Valium without documenting any medical
8 examination or indication, and in that he altered the medical records after the fact by
9 including additional information not present in the original version of those records, and
10 without noting the date of the additions and alterations.

11 k. As to the undercover operation, Respondent is subject to
12 discipline in that he failed to obtain or document an adequate history; he failed to perform
13 or document a good faith physical examination; he prescribed Valium without medical
14 indication; and he failed to countersign the work or otherwise supervise the acts of his
15 PA.

16 THIRD CAUSE FOR DISCIPLINE

17 (Incompetence)

18 19. Respondent is subject to disciplinary action under section 2234,
19 subdivision (d) of the Code in that he has committed acts of incompetence. The circumstances
20 are as follows:

21 a. Paragraphs 17, subparagraphs (a)-(pp) inclusive, and 18,
22 subparagraphs (a)-(k) inclusive, are incorporated by reference as if set forth in full at this
23 point.

24 FOURTH CAUSE FOR DISCIPLINE

25 (Excessive Prescribing and/or Diagnostic Treatment)

26 20. Respondent is subject to disciplinary action under section 725 of the Code
27 in that he has engaged in repeated acts of both clearly excessive prescribing and clearly excessive
28 use of diagnostic procedures. The circumstances are as follows:

1 a. Paragraph 17, subparagraphs (a)-(pp) inclusive, are incorporated by
2 reference as if set forth in full at this point.

3 FIFTH CAUSE FOR DISCIPLINE

4 (Prescribing to Addicts)

5 21. Respondent is subject to disciplinary action under section 2241 of the
6 Code in that he has prescribed or otherwise dispensed drugs to individuals known to him to be
7 addicts. The circumstances are as follows:

8 a. Paragraph 17, subparagraphs (l)-(u) inclusive, are incorporated by
9 reference as if set forth in full at this point.

10 SIXTH CAUSE FOR DISCIPLINE

11 (Prescribing Without Examination)

12 22. Respondent is subject to disciplinary action under section 2242,
13 subdivision (a) of the Code in that he has prescribed, dispensed, or otherwise furnished
14 dangerous drugs without a good faith prior examination and medical indication therefor. The
15 circumstances are as follows:

16 a. Paragraph 17, subparagraphs (a)-(pp) inclusive, are incorporated by
17 reference as if set forth in full at this point.

18 SEVENTH CAUSE FOR DISCIPLINE

19 (Violation of Drug Statutes)

20 23. Respondent is subject to disciplinary action under section 2238 of the
21 Code, by and through sections 11153, 11156, 11157, and 11171 of the Health and Safety Code.
22 The circumstances are as follows:

23 a. Paragraph 17, subparagraphs (a)-(pp) inclusive, are incorporated by
24 reference as if set forth in full at this point.

25 EIGHTH CAUSE FOR DISCIPLINE

26 (Failure to Supervise Physician Assistant)

27 24. Respondent is subject to disciplinary action under section 2234 of the
28 Code in conjunction with section 3527, subdivision (d) of the Code, and with section 1399.545

1 of the California Code of Regulations in that he has failed to supervise a physician assistant and
2 has therefore allowed him to function autonomously. The circumstances are as follows:

3 a. Paragraph 17, subparagraphs (a)-(jj), and (nn)-(pp) inclusive, are
4 incorporated by reference as if set forth in full at this point.

5 NINTH CAUSE FOR DISCIPLINE

6 (Failure to Maintain Adequate Records)

7 25. Respondent is subject to disciplinary action under section 2266 of the
8 Code in that he has failed to maintain adequate and accurate records relating to the provision of
9 services to his patients. The circumstances are as follows:

10 a. Paragraph 17, subparagraphs (a)-(pp) inclusive, are incorporated by
11 reference as if set forth in full at this point.

12
13 PETITION TO REVOKE PROBATION

14 26. An accusation in case number 11-95-55664 was filed against respondent
15 on or about August 20, 1997. This matter was resolved by a decision of the Board effective June
16 26, 1998, placing respondent on four (4) years probation. At all times since that date, the
17 following conditions have been imposed on respondent's license and have read as follows:

18 "6. OBEDIENT TO ALL LAWS Respondent shall obey all federal, state, and local
19 laws, all rules governing the practice of medicine in California, and remain in full
20 compliance with any court ordered criminal probation, payments and other
21 orders."

22 VIOLATIONS OF PROBATION

23 27. Respondent is in violation of Condition 6 of his probation. The
24 circumstances are as follows:

25 a. Paragraph 17, subparagraphs (a)-(pp) inclusive, are incorporated by
26 reference as if set forth in full at this point.

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28

PRAYER

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

1. Revoking probation and revoking or suspending Physician and Surgeon's Certificate Number G34168, issued to Barry Lew, M.D.;
2. Revoking, suspending or denying approval of Barry Lew, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. Ordering Barry Lew, M.D. to pay the Division of Medical Quality the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: June 14, 2001



RON JOSEPH
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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