

1 BILL LOCKYER, Attorney General
of the State of California
2 GLORIA L. CASTRO, State Bar No. 193304
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-6804
5 Facsimile: (213) 897-9395

6 Attorneys for Complainant

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

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

12 ALAN SCHWARTZ, M.D.
13 30856 Agoura Road, Suite A15
Agoura Hills, California 91301

14
15 Physician's & Surgeon's Certificate No. G 18347

16 Respondent.

Case No. D1-1996-69628

**ACCUSATION AND
PETITION TO REVOKE
PROBATION**

17 Complainant alleges:

18 PARTIES

19 1. David T. Thornton (Complainant) brings this Accusation and Petition to
20 Revoke Probation solely in his official capacity as the Executive Director of the Medical Board of
21 California ("Board").

22 2. On May 21, 1970, the Medical Board of California issued Physician's &
23 Surgeon's Certificate No. G 18347 to Respondent Alan Schwartz, M.D. The certificate was in effect
24 at all times relevant to the charges herein brought, and will expire on May 31, 2006, unless renewed.

25 3. In a disciplinary action entitled "In the Matter of Accusation and Petition to
26 Revoke Probation Against Alan Schwartz, M.D.," Case No. 09-96-69628, the Board's Division of
27 Medical Quality issued a decision, effective January 4, 1999, in which Respondent's Physician's &
28 Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's certificate

1 was placed on probation for a period of ten years with certain terms and conditions.

2 JURISDICTION

3 4. This Accusation and Petition to Revoke Probation is brought before the
4 Board's Division of Medical Quality under the authority of the following sections of the Business
5 and Professions Code.

6 5. Section 2234 of the Code states:

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

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

13 "(b) Gross negligence.

14 "© Repeated negligent acts.

15 "(d) Incompetence.

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

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

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

23 CAUSES FOR REVOCATION OF PROBATION

24 Probation Condition 6 - Chaperone

25 7. Respondent's probation is subject to revocation in that he has violated
26 condition 6 of the Board's January 4, 1999 probation order by not having a third-party chaperone
27 present while examining, treating, seeing or observing a male pediatric patient, whether or not a
28 parent is present. The facts and circumstances are as follows:

1 A. Condition 6 of the Probation Order issued by the Medical Board states
2 as follows: "During probation, respondent shall have a third-party present while
3 examining minor male patients. Respondent shall, within thirty (30) days of the
4 effective date of the decision, submit to the Division or its designee for its approval
5 names(s) of persons who will act as the third party present. The Respondent shall
6 execute a release authorizing the third party present to divulge any information that
7 the Division may request during interviews by the probation monitor on a periodic
8 basis."

9 B. On January 4, 1999, Dr. Schwartz signed an acknowledgment that
10 he understood every term of the Decision, which included Condition 6 as described
11 in paragraph A above. The Decision defined a "third-party chaperone" to mean a
12 person who has no business, professional, financial dealings, or personal involvement
13 or relationship with the respondent or his practice. Dr. Schwartz's probation term is
14 from January 4, 1999 through January 1, 2009.

15 C. During a review of Dr. Schwartz's monitor reports on September 3, 2002
16 as required by the terms of his probation, the Division discovered that Dr. Schwartz
17 treated two minor male patients without a third-party chaperone present. On
18 September 25, 2002, the Division interviewed Dr. Schwartz and determined that he
19 was not following the probation term that required him to have a third-party
20 chaperone present when he examined, treated, saw or observed a male pediatric
21 patient, notwithstanding whether or not the patient's parent was present at the time.
22 On October 21, 2002, the Division informed Dr. Schwartz that he was in violation
23 of the probation requirement that a third-party chaperone is required to be present
24 when he is examining, treating, seeing or observing a male pediatric patient,
25 notwithstanding whether or not a parent is present. On November 6, 2002, the
26 Medical Board informed Dr. Schwartz that he was prohibited from examining,
27 treating, seeing or observing a male pediatric patient until he submitted the name of
28 a third-party chaperone for approval by the Division. On January 9, 2003, Dr.

1 Schwartz submitted a "Third-party Chaperone Release and Agreement" signed by
2 him and Patricia Michaels – the proposed third-party chaperone – to the Division.
3 On January 28, 2003, the Division approved Ms. Michaels to serve as Dr. Schwartz's
4 third-party chaperone.

5 D. On August 11, 2003 and August 26, 2003, the Medical Board made it
6 clear to Dr. Schwartz that he was required to have a third-party chaperone present
7 even when he "observes" male pediatric patients, notwithstanding the fact that he
8 may not be performing a "physical examination" of the male pediatric patient. The
9 Division emphasized in no uncertain terms that Dr. Schwartz was required to obey
10 this probation condition whether or not the male pediatric patient's parents were
11 present at the time and whether or not he touched the male pediatric patients in any
12 manner.

13 E. On January 12, 2004, in a personal interview, Respondent admitted to the
14 Division that he had seen twenty-seven (27) male pediatric patients for treatment
15 from November 1, 2002 through November 1, 2003 without having a third-party
16 chaperone present.

17 F. On June 23, 2004, in a personal interview, Respondent admitted to the
18 Division that he had continued to treat male pediatric patients without having Ms.
19 Michaels, the third-party chaperone, present.

20 G. From January 28, 2003 to September 16, 2004, Dr. Schwartz had Ms.
21 Michaels present as a third-party chaperone with three appointments with male
22 pediatric patients. During this time period, Dr. Schwartz saw male pediatric patients,
23 including patients Nolan A. and Nathaniel C., described in paragraphs 9-11 and 14-
24 16 respectively in this Accusation, without having a third-party chaperone present,
25 despite being on notice from the Medical Board that doing so was a violation of his
26 probation term requiring a chaperone.

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1 **ACCUSATION**

2 **FIRST CAUSE FOR DISCIPLINE**

3 (Unprofessional Conduct: Violation of Probation)

4 7. Respondent is subject to disciplinary action under section 2234 of the
5 Business and Professions Code in that his violation of probation as discussed in paragraph 6 above
6 constitutes unprofessional conduct within the meaning of this statute.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Gross Negligence: Patients Nolan A., Miles B., Nathaniel C. and Nicholas P.)

9 8. Respondent is subject to disciplinary action under section 2234,
10 subdivision (b), of the Business and Professions Code for the commission of grossly negligent acts
11 in his care and treatment of four patients, Nolan A., Miles B., Nathaniel C. and Nicholas P.¹ each of
12 whom was treated by Dr. Schwartz in the manner hereafter described at a business known as the
13 Holistic Resource Center (HRC), 29020 Agoura Road, Suite A8, Agoura Hills, California.

14 **Patient Nolan A.**

15 9. Nolan A., a three-year-old male patient, was first seen by Respondent on or
16 around March 4, 2003 at HRC. Respondent also saw Nolan A. on May 15, 2003 and July 3, 2003.
17 No third-party chaperone was present at any of these three visits. Dr. Schwartz never performed a
18 formal physical and neurological examination of Nolan A. He interviewed Nolan A.'s mother to
19 obtain behavioral and physical assessment. He did not review any of Nolan A.'s medical records.
20 After Nolan A.'s first visit, Dr. Schwartz diagnosed him with Autism Spectrum Disorder² (ASD),
21 Attention Deficit Hyperactivity Disorder (ADHD), Behavior Disorder, allergies to food, and toxic
22 exposure. Nolan A.'s medical record contains no clarifying information regarding these diagnoses.
23 However, Dr. Schwartz formed the opinion that Nolan A.'s ASD was caused by nutritional

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25 1. The full names of the patients is not set forth in the interest of privacy but will be disclosed to the
26 Respondent upon an appropriate request for discovery.

27 2. Autism Spectrum Disorders (ASD), also known as Pervasive Developmental Disorders (PDDs), cause
28 severe and pervasive impairment in thinking, feeling, language, and the ability to relate to others.
<<http://www.nih.gov/healthinformation/autismmenu.cfm>> (as of March 29, 2006.)

1 deficiencies; toxins from heavy metals, intestinal infections, immunizations or immunoglobulin A
2 (IgA); and immune deficiencies. Respondent did not document that he considered known toxic
3 causes for Nolan A.'s developmental delay, such as plumbism (lead poisoning).

4 10. Nolan A.'s medical record contains documentation showing that Dr.
5 Schwartz ordered a battery of laboratory tests and that results were obtained. However, there is no
6 documentation justifying the laboratory tests performed. The course of treatment ordered by
7 Respondent for Nolan A. consisted of glutathione and DSMA chelations.³ Further, there is no
8 documentation that Respondent recommended or ordered educational and/or behavioral therapies
9 or hearing and speech evaluations for Nolan A.

10 11. In its brevity and lack of detail, this documentation of the justification of
11 the course of treatment ordered by Respondent for Nolan A. is a departure from the standard of care.
12 Furthermore, the administration of laboratory tests, together with no documentation evidencing how
13 Dr. Schwartz was to address Nolan A.'s ASD, is an extreme departure from the standard of care.
14 The standard of care required that Dr. Schwartz conduct a thorough physical, neurological and
15 psychological evaluation of Nolan A., who he diagnosed with ASD. The standard of care also
16 required him to order and document the performance of hearing and speech evaluations for a child
17 he has diagnosed with ASD. Dr. Schwartz' apparent reliance on Nolan A.'s mother's behavioral and
18 physical assessments and his failure to review his medical records falls below the applicable standard
19 of care. Dr. Schwartz reliance on behavioral and physical assessments of others falls below the
20 standard of care for determining physical syndromes. Finally, Respondent's administration of
21 glutathione and Dimercaptosuccinic Acid (DSMA) chelation to Nolan A. are not considered to meet
22 the relevant standard of care for treatment of ASD.

23 Patient Miles B.

24 12. Miles B., a seven-year-old male, was never seen by Respondent.
25 Respondent interviewed the child's mother on July 16, 2003, September 16, 2003 and October 25,

26
27 _____
28 3. Chelation therapy is a process involving the use of agents to remove heavy metals from the body.

1 2004. Dr. Schwartz never performed a formal physical and neurological examination of Miles B.
2 After his interview of Miles B.'s mother on July 16, 2003, Dr. Schwartz diagnosed Miles B. with
3 Autism with language disorders, ADHD, Obsessive-Compulsive Disorder, toxic exposure and food
4 allergy. Miles B.'s medical record contains no clarifying information regarding these diagnoses.
5 However, Dr. Schwartz formed the opinion that Miles B.'s Autism and ADHD was caused by
6 nutritional deficiencies, toxins from heavy metals, intestinal infections, immunizations,
7 immunoglobulin A (IgA) and immune deficiencies. Respondent did not document that he
8 considered known toxic causes for Miles B.'s developmental delay, such as plumbism. Respondent
9 did not document Miles B.'s ADHD features, such as inattention, impulsivity and hyperactivity, or
10 the presence of symptoms in multiple settings. Further, there is no documentation that Respondent
11 recommended or ordered pharmacotherapy, educational and/or behavioral therapies or hearing and
12 speech evaluations for Miles B.

13 13. In its brevity and lack of detail, this documentation of the justification of
14 the course of treatment ordered by Respondent for Miles B. is a departure from the standard of care.
15 Furthermore, the administration of laboratory tests, together with no documentation evidencing how
16 Dr. Schwartz was to address Miles B.'s autism, is an extreme departure from the standard of care.
17 The standard of care required that Dr. Schwartz conduct a thorough physical, neurological and
18 psychological evaluation of Miles B., who he diagnosed with autism. The standard of care also
19 required him to order and document the performance of hearing and speech evaluations for a child
20 he has diagnosed with autism. Dr. Schwartz' apparent reliance on Miles B.'s mother's behavioral
21 and physical assessments and his failure to review his medical records falls below the applicable
22 standard of care. Dr. Schwartz reliance on others behavioral and physical assessments falls below
23 the standard of care for determining physical syndromes. Dr. Schwartz failed to perform a formal
24 physical examination in the treatment of Miles B. Dr. Schwartz's deficiencies in care and
25 documentation are below the standard of practice. Furthermore, given his diagnosis of ADHD,
26 Respondent failure to document Miles B.'s ADHD features, such as inattention, impulsivity and
27 hyperactivity, or the presence of symptoms in multiple settings over the fifteen months Miles B. was
28 his patient falls below the standard of care in ADHD diagnoses.

1 Patient Nathaniel C.

2 14. Nathaniel C, a seven-year-old male, was seen on February 4, 2003 by
3 Respondent at HRC. No third-party chaperone was present at this visit. Respondent interviewed
4 Nathaniel C.'s mother on May 15, 2003. Dr. Schwartz performed a very limited physical exam.
5 He did not perform a neurological examination. Dr. Schwartz diagnosed Nathaniel C. with Autism,
6 ADHD, behavior disorder, developmental delay with hyperkinesia, and a series of atopic diseases
7 (allergic rhinitis, asthma, food allergy). Nathaniel C.'s medical record contains no clarifying
8 information regarding these diagnoses.

9 15. Nathaniel C.'s medical record shows documentation that Dr. Schwartz
10 ordered a battery of laboratory tests and that results were obtained. However, there is no
11 documentation justifying the laboratory tests performed. The course of treatment ordered by
12 Respondent for Nathaniel C. consisted of topical secretin. Further, there is no documentation that
13 Respondent recommended or ordered pharmacotherapy, educational and/or behavioral therapies or
14 hearing and speech evaluations for Nathaniel C. Finally, the course of topical secretin falls below
15 the standard of care given that randomized research studies have shown no benefit to autistic
16 children.

17 16. Dr. Schwartz's deficiencies in care and documentation are below the
18 standard of practice. The lack of knowledge of appropriate care, and pursuit of the full course of
19 care, including multiple ordering of medical studies and recommendations for complementary
20 interventions without medical evaluation or treatments represents an extreme departure from the
21 standard of practice. Further, his failure to perform a neurological evaluation falls below the
22 standard of care. Finally, the course of topical secretin falls below the standard of care because it
23 has not been shown to benefit children with autism in a series of randomized blinded research
24 studies.

25 Patient Nicholas P.

26 17. Nicholas P., a male thirteen-year-old patient, was never seen by
27 Respondent. Respondent interviewed Nicholas P.'s mother on June 14, 2003 and September 13,
28 2003 at HRC. Dr. Schwartz never performed a formal physical and neurological examination of

1 Nicholas P. Dr. Schwartz diagnosed Nicholas P. with autism, behavioral disorder, language
2 dysfunction, food allergy, toxic exposure and ADHD. Nicholas P.'s medical record contains no
3 clarifying information regarding this diagnosis. However, Dr. Schwartz formed the opinion that
4 Nicholas P.'s ASD was caused by nutritional deficiencies, toxins from heavy metals, intestinal
5 infections, immunizations, immunoglobulin A (IgA), and immune deficiencies. Respondent did not
6 document that he considered known toxic causes for Nicholas P.'s condition, such as plumbism.

7 18. Nicholas P.'s medical record shows documentation that Dr. Schwartz
8 ordered a battery of laboratory tests and that results were obtained. However, there is no
9 documentation justifying the laboratory tests performed. The course of treatment ordered by
10 Respondent for Nicholas P. consisted of glutathione chelation. Further, there is no documentation
11 that Respondent recommended or ordered educational and/or behavioral therapies or hearing and
12 speech evaluations for Nicholas P.

13 19. In its brevity and lack of detail, this documentation of the justification of
14 the course of treatment ordered by Respondent for Nicholas P. is a departure from the standard of
15 care. Furthermore, the administration of a laboratory tests, together with no documentation
16 evidencing how Dr. Schwartz was to address Nicholas P.'s ASD, is an extreme departure from the
17 standard of care. The standard of care required that Dr. Schwartz conduct a thorough physical,
18 neurological and psychological evaluation of Nicholas P., who he diagnosed with, among other
19 things, ASD without ever having met him or reviewing his medical records. The standard of care
20 also required him to order and document the performance of hearing and speech evaluations for a
21 child he has diagnosed with ASD. Dr. Schwartz' apparent reliance on Nicholas P.'s mother's
22 behavioral and physical assessments falls below the applicable standard of care given that her
23 physical assessment may be inaccurate. Dr. Schwartz' reliance on others behavioral and physical
24 assessments falls below the standard of care for determining physical syndromes. Finally,
25 Respondent's administration of glutathione chelation to Nicholas P. are not considered to meet the
26 relevant standard of care for treatment of ASD.

1 **THIRD CAUSE FOR DISCIPLINE**

2 (Repeated Negligent Acts: Patients Nolan A., Miles B., Nathaniel C. and Nicholas P.)

3 20. Respondent is subject to disciplinary action under section 2234,
4 subdivision (c) of the Business and Professions Code, for his care and treatment of patients Nolan
5 A., Miles B., Nathaniel C. and Nicholas P. The facts and circumstances described in paragraphs 8
6 through 19 above are incorporated here.

7 21. Respondent is subject to discipline in that the following acts, both
8 singularly and collectively represent extreme departures from the standard of care:

9 i. He failed to perform physical, physiological and neurological examinations
10 of patients Nolan A., Miles B., and Nicholas P. He failed to perform a neurological
11 examination of Nathaniel C.

12 ii. He failed to order and/or perform hearing and speech evaluations for
13 patients he diagnosed with ASD.

14 iii. He relied on the direct and second-hand behavioral and physical
15 assessments of laypersons to determine physical syndromes. He did not review the
16 medical records of patients Nolan A., Miles B., Nathaniel C. and Nicholas P.
17 Further, he never even saw Miles B. and Nicholas P.

18 iv. He administrated chelation therapies to patients without medical
19 justification.

20 v. His treatment of patients Nolan A., Miles B., Nathaniel C. and Nicholas
21 P. reflected a lack of knowledge of appropriate care, and pursuit of the full
22 course of care, including multiple ordering of medical studies and recommendations
23 for complementary interventions without medical evaluation or treatments represents
24 an extreme departure from the standard of practice. Respondent supported his
25 treatment decision on the belief that autism is characterized by numerous toxic
26 assaults on the brain by heavy metals, viruses, autoimmune reactions, food allergies,
27 gut toxicity, and abnormal peptides. Based on this belief, Respondent ordered
28 laboratory tests for toxins and/or nutritional deficiencies on patients Nolan A., Miles

1 B., Nathaniel C. and Nicholas P.

2 vi. Despite having diagnosed patients Nolan A., Miles B., and
3 Nathaniel C. with toxic exposure, Respondent did not consider toxic causes, such as
4 plumbism, for his patient's developmental delay and/or behavior.

5 vii. He failed to document patients Miles B. and Nathaniel C.'s ADHD
6 features, such as inattention, impulsivity and hyperactivity, or the presence of
7 symptoms in multiple settings.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 (Incompetence: Patients Nolan A., Miles B., Nathaniel C. and Nicholas P.)

10 22. Respondent is subject to disciplinary action under section 2234,
11 subdivision (d) of the Business and Professions Code, for his care and treatment of patients Nolan
12 A., Miles B., Nathaniel C. and Nicholas P. The facts and circumstances described in paragraphs 8
13 through 21 above are incorporated here.

14 23. Dr. Schwartz is a medical practitioner who has provided evaluation and
15 treatment to children with autism and related disorders utilizing the approaches of alternative
16 medicine. The practice of alternative medicine in this area by itself is not a significant deviation
17 from the standard of practice in isolation. However, Dr. Schwartz is practicing medicine under a
18 license in our state, and offers his evaluation and treatment as a medical activity. As such, Dr.
19 Schwartz is responsible for the traditional medical obligations to take a history, examine patients,
20 and address the presence of traditional health concerns that can cause or impact children with autism
21 in accordance with generally accepted medical and scientific principles. Dr. Schwartz does not meet
22 the standard of care for providing such traditional care for children with developmental disorders.

23 24. Dr. Schwartz diagnosed patients Miles B. and Nathaniel C.'s with autism
24 and ADHD, notwithstanding that the Diagnostic and Statistical Manual of Mental Disorders, Fourth
25 Edition (DSM IV) specifically excludes the application of the diagnosis of ADHD when symptoms
26 are due to a pervasive developmental disorder, such as autism.

27 25. Dr. Schwartz does not meet the standards regarding post-graduate training
28 that would qualify him as an expert referral physician in treating autism and thus did not meet the

1 standard of care for a general pediatrician at the time he treated the patients Nolan A., Miles B.,
2 Nathaniel C. and Nicholas P. in 2003 and 2004.

3 **PENALTY CONSIDERATIONS**

4 26. To determine the degree of penalty to be imposed on respondent,
5 complainant alleges that respondent has a history of prior disciplinary action for sexual misconduct.
6 On December 2, 1998, a decision after a hearing was entered in case number 09-1996-69628,
7 effective January 9, 1999, revoking his license, staying the revocation and placing him on a 10-year
8 probationary term. The Decision made findings that Respondent engaged in sexual relations with
9 a patient.

10 **PRAYER**

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

13 1. Revoking the probation that was granted by the Medical Board of California
14 in Case No. 09-1994-40241 and imposing the disciplinary order that was stayed, thereby revoking
15 Physician's and Surgeon's Certificate G 18347, issued to Alan Schwartz, M.D.;

16 2. Revoking or suspending Physician's & Surgeon's Certificate No. G 18347,
17 issued to Alan Schwartz, M.D.;

18 3. Revoking, suspending or denying approval of his authority to supervise
19 physician's assistants, pursuant to section 3527 of the Business and Professions Code; and

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

21 DATED: April 13, 2006

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23 
24 DAVID T. THORNTON
25 Executive Director
26 Medical Board of California
27 State of California
28 Complainant