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

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

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

Physician’s & Surgeon’s Certificate No. G 18347

Complainant alleges:

PARTIES

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

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

3. In a disciplinary action entitled “In the Matter of Accusation and Petition to
Revoke Probation Against Alan Schwartz, M.D.,” Case No. 09-96-69628, the Board’s Division of
Medical Quality issued a decision, effective January 4, 1999, in which Respondent’s Physician’s &
Surgeon’s Certificate was revoked. However, the revocation was stayed and Respondent's certificate
was placed on probation for a period of ten years with certain terms and conditions.

**JURISDICTION**

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

5. Section 2234 of the Code states:

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

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

“(b) Gross negligence.

“(© Repeated negligent acts.

“(d) Incompetence.

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

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

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

**CAUSES FOR REVOCATION OF PROBATION**

**Probation Condition 6 - Chaperone**

7. Respondent’s probation is subject to revocation in that he has violated condition 6 of the Board’s January 4, 1999 probation order by not having a third-party chaperone present while examining, treating, seeing or observing a male pediatric patient, whether or not a parent is present. The facts and circumstances are as follows:
A. Condition 6 of the Probation Order issued by the Medical Board states as follows: “During probation, respondent shall have a third-party present while examining minor male patients. Respondent shall, within thirty (30) days of the effective date of the decision, submit to the Division or its designee for its approval names(s) of persons who will act as the third party present. The Respondent shall execute a release authorizing the third party present to divulge any information that the Division may request during interviews by the probation monitor on a periodic basis.”

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

C. During a review of Dr. Schwartz’s monitor reports on September 3, 2002 as required by the terms of his probation, the Division discovered that Dr. Schwartz treated two minor male patients without a third-party chaperone present. On September 25, 2002, the Division interviewed Dr. Schwartz and determined that he was not following the probation term that required him to have a third-party chaperone present when he examined, treated, saw or observed a male pediatric patient, notwithstanding whether or not the patient’s parent was present at the time. On October 21, 2002, the Division informed Dr. Schwartz that he was in violation of the probation requirement that a third-party chaperone is required to be present when he is examining, treating, seeing or observing a male pediatric patient, notwithstanding whether or not a parent is present. On November 6, 2002, the Medical Board informed Dr. Schwartz that he was prohibited from examining, treating, seeing or observing a male pediatric patient until he submitted the name of a third-party chaperone for approval by the Division. On January 9, 2003, Dr.
Schwartz submitted a "Third-party Chaperone Release and Agreement" signed by him and Patricia Michaels – the proposed third-party chaperone – to the Division. On January 28, 2003, the Division approved Ms. Michaels to serve as Dr. Schwartz's third-party chaperone.

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

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

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

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

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct: Violation of Probation)

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

SECOND CAUSE FOR DISCIPLINE
(Gross Negligence: Patients Nolan A., Miles B., Nathaniel C. and Nicholas P.)

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

   Patient Nolan A.

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

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

². Autism Spectrum Disorders (ASD), also known as Pervasive Developmental Disorders (PDDs), cause
   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.)
deficiencies; toxins from heavy metals, intestinal infections, immunizations or immunoglobulin A (IgA); and immune deficiencies. Respondent did not document that he considered known toxic causes for Nolan A.’s developmental delay, such as plumbism (lead poisoning).

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

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

Patient Miles B.


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

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

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

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

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

Patient Nicholas P.

17. Nicholas P., a male thirteen-year-old patient, was never seen by Respondent. Respondent interviewed Nicholas P.'s mother on June 14, 2003 and September 13, 2003 at HRC. Dr. Schwartz never performed a formal physical and neurological examination of\n\n
Nicholas P. Dr. Schwartz diagnosed Nicholas P. with autism, behavioral disorder, language
dysfunction, food allergy, toxic exposure and ADHD. Nicholas P.’s medical record contains no
clarifying information regarding this diagnosis. However, Dr. Schwartz formed the opinion that
Nicholas P.’s ASD was caused by nutritional deficiencies, toxins from heavy metals, intestinal
infections, immunizations, immunoglobulin A (IgA), and immune deficiencies. Respondent did not
document that he considered known toxic causes for Nicholas P.’s condition, such as plumbism.

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

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

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

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

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

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

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

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

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

v. His treatment of patients Nolan A., Miles B., Nathaniel C. and Nicholas P. reflected a lack of knowledge of appropriate care, and pursuit of the full course of care, including multiple ordering of medical studies and recommendations for complementary interventions without medical evaluation or treatments represents an extreme departure from the standard of practice. Respondent supported his treatment decision on the belief that autism is characterized by numerous toxic assaults on the brain by heavy metals, viruses, autoimmune reactions, food allergies, gut toxicity, and abnormal peptides. Based on this belief, Respondent ordered laboratory tests for toxins and/or nutritional deficiencies on patients Nolan A., Miles
vi. Despite having diagnosed patients Nolan A., Miles B., and Nathaniel C. with toxic exposure, Respondent did not consider toxic causes, such as plumbism, for his patient's developmental delay and/or behavior.

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

FOURTH CAUSE FOR DISCIPLINE

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

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

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

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

25. Dr. Schwartz does not meet the standards regarding post-graduate training that would qualify him as an expert referral physician in treating autism and thus did not meet the
standard of care for a general pediatrician at the time he treated the patients Nolan A., Miles B., Nathaniel C. and Nicholas P. in 2003 and 2004.

**PENALTY CONSIDERATIONS**

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

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

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

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

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

DATED: April 13, 2006

[Signature]

DAVID T. THORNTON
Executive Director
Medical Board of California
State of California
Complainant