

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

In the Matter of the Accusation)
Against:)
)
)
GARY JAMES SHIMA, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 14742)
)
Respondent)
_____)

File No. 10-2006-172800

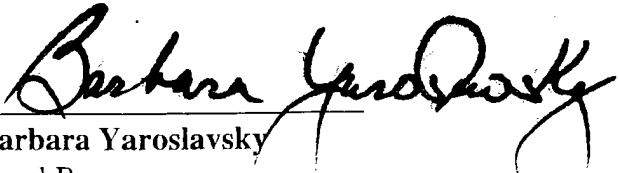
DECISION

The attached **Stipulated Settlement and Disciplinary Order** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 15, 2008.

IT IS SO ORDERED July 17, 2008.

MEDICAL BOARD OF CALIFORNIA

By: 
Barbara Yaroslavsky
Panel B
Division of Medical Quality

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN, State Bar No. 155553
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2094
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 GARY JAMES SHIMA, M.D.
14 1529 Grand Avenue, Suite B
San Marcos, CA 92078
15 Physician's and Surgeon's Certificate No.
G 14742

16 Respondent.

Case No. 10-2006-172800

OAH No. 2007090346

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Barbara Johnston (Complainant) is the Executive Director of the Medical
22 Board of California. She brought this action solely in her official capacity and is represented in this
23 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Martin W. Hagan,
24 Deputy Attorney General.

25 2. Respondent GARY JAMES SHIMA, M.D. is represented in this proceeding
26 by attorneys James N. Maynard, Esq., whose address is 3368 Governor Drive, Suite F135, San
27 Diego, CA 92111; and Marc S. Herlands, Esq., whose address is P.O. Box 231746, Encinitas, CA
28 92024-5626.

1 3. On or about May 22, 1968, the Medical Board of California (Board) issued
2 Physician's and Surgeon's Certificate No. G 14742 to GARY JAMES SHIMA, M.D. Physician's and
3 Surgeon's Certificate No. G 14742 was in full force and effect at all times relevant to the charges brought
4 in First Amended Accusation No. 10-2006-172800 and will expire on September 30, 2008, unless
5 renewed.

6 **JURISDICTION**

7 4. On or about August 15, 2007, Accusation No. 10-2006-172800 was filed before
8 the Medical Board of California, Department of Consumer Affairs ("Board"). A true and correct copy of
9 the Accusation and all other statutorily required documents were properly served on respondent on August
10 15, 2007. Respondent timely filed his Notice of Defense contesting the Accusation.

11 5. On or about November 29, 2007, First Amended Accusation No.
12 10-2006-172800 was filed before the Board and is currently pending against respondent. A true and
13 correct copy of the First Amended Accusation and all other statutorily required documents were properly
14 served on respondent on November 29, 2007. A true and correct copy of First Amended Accusation No.
15 10-2006-172800 is attached as Exhibit A and incorporated herein by reference.

16 **ADVISEMENT AND WAIVERS**

17 6. Respondent has carefully read, and fully understands the charges and allegations
18 in First Amended Accusation No. 10-2006-172800. Respondent has also carefully read, and fully
19 understands the effects of this Stipulated Settlement and Disciplinary Order.

20 7. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in First Amended Accusation No. 10-2006-172800; the right to
22 confront and cross-examine the witnesses against him; the right to present evidence and to testify on his
23 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
24 production of documents; the right to reconsideration and court review of an adverse decision; and all other
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

26 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

28 ////

1 CULPABILITY

2 9. Respondent admits the truth of the charges and allegations set forth in Paragraphs
3 1 through 12 in First Amended Accusation No. 10-2006-172800. As to the remaining charges and
4 allegations, respondent admits complainant can establish a *prima facie* case as to those remaining charges
5 and allegations not being admitted. If respondent later fails to comply with any term or condition of
6 probation, or seeks early termination of probation, all disciplinary charges and allegations in First Amended
7 Accusation No. 10-2006-172800 will be deemed true, correct and fully admitted by respondent.

8 10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 14742 is
9 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
10 Disciplinary Order below.

11 CONTINGENCY

12 11. This stipulation shall be subject to approval by the Board. Respondent understands
13 and agrees that counsel for Complainant and Board staff may communicate directly with the Board
14 regarding this stipulation and settlement, without notice to or participation by respondent. By signing the
15 stipulation, respondent understands and agrees that he may not withdraw his agreement or seek to rescind
16 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
17 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
18 or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the
19 Board shall not be disqualified from further action by having considered this matter.

20 ADDITIONAL PROVISIONS

21 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
22 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the
23 originals.

24 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
25 to be an integrated writing representing the complete, final and exclusive embodiment of the agreements
26 of the parties in the above-entitled matter.

27 14. This Stipulated Settlement and Disciplinary Order shall be subject to approval of
28 the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to

1 the Board for its consideration in the above-entitled matter and, further, that the Board shall have a
2 reasonable period of time in which to consider and act on this stipulation after receiving it. By signing this
3 stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to
4 rescind this stipulation prior to the time the Board considers and acts upon it.

5 In consideration of the foregoing admissions and stipulations, the parties agree that the Board may,
6 without further notice or formal proceeding, issue and enter the following Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 14742 issued
9 to respondent GARY JAMES SHIMA, M.D. is revoked. However, the revocation is stayed and
10 respondent is placed on probation for two and one-half (2 ½) years on the following terms and conditions.

11 1. **ETHICS COURSE** Within 60 calendar days of the effective date of this
12 Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by
13 the Board or its designee. Failure to successfully complete the course during the first year of probation is
14 a violation of probation.

15 An ethics course taken after the acts that gave rise to the charges in the Accusation, but
16 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be
17 accepted towards the fulfillment of this condition if the course would have been approved by the Board or
18 its designee had the course been taken after the effective date of this Decision.

19 Respondent shall submit a certification of successful completion to the Board or its designee
20 not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days
21 after the effective date of the Decision, whichever is later.

22 2. **CLINICAL TRAINING PROGRAM** Within 60 calendar days of the effective
23 date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the
24 Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San
25 Diego School of Medicine ("Program").

26 The Program shall consist of a Comprehensive Assessment program comprised of a two-
27 day assessment of respondent's physical and mental health; basic clinical and communication skills common
28 to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's specialty or sub-

1 specialty, and at minimum, a 40 hour program of clinical education in the area of practice in which
2 respondent was alleged to be deficient and which takes into account data obtained from the assessment,
3 Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant.
4 Respondent shall pay all expenses associated with the clinical training program.

5 Based on respondent's performance and test results in the assessment and clinical
6 education, the Program will advise the Board or its designee of its recommendation(s) for the scope and
7 length of any additional educational or clinical training, treatment for any medical condition, treatment for
8 any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall
9 comply with Program recommendations.

10 At the completion of any additional educational or clinical training, respondent shall submit
11 to and pass an examination. The Program's determination whether or not respondent passed the
12 examination or successfully completed the Program shall be binding.

13 Respondent shall complete the Program not later than six months after respondent's initial
14 enrollment unless the Board or its designee agrees in writing to a later time for completion.

15 Failure to participate in and complete successfully all phases of the clinical training program
16 outlined above is a violation of probation.

17 If respondent fails to complete the clinical training program within the designated time
18 period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board
19 or its designee that respondent failed to complete the clinical training program.

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

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

28 /////

1 4. **SUPERVISION OF PHYSICIAN ASSISTANTS** During probation,
2 respondent is prohibited from supervising physician assistants.

3 5. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, all
4 rules governing the practice of medicine in California, and remain in full compliance with any court ordered
5 criminal probation, payments and other orders.

6 6. **QUARTERLY DECLARATIONS** Respondent shall submit quarterly
7 declarations under penalty of perjury on forms provided by the Board, stating whether there has been
8 compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later
9 than 10 calendar days after the end of the preceding quarter.

10 7. **PROBATION UNIT COMPLIANCE** Respondent shall comply with the
11 Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business
12 and residence addresses. Changes of such addresses shall be immediately communicated in writing to the
13 Board or its designee. Under no circumstances shall a post office box serve as an address of record,
14 except as allowed by Business and Professions Code section 2021 (b).

15 Respondent shall not engage in the practice of medicine in respondent's place of residence.
16 Respondent shall maintain a current and renewed California physician's and surgeon's license. Respondent
17 shall immediately inform the Board, or its designee, in writing, of travel to any areas outside the jurisdiction
18 of California which lasts, or is contemplated to last, more than 30 calendar days.

19 8. **INTERVIEW WITH THE BOARD, OR ITS DESIGNEE** Respondent shall
20 be available in person for interviews either at respondent's place of business or at the probation unit office,
21 with the Board or its designee, upon request at various intervals, and either with or without prior notice
22 throughout the term of probation.

23 9. **RESIDING OR PRACTICING OUT-OF-STATE** In the event respondent
24 should leave the State of California to reside or to practice, respondent shall notify the Board or its designee
25 in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any
26 period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in
27 Sections 2051 and 2052 of the Business and Professions Code.

28 //// .

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

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

14 10. **FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT**

15 In the event respondent resides in the State of California and for any reason respondent
16 stops practicing medicine in California, respondent shall notify the Board or its designee in writing within
17 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice
18 within California, as defined in this condition, will not apply to the reduction of the probationary term and
19 does not relieve respondent of the responsibility to comply with the terms and conditions of probation.
20 Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not
21 engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

1 11. **COMPLETION OF PROBATION** Respondent shall comply with all financial
2 obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation.
3 Upon successful completion of probation, respondent's certificate shall be fully restored.

4 12. **VIOLATION OF PROBATION** Failure to fully comply with any term or
5 condition of probation is a violation of probation. If respondent violates probation in any respect, the
6 Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry
7 out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim
8 Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction
9 until the matter is final, and the period of probation shall be extended until the matter is final.

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

20 14. **PROBATION MONITORING COSTS** Respondent shall pay the costs
21 associated with probation monitoring each and every year of probation, as designated by the Board, which
22 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and
23 delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs
24 within 30 calendar days of the due date is a violation of probation.

25 ////

26 ////

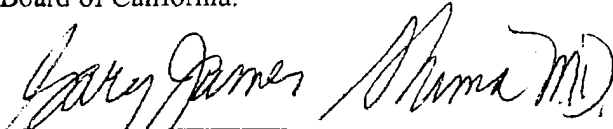
27 ////

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, James N. Maynard, Esq., and Marc S. Herlands, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate G 14742. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/14/08 
GARY JAMES SHIMA, M.D.
Respondent

I have read and fully discussed with Respondent GARY JAMES SHIMA, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/14/08 
JAMES N. MAYNARD, ESQ.
Attorney for Respondent

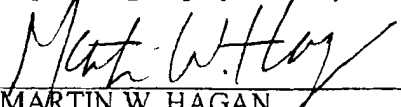
DATED: 5/14/08 
MARC S. HERLANDS, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: 5/14/08
EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General


MARTIN W. HAGAN
Deputy Attorney General

Attorneys for Complainant

Exhibit A

First Amended Accusation No. 10-2006-172800

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN HAGAN, State Bar No. 155553
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 645-2094
Facsimile: (619) 645-2061
8
9 Attorneys for Complainant

10 **BEFORE THE**
11 **DIVISION OF MEDICAL QUALITY**
12 **MEDICAL BOARD OF CALIFORNIA**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
14 **STATE OF CALIFORNIA**

13 In the Matter of the First Amended Accusation
Against:
14 Gary James Shima, M.D.
15 1529 Grand Ave., Ste. B
San Marcos, CA 92078
16 Physician's and Surgeon's Certificate
17 No. G 14742
18
19 Respondent.

Case No. 10-2006-172800
OAH No. 2007090346
FIRST AMENDED ACCUSATION
(Cal. Gov. Code Section 11507)

20 Complainant alleges:

21 **PARTIES**

- 22 1. Barbara Johnston (Complainant) brings this First Amended Accusation solely
23 in her official capacity as the Executive Director of the Medical Board of California.
24 2. On or about May 22, 1968, the Medical Board of California issued Physician's
25 and Surgeon's Certificate Number G 14742 to GARY J. SHIMA, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges
27 brought herein and will expire on September 30, 2008, unless renewed.
28

1 JURISDICTION

2 3. This First Amended Accusation is brought before the Division of Medical
3 Quality (Division) for the Medical Board of California, Department of Consumer Affairs, under the
4 authority of the following sections of the Business and Professions Code ("Code"). All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 4. Section 2227 of the Code states:

7 "(a) A licensee whose matter has been heard by an administrative law judge of the
8 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
9 whose default has been entered, and who is found guilty, or who has entered into a
10 stipulation for disciplinary action with the division, may, in accordance with the provisions
11 of this chapter:

12 "(1) Have his or her license revoked upon order of the division.

13 "(2) Have his or her right to practice suspended for a period not to exceed one
14 year upon order of the division.

15 "(3) Be placed on probation and be required to pay the costs of probation
16 monitoring upon order of the division.

17 "(4) Be publicly reprimanded by the division.

18 "(5) Have any other action taken in relation to discipline as part of an order
19 of probation, as the division or an administrative law judge may deem proper.

20 "(b) Any matter heard pursuant to subdivision (a), except for warning letters,
21 medical review or advisory conferences, professional competency examinations,
22 continuing education activities, and cost reimbursement associated therewith that are
23 agreed to with the division and successfully completed by the licensee, or other
24 matters made confidential or privileged by existing law, is deemed public, and shall
25 be made available to the public by the board pursuant to Section 803.1."

26 ////

27 ////

28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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, 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.

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

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

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

"(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.

"...."

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

7. Section 109300 of the Health and Safety Code states:

"The sale, offering for sale, holding for sale, delivering, giving away, prescribing or administering of any drug, medicine, compound, or device to be used in the diagnosis, treatment, alleviation, or cure of cancer is unlawful and prohibited unless (1) an application with respect thereto has been approved under Section 505 of the federal Food, Drug and Cosmetic Act, or (2) there has been approved an application filed with the board setting forth:
(a) Full reports of investigations that have been made to show whether or not the drug, medicine, compound, or device is safe for the use, and whether the drug, medicine, compound, or device is effective in the use;

"(b) A full list of the articles used as components of the drug, medicine, compound, or device;

"(c) A full statement of the composition of the drug, medicine, compound, or device;

"(d) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug, medicine, or compound or in the case of a device, a full statement of its composition, properties, and construction and the principle or principles of its operation;

"(e) Such samples of the drug, medicine, compound, or device and of the articles used as components of the drug, medicine, compound, or device as the board may require; and

"(f) Specimens of the labeling and advertising proposed to be used for the drug, medicine, compound, or device."

1 8. Title 21 United States Code section 321 (p) (1), the Federal Food, Drug
2 and Cosmetic Act, section 505, defines a "new drug" as any drug not generally recognized
3 among experts as "safe and effective" for use.

4 9. Title 21 United States Code section 355 prohibits the interstate
5 distribution of any "new drug" unless the Secretary of Health, Education and Welfare
6 approves an application supported by substantial evidence of the drug's safety and
7 effectiveness.

8 10. On July 29, 1977, the Commissioner of the Food and Drug
9 Administration, at 42 Code of Federal Regulations, part 39775-39787, issued an opinion
10 concluding that laetrile is a "new drug" as defined by Title 21 United States Code section 321
11 (p) (1).

12 11. Title 17 California Code of Regulations section 10400.1. states, in
13 pertinent part:

14 "..."

15 "(b) The Department of Public Health hereby finds that
16 beta-cyanogenetic glucosides including amygdalin (with or without the
17 addition of diisopropyl ammonium iodide), and prunasin, commonly known
18 as "Laetriles," are of no value in the diagnosis, treatment, alleviation or cure
19 of cancer and that the use of one or more of these agents in early cancer to the
20 exclusion of conventional treatment might well be dangerous since treatment
21 with acceptable, modern, curative methods (surgery or radiation) would
22 thereby be delayed potentially until such time as metastases had occurred and
23 the cancer therefore might no longer be curable. In late disease palliative effect
24 is lacking. The Department recommends that the public refrain from using any
25 of the said agents or any agent, drug, medicine, compound or device
26 substantially similar thereto in the diagnosis, alleviation, treatment or cure of
27 cancer.

28 ////

1 “(c) Except as otherwise provided in Section 1708 of the California
2 Health and Safety Code the prescription, administration, sale or other
3 distribution of beta-cyanogenetic glucosides including amygdalin (with or
4 without the addition of diisopropyl ammonium iodide) and prunasin,
5 commonly known as “Laetriles” or, any substantially similar agent, drug,
6 medicine, compound or device to any patient who has or who believes that he
7 has or may have cancer is prohibited; and the Department shall upon learning
8 of such prescription, administration, sale or other distribution take appropriate
9 steps to cause such persons so doing to cease and desist therefrom.

10 “(d) No person shall for the purpose of prescribing, administering,
11 selling or otherwise distributing beta-cyanogenetic glucosides including
12 amygdalin (with or without the addition of diisopropyl ammonium iodide) or
13 prunasin, commonly known as “Laetriles,” make any representation that said
14 agents have any value in arresting, alleviating or curing cancer; and the
15 Department shall upon learning of such representation take appropriate steps
16 to cause such person to cease and desist from such representation and shall
17 take such other and further steps as may be appropriate to cause such
18 representation to be discontinued.”

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Violating Federal and State Drug Laws)**

21 12. Respondent is subject to disciplinary action under sections 2227 and
22 2234, as defined by section 2238 of the Code, in that he administered laetrile to patient M.T.,
23 in violation of Title 21 United States Code section 355, as defined by Title 21 United States
24 Code section 321 (p)(1), and Health and Safety Code section 109300. The circumstances are
25 as follows:

26 A. On or about April 13, 2000, patient M.T. began seeking
27 treatment with respondent for her metastatic melanoma which had previously
28 been diagnosed in 1997.

1 B. On or about June 21, 2000, Respondent sent a facsimile to Dr.
2 D.B., who practiced alternative medicine to treat cancer, seeking guidance on
3 treating Patient M.T.'s metastatic melanoma. The facsimile stated, in
4 pertinent part:

5 "I have communicated with your office several times. I am treating a
6 45 y.o. [year old] female with nodular, metastatic melanoma. She has
7 completed the IV multi-vit/min and Super C IV's, and now following the oral
8 protocal program. Do you continue Thymus peptides? How long? Is the oral
9 supplement program continued indefinitely? Especially, how long do you
10 continue to treat with 'Azelaic Acid'? My patient weighs 113 pounds and I
11 am using 6 grams Azelaic Acid divided doses daily. Thank you for assistance
12 in managing this melanoma patient. /s/ Gary J. Shima M.D."

13 C. On or about June 27, 2000, respondent administered "oral Phytokem
14 B17 one tab twice daily" to patient M.T. B17 is the common alternative term used for
15 laetrile.¹

16 D. On or about July 20, 2000, respondent administered B17 to
17 patient M.T.

18 E. On or about August 16, 2000, respondent administered B17 to
19 patient M.T.

20 F. On or about August 18, 2000, respondent administered B17 to
21 patient M.T.

22 G. On or about August 22, 2000, respondent administered B17 to
23 patient M.T.

24 H. On or about August 24, 2000, respondent administered B17 to
25 patient M.T.

26
27
28

1. Laetrile is also known as amygdalin.

- 1 I. On or about August 26, 2000, respondent administered B17 to
2 patient M.T.
- 3 J. On or about August 31, 2000, respondent administered B17 to
4 patient M.T.
- 5 K. On or about September 2, 2000, respondent administered B17
6 to patient M.T.
- 7 L. On or about September 4, 2000, respondent administered B17
8 to patient M.T.
- 9 M. On or about September 6, 2000, respondent administered B17
10 to patient M.T.
- 11 N. On or about September 11, 2000, respondent administered B17
12 to patient M.T.
- 13 O. On or about September 15, 2000, respondent administered B17
14 to patient M.T.
- 15 P. On or about September 22, 2000, respondent administered B17
16 to patient M.T.
- 17 Q. On or about September 29, 2000, respondent administered B17
18 to patient M.T.
- 19 R. On or about October 2, 2000, respondent administered B17 to
20 patient M.T.
- 21 S. On or about October 6, 2000, respondent administered B17 to
22 patient M.T.
- 23 T. On or about October 9, 2000, respondent administered B17 to
24 patient M.T.
- 25 U. On or about October 11, 2000, respondent administered B17
26 to patient M.T.
- 27 V. On or about October 13, 2000, respondent administered B17
28 to patient M.T.

1 W. On or about October 16, 2000, respondent administered B17
2 to patient M.T.
3 X. On or about October 18, 2000, respondent administered B17
4 to patient M.T.
5 Y. On or about October 20, 2000, respondent administered B17
6 to patient M.T.
7 Z. On or about October 23, 2000, respondent administered B17
8 to patient M.T.
9 AA. On or about October 24, 2000, respondent administered B17
10 to patient M.T.
11 BB. On or about October 27, 2000, respondent administered B17
12 to patient M.T.
13 CC. On or about October 30, 2000, respondent administered B17
14 to patient M.T.
15 DD. On or about November 1, 2000, respondent administered B17
16 to patient M.T.
17 EE. On or about November 3, 2000, respondent administered B17
18 to patient M.T.
19 FF. On or about November 6, 2000, respondent administered B17
20 to patient M.T.
21 GG. On or about November 8, 2000, respondent administered B17
22 to patient M.T.
23 HH. On or about November 10, 2000, respondent administered B17
24 to patient M.T.
25 II. On or about November 13, 2000, respondent administered B17
26 to patient M.T.
27 JJ. On or about November 15, 2000, respondent administered B17
28 to patient M.T.

1 KK. On or about November 17, 2000, respondent administered B17
2 to patient M.T.

3 LL. On or about November 22, 2000, respondent administered B17
4 to patient M.T.

5 MM. On or about November 25, 2000, respondent administered B17
6 to patient M.T.

7 NN. On or about November 27, 2000, respondent administered B17
8 to patient M.T.

9 OO. On or about November 28, 2000, respondent administered B17
10 to patient M.T.

11 PP. On or about November 28, 2000, patient M.T. died.
12 Respondent completed her death certificate and listed the cause of death as
13 metastatic melanoma. No autopsy was performed.

14 QQ. Respondent admitted during his interview that patient M.T.
15 brought laetrile from Mexico to his clinic in San Marcos where he
16 administered it to her.

17 13. Respondent has violated federal statutes, federal regulations, state
18 statutes and/or state regulations regulating dangerous drugs, controlled substances, and/or
19 laetrile during his care and treatment of patient M.T. in that he administered laetrile to her in
20 violation of Title 21 United States Code section 355, as defined by Title 21 United States
21 Code section 321 (p) (1), and section 109300 of the California Health and Safety Code.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Gross Negligence)**

24 14. Respondent is further subject to disciplinary action under sections 2227
25 and 2234, as defined by section 2234, subdivision (b), of the Code, in that Respondent
26 committed gross negligence in his care and treatment of Patient M.T., as more particularly
27 described hereinafter:

28 ///

1 15. Paragraphs 12 and 13, above, are incorporated by reference as if fully
2 set forth herein.

3 16. As discussed more fully herein, Respondent administered laetrile to
4 Patient M.T. in violation of Title 21 United States Code section 355, as defined by Title 21
5 United States Code section 321 (p) (1), and section 109300 of the California Health and
6 Safety Code.

7 17. Respondent's informed consent was inadequate during his care and
8 treatment of Patient M.T.'s metastatic melanoma. Among other things, Respondent failed to
9 adequately inform Patient M.T. of the options of palliative and/or hospice care; the possibility
10 of end of life; the unlikelihood of any success with the laetrile treatment; the potential side
11 effects of laetrile; and the specific nature and goals in regards to his care and treatment of
12 Patient M.T.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Repeated Negligent Acts)**

15 18. Respondent is further subject to disciplinary action under sections 2227
16 and 2234, as defined by section 2234, subdivision (c), of the Code, in that Respondent
17 committed repeated negligent acts in his care and treatment of Patient M.T., as more
18 particularly described hereinafter.

19 19. Paragraphs 12 through 17, above, are incorporated by reference as if
20 fully set forth herein.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Incompetence)**

23 20. Respondent is further subject to disciplinary action under sections 2227
24 and 2234, as defined by section 2234, subdivision (d), of the Code, in that Respondent's
25 treatment, care and management of Patient M.T. was incompetent, as more particularly
26 described hereinafter.

27 21. Paragraphs 12 through 19, above, are incorporated by reference as if
28 fully set forth herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

22. Respondent's treatment of Patient M.T.'s metastatic melanoma, and inquiries regarding possible treatment with, among other things, laetrile, thymus peptides, supplements and/or azeiaic acid demonstrates a poor knowledge of oncology and the natural course of metastatic melanoma and of the risks and benefits of laetrile itself.

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 or suspending Physician's and Surgeon's Certificate Number G 14742, issued to GARY J. SHIMA, M.D.;
- 2. Revoking, suspending or denying approval of GARY J. SHIMA, M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 3. Ordering GARY J. SHIMA, M.D. if placed on probation, to pay the Division of Medical Quality the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: 11/29/07

Barbara Johnston for

 BARBARA JOHNSTON
 Executive Director
 Medical Board of California
 State of California
 Complainant

SD2006802035
80180955.wpd