BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and Complaint Against HAROLD TATE, M.D., Respondent.	Case No. 08-19247-1 FILED 8th December 2008 CLERK OF THE BOARD

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board), composed of Sohail U. Anjum, M.D., Chairman, and S. Daniel McBride, M.D. Member, by and through counsel, Edward Cousineau, Esq., and Harold Tate, M.D. (Respondent), as follows:

WHEREAS, on or about May 20, 2008, the IC of the Board filed a formal complaint in the above-referenced matter, charging Respondent with violations of the Medical Practice Act (NRS Chapter 630), to wit: revocation, suspension, modification or limitation of a license to practice medicine in another jurisdiction, a violation of NRS 630.301(3).

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands the nature and significance of the Complaint, and Respondent is fully advised concerning his rights and defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to confrontation and

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cross-examination of witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to him; and

WHEREAS, provided this Agreement is approved by the Board, Respondent agrees to waive all of his rights under the United States Constitution, the Constitution of the state of Nevada, the Medical Practice Act, and the Nevada Administrative Procedures Act, including but not limited to the right to a hearing on the charges and written findings of fact, conclusions of law and order, and he agrees to settle and resolve this matter of the formal complaint against him by way of, and in accordance with, this Settlement, Waiver and Consent Agreement; and

WHEREAS, Respondent understands and agrees that this Agreement is entered into by and between himself and the Board's IC, and not with the Board, but that the IC will present this Agreement to the Board for consideration in open session at a regularly-scheduled quarterly meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but that the Board has the right to decide in its own discretion whether or not to approve this Agreement; and

WHEREAS, Respondent and the IC each understand and agree that if the Board approves the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be binding and enforceable upon Respondent and the Board's IC; and

WHEREAS, Respondent has reviewed and understands all the relevant facts and circumstances of this matter and after due consideration concedes that his active license to practice medicine in California has been suspended, modified and or limited as outlined in the Complaint filed by the IC of the Board in this case.

NOW THEREFORE, in order to resolve the above-captioned case and charges brought against him by the Board's Investigative Committee in said matter, Respondent and the IC hereby agree to the following terms, covenants and conditions:

1. **Jurisdiction.** Respondent is, and at all times mentioned in the complaint filed in the above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

2. **Representation by Counsel.** Respondent acknowledges that although he is not represented by counsel licensed in the state of Nevada, Respondent has consulted with out-of-state counsel prior to entering into this Agreement.

3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently and that he has consulted with out-of-state counsel prior to entering into this Agreement. In connection with this Agreement, and the terms, covenants and conditions contained herein, Respondent knowingly, willingly and intelligently, waives all rights arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in connection with the proceeding on the complaint filed herein, the defense of said complaint and the adjudication of the charges in said complaint, and Respondent further agrees that the matter of the disciplinary action commenced by complaint herein may be settled and resolved in accordance with this Agreement without a hearing or any further proceeding, and without the right to judicial review.

4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees that the Board's IC has a reasonable basis to believe that Respondent violated one or more provisions of the Medical Practice Act.

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against him without any further cost and expense of providing a defense to the complaint, Respondent hereby agrees that an order may be entered herein by the Board against him, finding that Respondent has violated the Medical Practice Act to wit: revocation, suspension, modification or limitation of his California license to practice medicine, a violation of NRS 630.301(3), and ordering that Respondent's Nevada license to practice medicine be revoked, with that revocation stayed, and that Respondent's license be placed in a probationary status until March 20, 2013, that Respondent shall be publicly reprimanded, and that he remain in compliance with the following terms and conditions:

a. that Respondent both has, and shall continue to, comply with all the terms and conditions set forth by the California Medical Board in its Decision which became effective on March 21, 2008, (see Exhibit A);

b. that Respondent shall contact the Compliance Officer of the Board (hereinafter "Compliance Officer") within thirty (30) days of the approval and acceptance of this Agreement in order to provide information regarding the most expeditious method of contacting him;

c. that Respondent shall sign a release of information allowing the Board to communicate with the California Medical Board regarding Respondent's compliance with the terms of his California probation or provide proof of completion of said probation and reinstatement of his license without restrictions;

d. that Respondent shall comply with all federal, state and local laws and rules governing the practice of medicine in Nevada at all times he is practicing within the state;

e. that Respondent shall cooperate fully with the Compliance Officer, or any other designated person, in the administration and enforcement of this Agreement;

f. that Respondent agrees to pay the costs of investigation and prosecution of this matter in the current amount of $441.55, along with the costs to conclude the matter, if any, within sixty (60) days of the Board's acceptance and approval of this Agreement;

6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff and members of the panel of the Board who would adjudicate this case if it were to go to hearing. Respondent covenants and agrees that such contacts and communication may be made or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel, and that such contacts and communications may include, but not be limited to, matters concerning this Agreement, the complaint, the allegations in the complaint, any and all evidence that may exist in support of the complaint, and any and all information of every nature whatsoever related to the complaint against Respondent.

7. **Board Approval Required.** This Agreement will be placed on the next available Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly understood that this

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Agreement will only become effective if the Board approves the recommendation of the IC for acceptance.

8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC will cause to be entered herein the Board's Order finding Respondent violated NRS 630.301(3), which states that the revocation, suspension, modification or limitation of a license to practice medicine by another jurisdiction is grounds for discipline, when his California license to practice medicine was suspended and/or modified.

9. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be null, void, and of no further force and effect except as to the following covenant and agreement regarding disqualification of adjudicating Board panel members. Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by the Board shall disqualify any member of the adjudicating panel of the Board from considering the charges against Respondent and participating in the disciplinary proceedings in any role, including adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

10. **Release From Liability.** In execution of this Agreement, the Respondent, for himself, his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in their representative capacities, and in their individual capacities absent evidence of bad faith, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration, in connection with the complaint. The IC hereby agrees to accept this Agreement in full settlement of all claims related to the complaint, with the understanding that the final decision rests with the Board.

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11. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

12. **Forum Selection Clause.** Respondent covenants and agrees that in the event either party is required to seek enforcement of this Agreement in the district court, he consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

13. **Attorneys Fees and Costs.** Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

14. **Failure to comply with terms.** In the event the Board enters its Order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that included herein for the subject's violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

Dated this 11th day of September, 2008.

Edward Cousineau, Esq.
Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement signed on the 11th day of September, by Edward Cousineau, Esq., Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners.

Dated this 17th day of Sept 2008.

Harold Tate, M.D.
Respondent

Signature of Harold Tate, M.D.
subscribed and sworn to before me
this 17th day of Sept 2008

Notary Public

JIMMY L SHELL JR.
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
February 8, 2013

ORDER

IT IS HEREBY ORDERED that the foregoing SETTLEMENT, WAIVER AND CONSENT AGREEMENT is approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of December 2008.

Charles N. Held, President
NEVADA STATE BOARD OF MEDICAL EXAMINERS

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

EXHIBIT

A

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

MEDICAL BOARD OF CALIFORNIA
I hereby certify that this document is a true and correct copy of the original on file in this office.
Signature
Title
Date

In the Matter of the Accusation Against:	)	
HAROLD AUSTIN TATE, M.D.	)	File No. 08-2006-178477
Physician's and Surgeon's Certificate No. G 74583	)	
Respondent	)	

RECEIVED
APR 24 2008
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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 **March 21, 2008.**

IT IS SO ORDERED **February 20, 2008.**

MEDICAL BOARD OF CALIFORNIA

By: _____
Barbara Yaroslavsky
Chair, Panel B
Division of Medical Quality

EDMUND G. BROWN JR., Attorney General
of the State of California
GAIL M. HEPPELL
Supervising Deputy Attorney General
G. LYNN THORPE, State Bar No. 112122
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1300 I Street, Suite 125
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **HAROLD AUSTIN TATE, M.D.** 8680 Mesa Canogo Drive Las Vegas, Nevada 89148 Physician and Surgeon's No. G 74583 Respondent.	Case No. 08-2006-178477 OAH No. 2007080860 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

2. Respondent Harold Austin Tate, M.D. is represented in this proceeding by attorney Mark Rivas, Esq., whose address is Law Offices of Mark Ravis, 7510 West Sunset Boulevard, Suite 559, Los Angeles, California 90046.

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3. On or about March 13, 1998, the Medical Board of California issued Physician and Surgeon Certificate No. G 74583 to Harold Austin Tate, M.D. (Respondent). Unless renewed, it will expire on January 31, 2008.

JURISDICTION

4. Accusation No. 08-2006-178477 was filed before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 26, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 08-2006-178477 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 08-2006-178477. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 08-2006-178477.

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9. Respondent agrees that his Physician and Surgeon Certificate is subject to discipline and he agrees to be bound by the Division's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceeding in which the Division of Medical Quality, Medical Board of California, or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

OTHER MATTERS

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

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DISCIPLINARY ORDER

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

IT IS HEREBY ORDERED that Physician and Surgeon Certificate No. G 74583 issued to Respondent Harold Austin Tate, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **ACTUAL SUSPENSION** As part of probation, Respondent is suspended from the practice of medicine for fifteen (15) days beginning the sixteenth (16th) day after the effective date of this decision. This condition will not become effective until Respondent resides and practice medicine in California.

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

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

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

3. **NOTIFICATION** Prior to engaging in the practice of medicine, the Respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine,

including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

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

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

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

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

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

Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California Physician and Surgeon license.

Respondent shall immediately inform the Division, or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

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8. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE

Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Division or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

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

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

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

10. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Division or its

designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

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

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

13. **LICENSE SURRENDER** Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The Division reserves the right to evaluate Respondent's request and to

exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Division or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which are currently set at $3,173.00, but may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark Ravis. I understand the stipulation and the effect it will have on my Physician and Surgeon Certificate. 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 Division of Medical Quality, Medical Board of California.

DATED: 1/5/2008

HAROLD AUSTIN TATE, M.D.
Respondent

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I have read and fully discussed with Respondent Harold Austin Tate, 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: 1/7/08

MARK RAVIS
Attorney for Respondent

ENDORSEMENT

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

DATED: 1/7/08

EDMUND G. BROWN JR., Attorney General
of the State of California

GAIL M. HEPPELL
Supervising Deputy Attorney General

G. LYNN THORPE
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 08-2006-178477

EDMUND G. BROWN JR., Attorney General
of the State of California
GAIL M. HEPPELL
Supervising Deputy Attorney General
G. LYNN THORPE, State Bar No. 112122
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Facsimile: (916) 327-2247

Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 26, 2007
BY [signature] ANALYST

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

In the Matter of the Accusation Against: **HAROLD AUSTIN TATE, M.D.** 8680 Mesa Canogo Drive Las Vegas, Nevada 89148 Physician and Surgeon's Certificate No. G 74583 Respondent.	Case No. 08-2006-178477 **ACCUSATION**

Complainant alleges:

PARTIES

1. Complainant, Dave Thornton, is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

2. On or about July 7, 1992, the Medical Board of California issued Physician and Surgeon's Certificate Number G 74583 to Harold Austin Tate, M.D. (Respondent), and at all times relevant to the charges brought herein, this license has been in full force and effect. Unless renewed, Respondent's Physician and Surgeon's license will expire on January 31, 2008.

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JURISDICTION

3. This Accusation is brought before the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other relevant statutory enactment:

4. 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.

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:

"(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."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall,

within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

FIRST CAUSE FOR DISCIPLINE
(Dishonesty)
[Bus. & Prof. Code § 2234(e)]

7. Respondent is subject to disciplinary action under section 2234(e) of the Code in that he failed to file tax returns for three years and was convicted of one felony count of failure to file income tax returns which constitutes a dishonest act which is substantially related to his qualifications as a physician and surgeon. The circumstances are as follows:

8. In the case of *People of the State of California v. Harold Austin Tate* (Super. Ct. Los Angeles County, 2007, No. BA309062), Respondent pled guilty to one felony violation of Revenue and Tax Code section 19706, Failing to File Income Tax. The underlying facts and circumstance are as follows:

a. Respondent did not file tax returns for the years 2002, 2003 and 2004.

b. On or about February 7, 2007, Respondent was charged with three (3) counts of failing to file a tax return in violation of Revenue and Tax Code section 19706.

c. On or about February 7, 2007, Respondent pled guilty to one felony violation of Revenue and Tax Code section 19706, Failing to File Income Tax. Respondent's sentence was suspended and he was placed on three years probation, ordered to pay $35,138.00 in restitution, ordered to reimburse the Franchise Tax Board for the costs of its investigation and fined $10,000 plus penalty assessments.

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9. Respondent's failure to pay income taxes for the years 2002, 2003 and 2004 constitutes a dishonest act which is substantially related to his qualifications as a physician and surgeon within the meaning of section 2234(e) of the Code. Respondent's felony conviction for violation of Revenue and Tax Code section 19706, Failing to File Income Tax also constitutes a dishonest act which is substantially related to his qualifications as a physician and surgeon within the meaning of section 2234(e) of the Code.

SECOND CAUSE FOR DISCIPLINE
(Conviction of Crime)
[Bus. & Prof. Code § 2236]

10. Respondent is subject to disciplinary action under section 2236 of the Code in that his felony conviction for failing to file tax returns in violation of Revenue and Tax Code section 19706 constitutes conviction of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are set forth below.

11. Complainant realleges paragraph 8 as if fully set forth herein.

12. Respondent's conviction for a felony violation of Revenue and Tax Code section 19706, Failing to File Income Tax constitutes conviction of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon within the meaning of section 2236 of the Code.

PRAYER

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

1. Revoking or suspending Physician & Surgeon's Certificate Number G 74583, issued to Harold Austin Tate, M.D.

2. Revoking, suspending or denying approval of Harold Austin Tate, M.D.'s authority to supervise physician's assistants, pursuant to Section 3527 of the Code;

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