

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 ADRIAN K. PANTON,
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 5212
4 Los Angeles, California 90013-1204
Telephone: (213) 897-6593

5
6 Attorneys for Complainant

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

12 In the Matter of the Accusation) NO. 05-93-29050
Against:)

13 **MILTON H. UHLEY, M.D.**) **A C C U S A T I O N**
14 360 North Bedford Drive)
Beverly Hills, CA 90210)

15 Physician's and Surgeon's)
Certificate No. C10122,)

16 Respondent.)
17

18 The Complainant alleges:

19 **PARTIES**

20 1. Complainant, Dixon Arnett, is the Executive
21 Director of the Medical Board of California (hereinafter the
22 "Board") and brings this accusation solely in his official
23 capacity.

24 2. On or about May 20, 1947, Physician's and
25 Surgeon's Certificate No. C10122 was issued by the Board to
26 MILTON H. UHLEY, M.D. (hereinafter "respondent"), and at all
27 times relevant to the charges brought herein, this license has

1 been in full force and effect. Unless renewed, it will expire on
2 November 30, 1996.

3 JURISDICTION

4 3. This accusation is brought before the Division of
5 Medical Quality of the Medical Board of California Department of
6 Consumer Affairs (hereinafter the "Division"), under the
7 authority of the following sections of the California Business
8 and Professions Code (hereinafter "Code"):

9 A. Section 2227 provides that the Board may revoke,
10 suspend for a period not to exceed one year, or place on
11 probation, the license of any licensee who has been found
12 guilty under the Medical Practice Act.

13 B. Section 2234 provides that unprofessional conduct
14 includes, but is not limited to, the following:

15 "(a) Violating or attempting to violate, directly or
16 indirectly, or assisting in or abetting the violation
17 of, or conspiring to violate, any provision of this
18 chapter.

19 (b) Gross negligence.

20 (c) Repeated negligent acts.

21 (d) Incompetence.

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

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

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C. Code section 125.3 provides, in part, that the Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

D. In relevant part Code section 725 provides:

"Repeated acts of clearly excessive prescribing or administering of drugs . . . as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon"

E. In relevant part, Code section 2241 provides:

"[T]he prescribing, selling, furnishing, giving away, or administering or offering to prescribe, sell, furnish, give away, or administer any of the drugs or compounds mentioned in Section 2239 to an addict or habitue constitutes unprofessional conduct."

F. Code section 2242, subdivision(a), states:

"Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4211 without a good faith prior examination and medical indication therefor, constitutes unprofessional conduct."

G. Section 4211 of the Code in part states:

"'Dangerous drug' means any drug unsafe for self-medication . . . and includes the following:

" * * * * *

1 " (c) Any other drug or device that by federal or
2 state law can be lawfully dispensed only on
3 prescription"

4 **CAUSES OF ACTION**

5 **Patient C.C.**

6 **I**

7 **GROSS NEGLIGENCE**

8 4. Respondent MILTON H. UHLEY, M.D., is subject to
9 disciplinary action under Code section 2234(b) for gross
10 negligence in that without a good faith prior examination or
11 medically indicated reason, he repeatedly wrote clearly excessive
12 prescriptions for Percocet, a dangerous drug and Schedule II
13 controlled substance, on behalf of C.C. who was known by
14 respondent to be chemically dependent. The circumstances are as
15 follows:

16 A. Respondent, who practices internal medicine,
17 began treating C.C. in September 1988 for migraine
18 headaches, back and neck pain, and sinusitis. As part of
19 the treatment for these conditions, respondent began to
20 prescribe Percocet in 1989. In April 1989, respondent
21 became aware that C.C. had a chemical dependence problem yet
22 he continued to prescribe Percocet. Respondent was also
23 aware in 1989 that C.C. underwent rehabilitation for
24 alcoholism in 1985. Respondent continued to prescribe
25 Percocet to C.C. without performing a good faith
26 examination, or otherwise assessing the medical necessity
27 for the prescriptions, after he became aware of C.C.'s

1 chemical dependence problem. Nor was there any indication
2 that respondent complied with any of the mandates of Code
3 section 2241.5 as they relate to intractable pain.

4 B. Beginning January 20, 1989 and
5 continuing through November 19, 1992, respondent wrote
6 36 prescriptions for Percocet for C.C. which in the
7 quantities dispensed approximates 1,890 dosage units
8 for that time period. The dates of the prescriptions
9 and the quantities for which they were written are as
10 follows:

11	January 20, 1989	50
12	May 15, 1989	100
13	August 23, 1989	30
14	May 15, 1990	50
15	June 25, 1990	50
16	July 9, 1990	50
17	August 9, 1990	30
18	August 15, 1990	50
19	September 11, 1990	50
20	September 22, 1990	50
21	October 1, 1990	30
22	October 8, 1990	30
23	October 18, 1990	30
24	November 15, 1990	30
25	November 29, 1990	30
26	December 6, 1990	50
27	December 26, 1990	30

1	July 18, 1991	50
2	September 2, 1991	30
3	November 10, 1991	30
4	December 2, 1991	30
5	December 14, 1991	50
6	December 14, 1991	50 ^{1/}
7	January 20, 1992	30
8	February 4, 1992	50
9	March 23, 1992	50
10	April 13, 1992	50
11	August 17, 1992	100
12	September 6, 1992	50
13	September 15, 1992	100
14	September 27, 1992	50
15	October 4, 1992	100
16	October 12, 1992	100
17	October 18, 1992	100
18	October 28, 1992	100
19	November 19, 1992	<u>30</u>
20	TOTAL	1890

II

EXCESSIVE PRESCRIBING

23 5. Respondent is subject to disciplinary action under
24 Code section 725 in that with respect to C.C., he engaged in
25 repeated acts of clearly excessive prescribing of Percocet. The
26

27 1. Two separate prescriptions were written for December
14, 1991 and were filled at different pharmacies.

1 fever of approximately 103 degrees and was complaining of
2 abdominal pains and chills. Respondent, over the telephone,
3 diagnosed C.K.'s condition as the flu and prescribed a
4 "protocol" of Tylenol, Valium and hot showers. The
5 telephonic diagnosis and recommended treatment without
6 taking a history and performing a physical examination was
7 an extreme departure from the standard of care.

8 B. On or about October 17, respondent by
9 telephone was informed that C.K.'s condition remained
10 unchanged. At respondent's directive, C.K. came to
11 respondent's office and was given an injection of Gamma
12 Globulin and Lincocin by respondent's nurse.

13 Respondent himself did not see C.K. On the afternoon
14 of October 17, C.K.'s wife telephoned again to report
15 that C.K.'s temperature was over 104 degrees and his
16 abdomen was distended. Respondent, again over the
17 telephone, advised C.K. to continue the protocol of
18 Tylenol, Valium and hot showers every four hours.
19 Given the patient's symptomatology and history of
20 ulcers and gastrointestinal bleeding, it was an extreme
21 departure from the standard of care for respondent to
22 have prescribed Tylenol and to not have personally
23 evaluated C.K. prior to having his nurse administer
24 Gamma Globulin and Lincocin.

25 C. When C.K.'s wife telephoned respondent on the
26 morning of October 18 to report that C.K.'s temperature
27 was still over 104 degrees, respondent advised that

1 C.K. probably still had the flu but directed her to
2 take him to the emergency room at Cedars Sinai Medical
3 Center.

4 D. Later on the morning of October 18, the
5 hospital telephoned respondent to report that C.K. had
6 been admitted. Respondent, over the telephone, ordered
7 the continuation of the protocol of Tylenol, Valium and
8 hot showers. When respondent failed to come to
9 evaluate C.K. until over 12 hours after his admission,
10 C.K.'s wife dismissed him from the case. Given the
11 patient's symptomatology and history, it was an extreme
12 departure from the standard of care for respondent to
13 have ordered a treatment regimen without having
14 performed a physical examination and to have delayed
15 his personal evaluation of C.K. until 12 hours after
16 the patient's hospital admission.

17 E. C.K. was subsequently diagnosed as having a
18 perforated duodenal ulcer. He suffered resultant
19 septic shock, renal insufficiency and gastrointestinal
20 bleeding. C.K. died in the hospital on December 4,
21 1988. Early assessment of C.K.'s condition at the
22 onset of his complaints by a physical evaluation,
23 proper diagnosis and surgical intervention would have
24 improved his chances of survival. Respondent's failure
25 to make an assesment of C.K.'s condition by a physical
26 examination at any time after the onset of the
27 patient's complaints was an extreme departure from the

1 standard of care.

2 **VIII**

3 **INCOMPETENCE**

4 11. Respondent is subject to disciplinary action
5 under Code section 2234(d) for incompetence based on his
6 demonstrated lack of knowledge, skill and ability in the
7 evaluation, diagnosis and treatment of ulcers and their attending
8 complications. The circumstances are as follows:

9 A. The facts and allegations in paragraph
10 10, subparagraphs A through E, inclusive, are
11 incorporated here by reference.

12 **PRAYER**

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

16 1. Revoking or suspending Physician's and Surgeon's
17 Certificate Number C10122, heretofore issued to respondent MILTON
18 H. UHLEY, M.D.;

19 2. Revoking, suspending or denying approval of the
20 respondent's authority to supervise physician's assistants,
21 pursuant to Business and Professions Code section 3527;

22 3. Ordering respondent to pay the Division the actual
23 and reasonable costs of the investigation and enforcement of this
24 case;

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