

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

FILE COPY

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
: FINAL DECISION AND ORDER  
MARSHALL L. BERMAN, M.D., : 96 MED 173  
RESPONDENT :

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The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Marshall L. Berman  
9046 Vista Grande  
Los Angeles, CA 90069

Medical Examining Board  
PO Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
PO Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Marshall L. Berman, M.D. (DOB 08/04/42) is duly licensed to practice medicine and surgery, with a specialty area of internal medicine, in the state of Wisconsin (license #17756.) This license was first granted on October 21, 1971.
2. Dr. Berman's most recent address on file with the Wisconsin Medical Examining Board is 9046 Vista Grande, Los Angeles, CA 90069.
3. On December 29, 1995, the Medical Board of California issued a decision which imposed discipline upon the California license of Dr. Berman to practice medicine. Dr. Berman agreed, based upon his medical condition, to the terms and conditions imposed upon his license in

California . A true and correct copy of the Accusation, the Stipulation to Restrict Practice of Medicine Pending Final Decision on Pending Accusation and the Decision are attached to this document as Exhibit A. Exhibit A is incorporated into this document by reference.

4. In resolution of this matter, Dr. Berman consents to the entry of the following Conclusions of Law and Order as a reasonable accommodation, based upon the facts and circumstances of this case.

#### CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter, pursuant to sec. 448.02(3), Stats. and is authorized to enter into the attached Stipulation and Order, pursuant to sec. 227.44(5), Stats.
2. The conduct described in paragraph 3, above, constitutes a violation of Wis. Admin. Code §Med 10.02(q).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

IT IS FURTHER ORDERED that the Wisconsin license of Marshall L. Berman (license #17756.) is LIMITED as follows:

1. Until otherwise ordered by the Board, Dr. Berman shall refrain from the practice of all medicine in Wisconsin [or the practice of medicine elsewhere under the use of his Wisconsin license].
2. Dr. Berman may petition the Board for permission to practice under Wisconsin licensure at any time following the effective date of this Order.
  - a. In conjunction with a petition by Dr. Berman, the Board shall require current documentation of the status of Dr. Berman's compliance with the terms and conditions imposed against his California license to practice medicine.
  - b. In the exercise of its discretion, the Board may in addition may require a personal appearance by Dr. Berman to answer questions in conjunction with his petition.
  - c. The Board may in addition require Dr. Berman to provide the results of a competency assessment and/or current mental health and chemical dependency assessments from sources acceptable to the Board attesting to Dr. Berman's ability to safely and competently practice medicine and surgery. To be considered current, the assessment(s) shall have occurred within forty (40) days from the date of its (their) submission.

c. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

3. Upon its completion of review of a petition under this Order, the Board may issue a full and unrestricted license to Dr. Berman. In the alternative, the Board may in its discretion SUSPEND the respondent's license for a period of not less than five (5) years. The Board may then stay the suspension for a period of three (3) months, *conditioned upon compliance with such terms and conditions as the Board finds appropriate*. If the Board issues a three month stay:

a. The respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Dr. Berman's practice during the prior three (3) month period. "Three months" means until the third regular Board meeting after the meeting at which any stay of suspension is granted.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by Dr. Berman for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Dr. Berman may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

d. The applications for stays of suspension together with all reports required under this Order shall be due on the first day of the third month following the Board order issuing a stay of suspension.

**4. Violation of any of the terms of this Order or the conditions imposed as a result of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Dr. Berman's license; the Board in its discretion may in the alternative deny an extension of the stay of suspension or impose additional conditions and limitations other additional discipline for a violation of any of the terms of this Order.**

5. This Order shall become effective on the date of its signing.

MEDICAL EXAMINING BOARD

By

  
A Member of the Board

Date

9/25/96

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 MARK T. ROOHK,  
Deputy Attorney General  
3 300 South Spring Street  
Los Angeles, California 90013  
4 Telephone: (213) 897-2568  
5 Attorneys for Complainant

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

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In the Matter of the Accusation	)	No. 11-94-36284
Against:	)	
	)	ACCUSATION
MARSHALL L. BERMAN, M.D.	)	
9046 Vista Grande	)	
Los Angeles, California 90069	)	
	)	
Physician's and Surgeon's	)	
Certificate No. G22551,	)	
	)	
Respondent.	)	

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COMES NOW DIXON ARNETT, complainant herein, and as  
causes for disciplinary action alleges as follows:

1. He is the Executive Director of the Medical Board  
of California, Division of Medical Quality (hereinafter  
"Division"), and makes and files this accusation solely in his  
official capacity.

2. On or about July 12, 1972, the Medical Board of  
California issued Physician's and Surgeon's certificate number  
G22551 to Marshall L. Berman, M.D. ("respondent"). At all times  
relevant herein, said certificate was in full force and effect.

1           3. Pursuant to Business and Professions Code sections  
2 2220 and 2227(a), the Division may take action against all  
3 persons guilty of violating the provisions of the Medical  
4 Practice Act (Business and Professions Code section 2000 et seq.)  
5 and, after a hearing or default in which a licensee is found  
6 guilty, may revoke or suspend a physician's and surgeon's  
7 certificate, or place such a certificate on probation.

8           4. Pursuant to Business and Professions Code section  
9 822:

10           "If a licensing agency determines that its licentiate's  
11 ability to practice his or her profession safely is impaired  
12 because the licentiate is mentally ill, or physically ill  
13 affecting competency, the licensing agency may take action by any  
14 of the following methods:

- 15           (a) Revoking the licentiate's certificate or license.  
16           (b) Suspending the licentiate's right to practice.  
17           (c) Placing the licentiate on probation.  
18           (d) Taking such other action in relation to the  
19 licentiate as the licensing agency in its discretion deems  
20 proper."

21           5. Business and Professions Code section 2234 provides  
22 that the Division shall take action against any licensee who is  
23 charged with unprofessional conduct, which includes, but is not  
24 limited to:

- 25           (b) Gross negligence.  
26           (c) Repeated negligent acts.  
27           (d) Incompetence."

1           6. Business and Professions Code section 125.3  
2 provides in pertinent part that the Division may request the  
3 administrative law judge to direct a licentiate found to have  
4 committed a violation or violations of the Medical Practice Act  
5 to pay a sum not to exceed the reasonable costs of the  
6 investigation and prosecution of the case.

7                                   MENTAL ILLNESS

8           7. Respondent has subjected his license to  
9 disciplinary action under Business and Professions Code section  
10 822 in that his ability to practice his profession safely is  
11 impaired due to a chronic and severe mental illness. The  
12 circumstances are as follows:

13           A. From approximately 1970, respondent has suffered  
14 and continues to suffer from a major affective mental  
15 disorder, bipolar, with manic-depressive behavior and  
16 episodes of psychosis. Respondent's condition is such that  
17 he has been hospitalized several times since 1970, and has  
18 had periods of complete or almost complete disability.

19           B. On or about June 15, 1981, accusation number D-  
20 2766 ("Accusation") was filed with the Board, alleging that,  
21 as a result of the mental illness described above,  
22 respondent was unable to practice medicine in a manner  
23 consistent with the public health and safety.

24           C. In 1984, respondent entered the Board's Diversion  
25 Program as an impaired physician.

26           D. On or about April 8, 1985, the Accusation was  
27 withdrawn by the Board.

1 E. In or about May 1993, respondent graduated from the  
2 Diversion Program.

3 F. Subsequent to his graduation from Diversion,  
4 respondent has mailed empty envelopes and postcards with  
5 strange slogans, writings, and drawings to previous  
6 employers, the Diversion Program, the Board, the Medical  
7 Board in respondent's home state of Wisconsin, and other  
8 government agencies. The slogans and writings include but  
9 are not limited to: predictions and commentaries on  
10 earthquakes, AIDS, and polio, predictions and commentaries  
11 on politics and political figures, references to historical  
12 events and figures, references to the Bible, requests for  
13 refunds of various fees paid to the recipient by respondent,  
14 and other phrases and words, some in foreign languages,  
15 which are abstract and not readily understandable. The  
16 drawings include but are not limited to: pictures of  
17 Franklin Roosevelt and Adolf Hitler, other cartoon drawings  
18 of people and figures, and a variety of symbols, including  
19 crosses, dollar signs, chemical compounds, and other symbols  
20 which are abstract and not readily identifiable.

21 G. Also subsequent to his graduation from Diversion,  
22 respondent's employer, for whom he had also worked while  
23 participating in Diversion, received several complaints from  
24 patients about respondent's behavior, characterizing it as  
25 "a bad attitude," "perverted," "rude," "nasty," and  
26 "strange." Finally, on or about April 7, 1994, respondent  
27 became so loud and verbally abusive towards the clinic



1 manager, he had to be removed from the clinic.

2 Subsequently, respondent was placed on administrative leave  
3 by his employer.

4 H. Respondent's license is subject to disciplinary  
5 action in that his disorder affects respondent to the extent  
6 that, without proper psychoactive medication, treatment,  
7 and/or supervision, he is unable to practice medicine in a  
8 manner consistent with the public health and safety.

9 UNPROFESSIONAL CONDUCT

10 8. Respondent has subjected his license to  
11 disciplinary action under Business and Professions Code section  
12 2234(b) in that he has committed acts of gross negligence in his  
13 care and treatment of patients. The circumstances are as  
14 follows:

15 Patient E.S.

16 A. On or about December 21, 1993, patient E.S. was  
17 seen by respondent as part of a Social Security evaluation  
18 of E.S.'s disability claim. E.S. had had her lower left leg  
19 amputated as a result of injuries suffered in an automobile  
20 accident, which had resulted in her being placed on  
21 disability.

22 B. Respondent's entire examination of E.S. consisted  
23 of the following:

24 i) Asking E.S. to remove her prosthesis, without  
25 asking her to remove the latex liner which covered the  
26 amputation site, and then looking at the amputation  
27 site from a distance;

- 1 ii) Asking E.S. questions about her medication, how  
2 long she could walk, and her hometown of St. Louis;  
3 iii) A breast examination of E.S. while she was fully  
4 clothed.

5 As a result of this examination, E.S.'s disability benefits  
6 were discontinued.

7 Patient L.M.

8 C. On or about March 16, 1994, patient L.M. was seen  
9 by respondent as part of an EDD evaluation of L.M.'s  
10 disability claim. L.M. had developed a burning sensation in  
11 one of her legs which had been diagnosed by another  
12 physician as a type of arthritis, and had also had a history  
13 of trouble with her weight and with her hands which had also  
14 resulted in her being placed on disability.

15 D. Respondent's entire examination of L.M. consisted  
16 of the following:

- 17 i) Asking L.M. questions about her medications;  
18 ii) A brief look at L.M. legs, and a brief test of her  
19 reflexes by tapping her on the foot;  
20 iii) Derogatory comments about her surname, and jokes  
21 about weight loss and medications;  
22 iv) A breast examination of L.M. while she was fully  
23 clothed.

24 As a result of this examination, L.M.'s disability benefits  
25 were denied.

26 E. Respondent's acts constitute gross negligence in  
27 that he failed to perform an adequate or appropriate

1 physical examination, and therefore was unable to provide a  
2 proper evaluation, for either patient.

3 9. Respondent has subjected his license to  
4 disciplinary action under Business and Professions Code section  
5 2234(d) in that he has committed acts of incompetence in his care  
6 and treatment of patients. The circumstances are as follows:

7 A. Paragraphs 8(A)-(D) are hereby incorporated by  
8 reference as if set forth in full at this point.

9 B. Respondent's acts constitute incompetence in that  
10 he failed to perform an adequate or appropriate physical  
11 examination, and therefore was unable to provide a proper  
12 evaluation, for either patient.

13 10. Respondent has subjected his license to  
14 disciplinary action under Business and Professions Code section  
15 2234(c) in that he has committed repeated negligent acts in his  
16 care and treatment of patients. The circumstances are as  
17 follows:

18 A. Paragraphs 8(A)-(D) are hereby incorporated by  
19 reference as if set forth in full at this point.

20 B. Respondent's acts constitute repeated negligence in  
21 that he failed to perform an adequate or appropriate  
22 physical examination, and therefore was unable to provide a  
23 proper evaluation, for either patient.

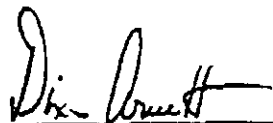
24  
25 WHEREFORE, complainant prays that a hearing be held on  
26 the matters alleged herein, and that following said hearing the  
27 Division issue an order:

1           1. Revoking or suspending Physician's and Surgeon's  
 2 certificate no. G22551, previously issued to Marshall L. Berman,  
 3 M.D.;

4           2. Directing respondent to pay to the Division the  
 5 costs of investigation and enforcement of this case, pursuant to  
 6 Business and Professions Code section 125.3; and

7           3. Taking such other and further action as the  
 8 Division deems necessary and proper.

9  
 10 DATED: November 30, 1994

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 13 DIXON ARNETT  
 14 Executive Director  
 15 Medical Board of California

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MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is true and correct copy of the original on file in this office.

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 MARK T. ROOHK, Deputy Attorney General  
3 300 South Spring Street  
Los Angeles, California 90013  
4 Telephone: (213) 897-2568  
5 Attorneys for Petitioner

*W. Jenner* 2/22/96  
SIGNED DATE  
*Asst. Sec. Records*  
TITLE

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

11	In the Matter of the Petition for	)	MBC No. 11-94-36284
12	Interim Suspension Order Against:	)	OAH No. L-11057
13	MARSHALL L. BERMAN, M.D.	)	STIPULATION TO
14	9046 Vista Grande	)	RESTRICT PRACTICE
15	Los Angeles, California 90069	)	OF MEDICINE PENDING
16	Physician's and Surgeon's	)	FINAL DECISION ON
17	Certificate No. G22551,	)	PENDING ACCUSATION
	Respondent.	)	

18 THE PARTIES TO THE ABOVE MATTER herein agree that the  
19 following is true:

20 1. On or about November 7, 1994, petitioner Dixon  
21 Arnett, acting within his authority as Executive Director of the  
22 Medical Board of California, Division of Medical Quality  
23 ("Division"), caused to be filed and served a Petition for  
24 Interim Suspension Order ("Petition") against the physician's and  
25 surgeon's license of Marshall L. Berman, M.D. ("respondent").

26 2. An ex parte hearing on the Petition was scheduled  
27 for November 16, 1994. At that time, the parties orally entered

1 into a stipulation in which respondent agreed to not practice  
2 medicine for sixty (60) days, while the Division would conduct  
3 and complete a psychiatric evaluation of him. The stipulation  
4 was set forth in writing and signed by the parties, and is  
5 attached hereto as Appendix A and incorporated by reference as if  
6 set forth in full at this point.

7           3. On or about November 30, 1994, Accusation number  
8 11-94-36284 was filed and served on respondent, pursuant to the  
9 requirements of Government Code section 11529(f). That  
10 accusation is pending at this time.

11           4. The sixty (60) day period was extended by oral  
12 agreement of the parties so that the psychiatric evaluation could  
13 be completed. The psychiatric evaluation was subsequently  
14 conducted on or about January 24, 1995. The evaluator prepared a  
15 report of his findings on or about February 10, 1995, and copies  
16 were provided to counsel for both parties.

17           5. Pursuant to the terms of the stipulation referenced  
18 above in paragraph 2, the parties to this matter retain the power  
19 to revise the agreement that respondent not practice medicine,  
20 "for the purpose of reaching a final decision on the [pending]  
21 accusation."

22           6. The parties have agreed to revise the agreement as  
23 follows:

24           A. Until such time as the Division has reached a final  
25 decision on Accusation number 11-94-36284 ("Accusation"), the  
26 following restrictions shall be placed on respondent's license to  
27 practice medicine:

1           1. Respondent shall be prohibited from engaging in  
2 solo practice, and shall be under the direct supervision of  
3 another physician and surgeon licensed to practice in the  
4 State of California. Respondent shall inform this  
5 individual of all restrictions on his license to practice  
6 medicine, and this individual shall serve as respondent's  
7 worksite monitor for purposes of communicating with the  
8 Division and/or its designee.

9           2. Respondent shall be prohibited from working more  
10 than 25 hours a week.

11           3. Respondent shall remain under the care of a  
12 psychiatrist, to whom he shall give full release to  
13 communicate freely with the Division and/or its designee.  
14 Respondent shall immediately inform the Division if for any  
15 reason he changes psychiatrists.

16           B. If respondent chooses to participate in the  
17 Division's Physician Diversion Program, he agrees to allow for a  
18 release of information pertaining to his participation for  
19 purposes of reaching a final decision on the Accusation. Any  
20 participation by respondent in the Diversion Program shall not in  
21 any way prevent, impede, or limit the Division from prosecuting  
22 the Accusation. It is understood by the parties that, should  
23 respondent participate in the Diversion Program and for any  
24 reason fail to complete its requirements, the Diversion Program  
25 shall notify the Division of that failure.

26           C. Violation of the terms of this stipulation in any  
27 manner by respondent shall constitute further grounds for

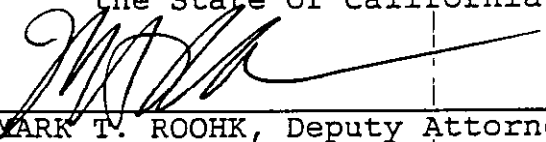
1 restriction or discipline of respondent's physician's and  
2 surgeon's certificate, and Petitioner may take further action and  
3 proceed either by petition for full suspension of respondent's  
4 license, or by supplemental accusation for revocation.

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SO STIPULATED:


DATE: 3/21/95

DANIEL E. LUNGREN, Attorney General of  
the State of California



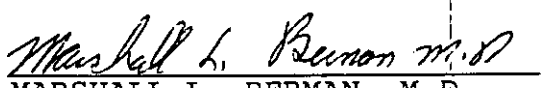
MARK T. ROOHK, Deputy Attorney General  
Attorneys for Petitioner

DATE: 3-16-95



HENRY LEWIN, Lewin & Levin  
Attorneys for Respondent

DATE: 3/16 /1995



MARSHALL L. BERMAN, M.D.  
Respondent



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

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

*N. Pomeroy* 1/22/96  
SIGNED DATE  
*Asst. Asst. Records*  
TITLE

In the Matter of the Accusation )  
Against: )  
)  
MARSHALL L. BERMAN, M.D. )  
Certificate No. G-22551 )  
)  
Respondent. )  
\_\_\_\_\_ )

No. 11-94-36284

DECISION

The attached Stipulation is hereby adopted by the Division of  
Medical Quality as its Decision in the above-entitled matter.

This Decision shall become effective on December 29, 1995.

IT IS OR ORDERED November 30, 1995.

By: *Ira Lubell*  
IRA LUBELL, M.D.  
Chair, Panel A  
Division of Medical Quality

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 MARK T. ROOHK,  
Deputy Attorney General  
3 300 South Spring Street  
Los Angeles, California 90013  
4 Telephone: (213) 897-2568  
5 Attorneys for Complainant

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

10

11

In the Matter of the Accusation )  
12 Against: )

No. 11-94-36284

13 MARSHALL L. BERMAN, M.D. )  
9046 Vista Grande )  
14 Los Angeles, California 90069 )

STIPULATION

15 Physician's and Surgeon's )  
Certificate No. G22551, )  
16 )

Respondent. )  
17 )

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IT IS HEREBY STIPULATED by and between the parties to  
the above captioned matter that the following is true:

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1. Complainant Dixon Arnett is the Executive Director  
of the Medical Board of California, Division of Medical Quality  
("Board"). Complainant is represented in this matter by Daniel  
E. Lungren, Attorney General of the State of California, by and  
through Mark T. Roohk, Deputy Attorney General.

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2. Respondent Marshall L. Berman, M.D., was issued  
Physician's and Surgeon's Certificate No. G22551 by the  
predecessor in interest to the Board on or about July 12, 1972.

1 At all times relevant herein, the license has been in full force  
2 and effect. Respondent is represented in this matter by Henry  
3 Lewin, Esq., Lewin & Levin, 3580 Wilshire Boulevard, Suite 1920,  
4 Los Angeles, California 90010-2520.

5 3. On or about November 30, 1994, complainant, acting  
6 solely in his official capacity as Executive Director of the  
7 Board, filed Accusation number 11-94-36284, which set forth  
8 causes for disciplinary action against respondent's license. The  
9 Accusation, together with all required supporting documentation,  
10 was duly and properly served upon respondent by certified mail  
11 and was received. Respondent thereafter timely filed a notice of  
12 defense contesting the charges and allegations set forth in the  
13 Accusation.

14 4. Complainant and respondent desire to resolve this  
15 matter without a hearing or further administrative proceeding.

16 5. Respondent herein has been specifically advised by  
17 the documents served upon him and through consultation with  
18 counsel of his rights in this matter, including a) his right to  
19 an administrative hearing on the charges and allegations filed  
20 against him; b) his right to confront and cross-examine witnesses  
21 called against him; c) his right to present evidence in defense  
22 and mitigation; d) his right to issue subpoenas to compel the  
23 attendance of witnesses and the production of documents; e) his  
24 right to petition the Board for reconsideration of any decision  
25 rendered adverse to him; and f) his rights of appeal to the  
26 courts of the State of California.

27

1 6. Respondent knowingly and intelligently waives and  
2 agrees to give up each of the rights set forth above, and agrees  
3 that the pending charges and allegations set forth in the  
4 Accusation may be resolved by this stipulation.

5 7. Respondent has not been forced, coerced,  
6 threatened, or induced in any way into entering into this  
7 stipulation.

8 GROUND FOR DISCIPLINE

9 8. Respondent is charged herein with violations of  
10 Business and Professions Code sections 822 and 2234. For  
11 purposes of settlement of this matter and to avoid a costly and  
12 protracted trial, respondent neither admits nor denies the  
13 allegations herein, but does admit that he suffers from a medical  
14 disorder which he must control through the use of adequate and  
15 proper medication, limitations upon the hours he practices, and  
16 the setting in which he practices. Respondent hereby agrees that  
17 the Board may impose practice restrictions on his license, and  
18 that the foregoing disciplinary order shall have the same effect  
19 and be binding to the same degree as any other order.

20 FACTORS IN MITIGATION

21 9. As part of this proceeding, the parties have  
22 previously entered into an agreement by and through which  
23 respondent a) has been restricted in his practice of medicine,  
24 and b) has been allowed to participate in the Board's Diversion  
25 Program, pending a final decision on this accusation. The  
26 parties agree that respondent has complied with the restrictions,  
27 and has thus far satisfied the Diversion Program's requirements.

1 RESERVATION

2 10. This stipulation and the admissions, agreements,  
3 and waivers contained herein are for purposes of settlement of  
4 this matter, and shall not be admissible in any civil or criminal  
5 proceeding to which the Division is not a party.

6 CONTINGENCY

7 11. In the event the Division fails to adopt this  
8 stipulation, it shall be null and void and of no effect for  
9 either party at any subsequent proceeding.

10  
11  
12  
13  
14 WHEREFORE, based upon the foregoing, it is agreed that  
15 the Division may issue the following:

16 ORDER

17 Physician's and Surgeon's Certificate No. G22551,  
18 previously issued to Marshall L. Berman, M.D., is hereby  
19 suspended for a period of one (1) year; however, suspension is  
20 stayed, and respondent is placed on probation for a period of  
21 five (5) years under the following terms and conditions:

22 A. DIVERSION PROGRAM. Respondent shall continue  
23 participating in the Board's Diversion Program until the Division  
24 determines that further treatment and rehabilitation is no longer  
25 necessary. Quitting the program without permission or being  
26 expelled for cause shall constitute a violation of probation by  
27 respondent.

1           B. PSYCHIATRIC EVALUATION. On a yearly basis during  
2 the probation period, respondent shall undergo a psychiatric  
3 evaluation (and psychological testing, if deemed necessary) by a  
4 Division-appointed psychiatrist, who shall furnish an evaluation  
5 report to the Division or its designee. The respondent shall pay  
6 the cost of each psychiatric evaluation. If as a result of the  
7 final psychiatric evaluation required by this condition, which  
8 shall take place no later than 100 days prior to the expiration  
9 of the probation period, the finding is made that respondent is  
10 unable to practice medicine safely, such a finding may constitute  
11 a violation of probation.

12           C. PSYCHOTHERAPY. Within 60 days of the effective  
13 date of this decision, respondent shall submit to the Division or  
14 its designee for its prior approval the name and qualifications  
15 of a psychotherapist of respondent's choice. Upon approval,  
16 respondent shall undergo and continue treatment until the  
17 Division or its designee deems that no further psychotherapy is  
18 necessary. Respondent shall have the treating psychotherapist  
19 submit quarterly status reports to the Division or its designee,  
20 indicating whether respondent is capable of practicing medicine  
21 safely. If a report is received indicating respondent is unable  
22 to practice medicine safely, respondent may not engage in the  
23 practice of medicine until a subsequent report is received  
24 indicating that respondent is mentally fit to resume practice,  
25 and is so notified by the Division or its designee.

26 /

27 /

1           D. PRACTICE RESTRICTIONS. Respondent shall be  
2 prohibited from working more than 25 hours per week, and shall be  
3 prohibited from engaging in solo practice of any kind.

4           E. ETHICS COURSE. Within 60 days of the effective  
5 date of this decision, respondent shall enroll in a course in  
6 Ethics approved in advance by the Division or its designee, and  
7 shall successfully complete the course during the first year of  
8 probation.

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

13           G. QUARTERLY REPORTS. Respondent shall submit  
14 quarterly declarations under penalty of perjury on forms provided  
15 by the Division, stating whether there has been compliance with  
16 all probation conditions.

17           H. PROBATION SURVEILLANCE PROGRAM COMPLIANCE.  
18 Respondent shall comply with the Division's probation  
19 surveillance program, and shall at all times keep the Division  
20 informed of his or her addresses of business and residence, both  
21 of which shall serve as addresses of record. Changes of these  
22 addresses shall be communicated immediately in writing to the  
23 Division. Under no circumstances shall a post office box serve  
24 as an address of record. Respondent shall also immediately  
25 inform the Division in writing of any travel to any areas outside  
26 the jurisdiction of California which lasts, or is contemplated to  
27 last, more than thirty (30) days.

1 I. INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS  
2 DESIGNATED PHYSICIAN(S). Respondent shall appear in person for  
3 interviews with the Division, its designee or its designated  
4 physician upon request at various intervals and with reasonable  
5 notice.

6 J. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.  
7 The period of probation shall not run during the time respondent  
8 is residing or practicing outside the jurisdiction of California.  
9 If, during probation, respondent moves out of the jurisdiction of  
10 California to reside or practice elsewhere, whether temporarily  
11 or permanently, respondent is required to immediately notify the  
12 Division in writing of the date of departure, and the date of  
13 return, if any.

14 K. COST RECOVERY. Respondent is hereby ordered to  
15 reimburse the Division in the amount of \$4000 for its  
16 investigative costs. Respondent shall be required to pay \$1000  
17 within six (6) months of the effective date of this decision, and  
18 shall thereafter make payments of \$1000 on a yearly basis until  
19 the total is paid. Failure to reimburse the Division within the  
20 specified time shall constitute a violation of probation, unless  
21 the Division agrees in writing to a change in the payment  
22 schedule. The filing of bankruptcy by the respondent shall not  
23 relieve him of his responsibility to reimburse the Division.

24 L. VIOLATION OF PROBATION. If respondent violates  
25 probation in any respect, the Division, after giving respondent  
26 notice and the opportunity to be heard, may revoke probation and  
27 carry out the disciplinary order that was stayed. If an



1 accusation or petition to revoke probation is filed against  
2 respondent during probation, the Division shall have continuing  
3 jurisdiction until the matter is final, and the period of  
4 probation shall be extended until the matter is final.

5 M. COMPLETION OF PROBATION. Upon successful  
6 completion of probation, respondent's certificate will be fully  
7 restored.

8 N. LICENSE SURRENDER. Following the effective date of  
9 this decision, if respondent ceases practicing medicine due to  
10 retirement, health, or is otherwise unable to satisfy the terms  
11 and conditions of probation, respondent may voluntarily tender  
12 his license to the Board. The Division reserves the right to  
13 evaluate respondent's request and to exercise its discretion  
14 whether to grant the request, or to take any other action deemed  
15 appropriate and reasonable under the circumstances. Upon formal  
16 acceptance of the tendered license, respondent will no longer be  
17 subject to the terms and conditions of probation.

18

19

ENDORSEMENT

20 DATED: October 13, 1995

DANIEL E. LUNGREN, Attorney General  
of the State of California

21

22

  
MARK T. ROOHK  
Deputy Attorney General

23

24

Attorneys for Complainant

25

26

ACCEPTANCE

27

I have read and reviewed the foregoing stipulation and  
order with my client and have discussed its terms and conditions

1 with him. I am satisfied that he understands the stipulation and  
2 its terms and agrees to be bound by them.

3

4 DATED: October 12, 1995

Henry Lewin  
HENRY LEWIN  
Lewin & Levin

5

6

Attorneys for Respondent

7

I, Marshall L. Berman, M.D., have read the foregoing  
8 stipulation and order, and have discussed its terms and  
9 conditions with my attorney. I acknowledge that I understand  
10 those terms and conditions, and that, by signing this  
11 stipulation, I am waiving and giving up my right to an  
12 administrative hearing on the charges and allegations currently  
13 pending against my license, and agreeing that the pending matter  
14 may be resolved by the terms and conditions of this stipulation.

15

16 DATED: October 12, 1995

Marshall L. Berman M.D.  
MARSHALL L. BERMAN, M.D.  
Respondent

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("All-Purpose" Acknowledgment)

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

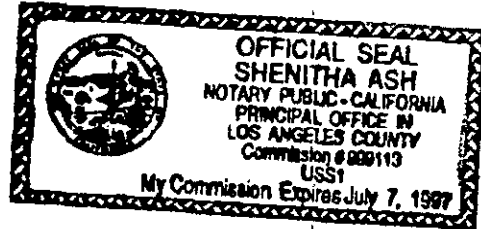
On SEPTEMBER 9, 1996 before me, (here insert name, title of the officer-ex. "Jane Doe, Notary Public"), \*\*\*\*\*

SHENITHA ASH, NOTARY, personally appeared \*\*\*\*\*MARSHALL BERMAN, M.D.\*\*\*\*\*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature Shenitha Ash  
Signature of Notary



(Seal)

This certificate must be attached to:

Title or type of document: State of Wisconsin-Department of Regulation & Licensing

Number of Pages 2

Date of Document: 9-9-96

Signer(s) other than named above: STEVEN M. GLOE

Signer is representing: HIMSELF MARSHALL BERMAN, M.D.  
(Name of person(s) or entity(ies))

Capacity claimed by signer

- Partnership
- Individual
- Corporate Officer(s)
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other \_\_\_\_\_

\_\_\_\_\_  
Title(s)

STATE OF WISCONSIN  
BEFORE THE MEDICAL EXAMINING BOARD

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST : STIPULATION  
MARSHALL L. BERMAN, M.D., : 96 MED 173  
RESPONDENT :

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It is hereby stipulated between Marshall L. Berman, personally on his own behalf and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Dr. Berman's licensure by the Division of Enforcement (96 MED 173). Dr. Berman consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Dr. Berman understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Americans with Disabilities Act of 1990, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Dr. Berman is aware of his right to seek legal representation and has been provided an opportunity to obtain legal advice prior to signing this stipulation.
4. Dr. Berman agrees to the adoption of the attached Final Decision and Order by the Medical Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. Attached to this Stipulation is the current licensure card of Marshall L. Berman. If the Board accepts the Stipulation, Dr. Berman's license shall be reissued only in accordance with the terms of the attached Final Decision and Order. If the Board does not accept this Stipulation, the

license of Dr. Berman shall be returned to him with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Medical Examining Board assigned as an advisor in this investigation may appear before the Medical Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

8. The Division of Enforcement joins Dr. Berman in recommending the Medical Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Marshall L. Berman MD  
Marshall L. Berman, M.D.

9/9/1996  
Date

Steven M. Gloc  
Steven M. Gloc, Attorney  
Division of Enforcement

9/10/96  
Date

BEFORE THE STATE OF WISCONSIN  
MEDICAL EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

AFFIDAVIT OF SERVICE

MARSHALL L. BERMAN, M.D., :  
RESPONDENT. :

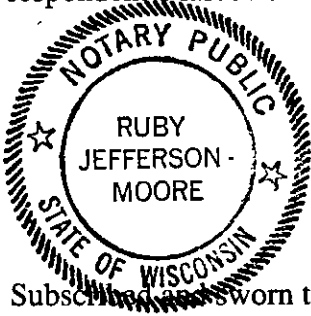
-----  
Katie Rotenberg, being first duly sworn on oath deposes and states that she is in the employ of the Department of Regulation and Licensing, and that on September 27, 1996, she served the following upon the respondent:

Final Decision and Order dated September 25, 1996

by mailing a true and accurate copy of the above-described document, which is attached hereto, by certified mail with a return receipt requested in an envelope properly addressed to the above-named respondent at:

9046 Vista Grande  
Los Angeles, CA 90069  
Certified P 213 148 343

an address which appears in the files and records of the Medical Examining Board as the respondent's last known address.



*Katie Rotenberg*

Katie Rotenberg  
Department of Regulation and Licensing

Subscribed and sworn to before me

this 27<sup>th</sup> day of September, 1996.

*Ruby Jefferson-Moore*

Notary Public  
Dane County, Wisconsin  
My Commission is Permanent

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## NOTICE OF APPEAL INFORMATION

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Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN MEDICAL EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

September 27, 1996

### 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)