STATE OF MICHIGAN
DEPARTMENT OF COMMERCE
BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION
BOARD OF MEDICINE

In the Matter of

ROBERT L. ALEXANDER, M.D.
_____/

File No. 43-86-0330-01
Docket No. 92-0073
Old Docket No. 89-0416

BOARD'S AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ON REMAND FROM INGHAM COUNTY CIRCUIT COURT ORDER OF NOVEMBER 28, 1995

On March 9, 1994, the Michigan Board of Medicine, hereafter Board, issued an Amended Superseding Final Order on Remand, with the Board's Findings of Fact and Conclusions of Law on Remand, in the matter of Robert L. Alexander, M.D., hereafter Respondent. In the Amended Superseding Final Order on Remand, the Board revoked Respondent's license, and assessed a fine in the amount of $50,000.00 based on Respondent's violation of sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv) of the Michigan Public Health Code, 1978 PA 368, as amended. On November 28, 1995, the Honorable James R. Giddings of the Ingham County Circuit Court issued an Order of Remand Vacating Amended Superseding Final Order with an Opinion. The court remanded this matter for a final decision "wherein the reasons for the Board's choice of sanctions are sufficiently articulated to comport with the principle of proportionality and with section 85 of the APA [Michigan Administrative Procedures Act, 1969 PA 306, as amended]."

The court indicated in its Opinion that the Board's decision on a sanction must reflect a "proportionality standard" in that the sanction is tailored to the seriousness of the offense and the

record of the offender. On pages 10 and 11 of the Opinion, the court listed a series of general questions to be answered in this matter in order to meet the proportionality standard. The following is the Board's amended findings of fact and conclusions of law which address the court's questions. The Board further incorporates by reference its previous document, Board's Findings of Fact and Conclusions of Law, dated March 9, 1994.

FINDINGS OF FACT:

1) **Respondent unlawfully distributed and conspired to distribute very dangerous drugs which had a high potential to harm the public.**

The record in this matter establishes that on multiple occasions Respondent distributed, without legitimate medical purpose, very dangerous controlled substances which had the potential to cause severe psychic and physical dependence to anyone ingesting the substances. On September 22, 1988, in the United States District Court for the Eastern District of Michigan, Southern Division, Respondent was found guilty by jury verdict of knowingly, intentionally and unlawfully distributing in part the following drugs: Methamphetamine (Desoxyn), a Schedule II Non-Narcotic Drug Controlled Substance; Phenmetrazine Hydrochloride (Preludin), a Schedule II Non-Narcotic Drug Controlled Substance; and Oxycodone Hydrochloride (Percodan), a Schedule II Narcotic Drug Controlled Substance. [See Judgment and Probation/Commitment Order, dated November 21, 1988; May 5, 1986 Indictment, Counts 7, 9, 10, 12, 13, 16]. The record also establishes that Respondent knowingly, intentionally and unlawfully conspired to possess with intent to distribute and conspired to distribute Desoxyn, Preludin, Perdocan, Secobarbital Sodium and Amobarbital Sodium (Tuinal), all Schedule II controlled substances, in addition to Diazepam (Valium), a Schedule IV Non-Narcotic

Drug Controlled Substance; Pentazocine (Talwin), a Schedule IV Non-Narcotic Drug Controlled Substance; Hydrocodone (Hycodan, Tussionex), a Schedule III Narcotic Drug Controlled Substance; and Tylenol 4 with Codeine, a Schedule III Narcotic Drug Controlled Substance. Section 7213 of the Public Health Code requires placement of a substance in the Schedule II category of drugs if **all** of the following terms apply:

> "(a) The substance has **high potential for abuse.**
> (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions.
> (c) The abuse of the substance **may lead to severe psychic or physical dependence.**"
> [MCL 333.7213; MSA 14.15(7213); emphasis supplied].

Respondent dispensed Schedule II controlled substances without legitimate medical purpose and without any safeguards as to how the drugs would be used. The Board finds that the Schedule II controlled substances which Respondent distributed or conspired to distribute are very dangerous to the public in that they have a high potential to be abused and to be psychically or physically addictive.

2) Respondent illegally dispensed or conspired to possess with intent to distribute or conspired to distribute large quantities of dangerous controlled substances.

Respondent was convicted by jury trial of conspiracy to deliver 8,490 Desoxyn, 1,260 Preludin, 2,260 Percodan/Percocet, 4,470 Valium, 3,200 Talwin, 446 Tussionex Hycodan, 160 Tuinal and 58 Tylenol #4. [Indictment Count I]. In particular, he was convicted of knowingly, intentionally and unlawfully distributing to Special Agent [redacted] 240 dosage units of Percodan, a Schedule II Narcotic Drug Controlled Substance, by delivering six prescriptions for that

drug which he knew were not issued in the usual course of medical practice for a legitimate medical purpose. Respondent was further convicted of unlawfully distributing to Special Agent [redacted] 180 dosage units of Valium, by delivering six prescriptions each on two consecutive days, April 22, 1982, and April 23, 1982. [Counts 15 and 17 of the Indictment]. The Board finds that the quantities of unlawfully distributed substances in this matter are large and significant without legitimate medical purpose.

3) **The record does not establish that Respondent's bipolar illness caused him to commit the illegal acts for which he was convicted.**

At the May 6, 1992 hearing on remand, Respondent attributed his unlawful actions to his then-diagnosed bipolar illness [5/6/92 Tr, pp 21, 29]. He testified that at the time he was working for the Kai Medical Clinic:

> "I was -- would come in and call in testimony and say: I'm Dr. Alexander; I'm God; I'm Superman. * * * **I had already worked 36 hours at Providence Hospital**, and coming directly to the Kai Clinic from being on-call. I was out of control. I was in a rage. I was in the manic state throughout the whole time." [5/6/92 Tr, p 25; emphasis supplied].

The Board first of all finds that Respondent must have had some sense of his actions to have been able to be on call at Providence Hospital for 36 hours prior to his work at the Kai Clinic.

A deposition of Joseph Daniels, M.D., dated April 15, 1992, contained in the record, sets forth Dr. Daniels' diagnostic impression of Respondent as "bipolar disorder mixed, that is an Axis I type diagnosis 296.66." [4/15/92 Tr, p 11]. However, the record in this matter further contains a psychiatric evaluation by Dr. Daniels, dated November 7, 1990, in which Dr. Daniels stated that Respondent "indicated he found it hard to understand some of the things about his conviction **since**

his involvement in the weight control clinic was prior to the classification of the amphetamines, and he felt, was appropriate at the time." [Daniels Deposition Exhibit B, p 3; emphasis supplied]. The Board finds that this statement in the record is evidence that Respondent's unlawful actions were not involuntary or caused by his bipolar illness. Rather, the Board finds this statement is evidence that in fact Respondent was fully aware of the nature of his actions, and did not believe them to be inappropriate.

Further, the record contains a psychiatric evaluation performed by R.B. Somepalli, M.D., dated August 8, 1989, in which Dr. Somepalli states that Respondent indicated to him "that he did not commit any crime and that he was **inexperienced** and used poor judgement when he renewed the prescriptions. He claims that the staff at the clinic took the prescriptions off the patients' charts and sold them illegally." [Respondent's Exhibit F, p 1; emphasis supplied]. Neither Dr. Daniels nor Dr. Somepalli directly state that Respondent's bipolar illness caused him to commit the illegal acts of which he was convicted. Dr. Somepalli's Responsibility Study, performed on August 8, 1989, concluded in part as follows: "In 1982 he seemed to be in a manic mood, and suffering from a manic episode and he **could possibly have** impaired judgment when he prescribed dextroamphetamines." [Respondent's Exhibit F, p 2; emphasis supplied]. This statement does not address all of the many controlled substances which Respondent distributed and conspired to distribute. Further, it is a guarded statement which does not definitely state that the bipolar illness caused the misconduct. The Board finds this statement very insufficient to show that Respondent's bipolar illness caused him to commit the acts set forth in Counts I and 7-17 of the Indictment, for which he was convicted.

Thomas L. Haynes, M.D., testified as medical director for the Physicians' Recovery Network of the Michigan State Medical Society, regarding Respondent's compliance with his lithium regimen.

Dr. Haynes is not a psychiatrist; he did not testify regarding whether Respondent's bipolar illness caused his unlawful acts. [4/15/92 Dep Tr, p 12]]. Dorsey Ligon, M.D., testified in April 15, 1992, that she had met Respondent perhaps nine months previously and testified as to Respondent's competency as a physician, not to the cause of his previous unlawful acts. [4/15/92 DepTr, pp 9-10]. The Board finds that the evidence brought by Dr. Haynes' and Dr. Ligon's depositions does not bear on the question as to whether Respondent's bipolar illness caused him to commit the unlawful acts for which he was convicted.

Respondent was convicted by jury verdict of "knowingly," "willfully" and "intentionally" conspiring with others to unlawfully distribute dangerous controlled substances. [Indictment, Count 1]. Conspiracy is an act of will; it is not involuntary. The number of prescribed substances involved in this matter are large, as discussed above. The unlawful acts were conducted on multiple occasions. Respondent unlawfully distributed controlled substances to a minimum of four different individuals, Special Agent [redacted], Agent [redacted] Special Agent [redacted] and Police Officer [redacted] [Indictment, Counts 7-17]. The Board finds that the record fails to establish that Respondent's bipolar illness caused him to commit the misconduct for which he was convicted and later sanctioned by the Board.

4) The record does not demonstrate clearly that Respondent's bipolar illness was under control through medication as of 1992.

The court has indicated in its opinion remanding this case that Respondent's bipolar illness is an issue which should be addressed by the Board. For the reasons discussed above, the Board does not think the matter of Respondent's bipolar illness to be relevant to the sanction for his

unlawful acts. Nevertheless, the Board makes the following specific finding on this issue.

In April of 1992, Dr. Daniels testified that Respondent was on Lithium at the time, and that his medication was within the therapeutic range. [4/15/92 Daniels Dep Tr, p 18]. Dr. Haynes' deposition in April, 1992, confirmed that Respondent was complying with his lithium regimen. [4/15/92 Haynes Dep Tr, p 6]. However, Respondent's own testimony was much less definite. Respondent was not clear regarding when he believes he became well as a result of the medication and psychotherapy. [5/6/92 Tr, pp 43, 44, 46]. His testimony was inconclusive regarding whether he considered himself disabled at the time of the May, 1992 hearing. [5/6/92 Tr, p 60]. Respondent testified that "Dr. Daniels has not given * * * [him] the okay" to inform Social Security that his condition had improved "* * * [b]ecause it hasn't according to Dr. Daniels." [5/6/92 Tr, pp 63-64]. Therefore, the Board finds that Respondent did not show that his bipolar illness was under control as of 1992.

Of course the record evidence at this point is dated. The record evidence in Respondent's application for reinstatement case is more current. The Board will not address that record evidence in this matter, which is the underlying disciplinary case, for the following reasons: As stated in the Board's Finding of Fact #3, the Board has not found that Respondent's bipolar illness caused him to commit the unlawful acts for which he was convicted. Further, as discussed below, a limitation or probation sanction in which Respondent would have a license to practice medicine is not appropriate in this matter.

5) The other evidence brought forth by Respondent constitutes very little mitigation for the seriousness of the underlying misconduct.

The court remanded this matter to the Board for another hearing on mitigating evidence. At the hearing held on May 6, 1992, Respondent brought one witness other than himself to testify: Rev. Donald Jansma of the Third Reformed Church in Kalamazoo, Michigan. Dr. Jansma testified that he had known Respondent about a year and a half. [5/6/92 Tr, p 6]. Dr. Jansma testified as pastor of the church that Respondent attended, that Respondent had shared with him regret about his previous acts. [5/6/92 Tr, p 7]. Dr. Jansma testified regarding Respondent's now positive work with the Boys and Girls Club, his church attendance, Respondent's personal journey and feelings of repentance. [5/6/92 Tr, p 5]. While this is positive testimony for Respondent, it does very little to mitigate the seriousness of the underlying conduct for which Respondent was convicted.

As discussed above, the focus of Respondent's testimony was his bipolar illness. Respondent did not offer any factual evidence regarding any other reasons why he committed the unlawful acts for which he was convicted. He did not explain how or why he dispensed large quantities of controlled substances to undercover officers. Further, he did not explain how or why he was convicted of conspiracy to distribute dangerous Schedule II controlled substances.

The deposition testimony of Robert Ezelle, Executive Director of the Boys and Girls Club of Kalamazoo, also carries little mitigation value in this matter. Mr. Ezelle testified on April 15, 1992, that he had known Respondent "a little over a year" at the time [4/15/92 Ezelle Dep Tr, p 5]. Mr. Ezelle testified regarding Respondent's positive volunteer activity with his organization. Clearly, however, Mr. Ezelle did not know the nature of Respondent's conviction. He testified that Doctor Alexander * * * mentioned to me that he has had his license suspended. * * * [T]hat there evidently was some, for lack of any terms, misappropriation of funds or something like that that I understood that I really didn't want to get into any further than that." [4/15/92 Ezelle Dep Tr, p 14].

Thomas L. Haynes, M.D.'s deposition testimony was addressed above. Dr. Haynes did not offer any testimony to mitigate the nature of Respondent's underlying misconduct. The same is true of the deposition testimony of Dorsey Ligon, M.D. Based on the evidence brought forth in the original hearing, the hearing on remand on May 6, 1992, and the other deposition testimony, the Board finds only some evidence that Respondent regretted his previous actions in the record. This constitutes very inadequate mitigation for Respondent's serious wrongdoing.

6) **Respondent received financial gain from his unlawful acts.**

The Board finds the record somewhat bare regarding Respondent's exact financial gain from the unlawful distribution and conspiracy to distribute controlled substances. However, given the large amount of controlled substances involved, Respondent must have derived financial benefit from his illegal actions. Respondent testified that his "moonlighting" work at the Kai Medical Clinic, where the unlawful distribution of controlled substances took place, was for the purpose of obtaining extra income to pay off debts and living expenses. [5/6/92 Tr, p 16]. The Board finds that Respondent received financial gain from his unlawful acts.

7) **The costs incurred in proceeding against Respondent were significant.**

The Board's administrative rule, Rule 338.2308, promulgated pursuant to authority conferred on the Board by sections 16145 and 16148 of the Public Health Code, sets forth the bases for assessment of fines. These bases were discussed in the Board's previous Findings of Fact and Conclusions of Law on Remand, dated March 9, 1994. One of the bases in the administrative rule is, "[t]he cost incurred in investigating and proceeding against the licensee."

The Administrative Complaint in this matter was filed on December 15, 1988. Respondent requested and was granted three adjournments and a 90-day continuance before the original contested case hearing. [4/20/90 Proposal for Decision, p 7]. The contested case hearing took place on December 20, 1989. On February 2, 1990, Respondent filed motions to dismiss. On August 3, 1990, the Board filed its first Final Order revoking Respondent's license. On September 12, 1990, Respondent filed a motion for reconsideration of the Final Order. The Board will not address the subsequent proceedings regarding Respondent's petition for review. Although the costs have not been calculated for the record, the items listed in the Certificate of Admitted Record, dated April 23, 1990, demonstrate very considerable time and expense on the State's part in the proceedings.

CONCLUSIONS OF LAW:

1) **The instant case falls on the "most serious" end of the spectrum of violations.**

As discussed above, a number of the controlled substances involved were very dangerous, in that they had a high potential for abuse and addiction. A large quantity of drugs were involved in the unlawful distribution and conspiracy to distribute. Respondent's actions are not mitigated by his bipolar illness, as the record fails to demonstrate that his illness caused Respondent to commit the unlawful acts. Aggravating circumstances are present, in that even in the course of being evaluated by Drs. Daniels and Somepalli, Respondent offered excuses for his misconduct, such as the classification of amphetamines, his inexperience and the actions of the clinic staff, rather than accepting responsibility himself.

2) Other sanctions available to the Board for the violations of Sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv) would not fit the offenses or the offender in this matter.

The other sanctions available to the Board include suspension, limitation and probation. The Board has concluded that for purposes of punishment of the offenses which fall on the most serious end of the spectrum, protection of the public and deterrence to other potential offenders, the maximum amount of time in which Respondent can be deprived of his medical license in the state of Michigan is necessary. Revocation is for a minimum period of three years. A suspension would be for a lesser period. Limitation and probation as sanctions would still allow Respondent to practice medicine in the state of Michigan. Suspension for less than three years, limitation and probation would not fit the serious nature of the offense, nor prevent the offender at issue from practicing medicine in the state of Michigan for the maximum possible time. In the Stipulation submitted by Respondent, dated August 1, 1989, and Board Order of September 20, 1989, Respondent voluntarily surrendered his license and right to practice medicine in the state of Michigan during the pendency of proceedings before the Board. The Stipulation rightfully included the following language:

> "The Board is not bound to credit the period of time during which Respondent's license was voluntarily surrendered to any period of suspension or revocation which the Board may ultimately impose as the appropriate disciplinary sanction in this matter."

The voluntary surrender, even if viewed as a "de facto" suspension, does not serve the same purpose as revocation of the license. It is not a punishment on the license and therefore does not serve as a deterrent to other potential offenders. The Board therefore concludes that revocation is the appropriate sanction in this matter.

3) A fine of $50,000.00 is appropriate for the offenses in this matter and the offender.

The Board has found Respondent in violation of sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv) of the Public Health Code. Under section 16226(3) of the Code, Respondent could be fined $250,000.00 for each violation of 16221 (a) and (b) for a total of $500,000.00. The Board could further assess fines against Respondent for each of the remaining violations.

As discussed above, the Board finds that Respondent wrongfully used his medical license for financial gain. Even if the financial gain has not been exactly calculated, a fine is appropriate in this matter for purposes of punishment and deterrence. The Board concludes that since Respondent's wrongful actions fall on the "most serious" end of the spectrum, a significant fine should be assessed against Respondent. $50,000.00 is one-tenth of the amount that the Board could assess for Respondent's violations of sections 16221(a) and (b) of the Code alone. The Board concludes that this amount is reasonable given the dangerousness of the controlled substances which Respondent dispensed and conspired to distribute, the great potential harm to the public from the illegal distribution of these highly addictive drugs without legitimate medical purpose, the large quantities of controlled substances involved, Respondent's own financial gain at the Kai Clinic, the willfulness of Respondent's conduct which the Board does not find mitigated by the status of Respondent's bipolar illness then or now or any other record evidence, and the significant costs of the State in proceeding against Respondent.