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SUMMARY OF PROCEEDINGS:

On December 5, 1988 an Administrative Complaint (Complaint) was filed against the Petitioner based on a conviction in federal court. The Petitioner was charged with violations of sections 16221(a), (b)(i), (b)(v), (b)(vi), (c)(iii) and (c)(iv) of the Code.

A hearing in this matter was originally set for July 10, 1989. Based on the requests made by the Petitioner and in the absence of objections on the part of the State, adjournments were granted in this matter and the hearing was held on December 20, 1989.

On August 3, 1990 the Board of Medicine (Board) entered a Final Order finding violations of all the above-listed Code sections. This Order revoked the Petitioner's license to practice medicine in the State of Michigan.

Petitioner subsequently filed a Petition for Review in Circuit Court. On September 30, 1991, an Order was issued by the Circuit Court remanding this matter to the Board on the question of sanctions only. A hearing on the limited issue of sanctions was held on May 6, 1992. The Board, after a review of the record determined that revocation and sanctions were in order.

The Board's determination was followed by a second appeal to the Circuit Court. As a result of this second appeal, this

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matter was remanded to the Board. The Board entered a further Order on March 9, 1994, complying with the Circuit Court's Order, again reiterating the sanction of revocation.

The Petitioner again petitioned the Circuit Court for Review. On April 10, 1995, oral arguments were conducted and the Circuit Court took this matter under advisement.

The revocation of the Petitioner's license has been in effect since August 3, 1990. In October 1993, the Petitioner submitted an Application for Reinstatement of his revoked license.

On March 29, 1994, the State filed a Motion Requesting Mental Examination pursuant to Section 16247(2). Although the Judge granted the Motion, the parties agreed to put the Motion before the Board of Medicine.

On October 12, 1994, the Board considered the Motion and on December 2, 1994, entered an Order for Petitioner to Undergo a Comprehensive Mental Examination to be performed by Dr. Thomas Carli, M.D., University of Michigan, Department of Psychiatry. The Board further Ordered that this examination be completed within 60 days of the effective date of the Order.

Due to scheduling conflicts between the Petitioner and the appointed examining physician, the Department granted an extension of time to complete the examination. On February 20, 1995, the Petitioner was examined by Dr. Thomas Carli, M.D.

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The parties stipulated to the admission of the following exhibits: The Deposition and 1992 testimony of Thomas Haynes, M.D., Joseph Daniels, M.D., Dorsey Ligon, M.D., Robert Enzell, and Donald Jansma. Further, depositions of Dr. Daniels and Dr. Ligon were taken on September 20, 1994 and the hearing was conducted on September 30, 1994.

ISSUES AND APPLICABLE LAW:

The sole issue before this Judge is whether the Petitioner has met the burden of proving by clear and convincing evidence that he has satisfied the requirements of reinstatement set forth in section 16247 of the Public Health Code. That Section of the Code provides:

Sec. 16247. (1) A board may reinstate or issue a limited license to an individual whose license has been suspended or revoked under this part if, after a hearing, the board is satisfied that the applicant is of good moral character, is able to practice the profession with reasonable skill and safety to patients, and should be permitted in the public interest to resume practice. AS a condition of reinstatement, the board may impose a disciplinary or corrective measure authorized under this part and require that the licensee attend a school or program selected by the board to take designated courses or training to become competent or proficient in those areas of practice in which the board finds the licensee to be deficient. The board may require a statement on a form approved by it from the chief administrator of the school or program attended or the person responsible for the training that the licensee has achieved the required competency or proficiency

(2) A license suspended or revoked for grounds stated in section 16221(b)(i), (iii), or (iv)

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shall not be reinstated until the board finds that the licensee has become mentally or physically able to practice with reasonable skill or safety to patients. The board may conduct further examination of the licensee, at the licensee's expense, necessary to verify that the licensee has become mentally or physically able. A licensee affected by this section shall be afforded the opportunity at reasonable intervals to demonstrate that he or she can resume competent practice.

FINDINGS OF FACT:

Pursuant to an Order issued by the Board, the Petitioner was examined by Thomas Carli, M.D. On March 23, 1995, the Department received Dr. Carli's examination report regarding an examination of the Petitioner conducted on February 20, 1995. Dr. Carli's report establishes that the Petitioner "has a clear and convincing history of bipolar disorder. . . [and] there's little question that Dr. Alexander suffers from this major psychiatric illness and that this illness is a lifelong condition". (Carli Report, p 2.) In addition, Dr. Carli observed that:

Dr. Alexander will continue to require psychiatric management and medication compliance for the rest of his life. Related to the issue of reinstating his license is the fact that his stable performance as a physician requires his continued compliance with medications. . . . a knowledgeable patient can go off their lithium and the load up on the medication a day or two before the blood test and have the test come back positive and within normal range. . . (Carli Report, p 2.)

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Additionally, Dr. Carli's report acknowledged that "Dr. Alexander's clinical skills, particularly in the surgical speciality of obstetrics and gynecology, have not been exercised or tested for some time." The Petitioner submitted evidence indicating that he attended Continuing Medical Education courses in late 1991 and early 1992 and in 1994 in an effort to establish that he possessed the necessary skills to practice medicine. While it is true that the Petitioner has made efforts toward the greater goal of meeting the requirements of reinstatement set forth in the Code, it is the opinion of this Judge that the record, taken as a whole, does not establish the Petitioner, at the present time, is in possession of the skill necessary to practice medicine in a safe manner.

Based on review of the evidence presented and the record as a whole, this Judge finds that the Petitioner has not met the burden of proving, by clear and convincing evidence, that he possesses the skills necessary to practice his profession and that it is in the best interest of the public that his license be reinstated.

CONCLUSIONS OF LAW:

Having reviewed the evidence presented and the record as a whole, this Judge finds and concludes that the above listed facts establish that this Petition for Reinstatement should be denied.

ORDER

NOW THEREFORE IT IS ORDERED that:

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1. Within 20 days after service of this Proposal for Decision, a party may file Exceptions and present Written Arguments.

2. Within 20 days thereafter, an opposing party may file a Response to the exceptions and Written Arguments.


Jurisdiction of the matters contained herein is specifically reserved together with the authority to issue such further order or orders as may be deemed just, necessary and appropriate.

Ronald M. Basso
RONALD M. BASSO
ADMINISTRATIVE LAW JUDGE

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PROOF OF SERVICE

I hereby certify, to the best of my knowledge, information and belief, that a copy of the foregoing documents were served upon all parties and/or attorneys of record in this matter by mailing same to them at their respective addresses, as disclosed by the file, with postage fully prepaid on the 6th day of June 1995.


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a copy was sent I.D. mail to:

Sanna Durk
Department of Attorney General
Health Professionals Division