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

In the Matter of the Accusation
Against:

Robert Andrew Achtel, M.D.     Case No. 02-2013-229841
Physician's and Surgeon's
Certificate No. G 21923
Respondent

DECISION

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 27, 2017.

IT IS SO ORDERED January 20, 2017.

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Executive Director
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:
ROBERT ANDREW ACHTEL, M.D.
2315 Stockton Blvd.
Sacramento, CA 95817

Physician’s and Surgeon’s Certificate
No. G 21923

Respondent.

Case No. 02-2013-229841
OAH No. 2016061105

STIPULATED SURRENDER OF LICENSE
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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
   of California (Board). She brought this action solely in her official capacity and is represented in
   this matter by Kamala D. Harris, Attorney General of the State of California, by Megan R.
   O’Carroll, Deputy Attorney General.

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Stipulated Surrender of License and Disciplinary Order (Case No. 02-2013-229841)
2. Robert Andrew Achtel, M.D. (Respondent) is represented in this proceeding by attorney Robert B. Zaro, Esq., whose address is 1315 I Street, Ste. 200, Sacramento, CA 95814.

3. On or about January 18, 1972, the Board issued Physician’s and Surgeon’s Certificate No. G 21923 to Robert Andrew Achtel, M.D. (Respondent). The Physician’s and Surgeon’s Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 02-2013-229841 and will expire on May 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 02-2013-229841 was filed before the (Board), and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 4, 2015. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 02-2013-229841 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 02-2013-229841. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License 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 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.

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CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 02-2013-229841, if proven at a hearing, constitute cause for imposing discipline upon his Physician’s and Surgeon’s Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a prima facie for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician’s and Surgeon’s Certificate without further process.

CONTINGENCY

11. Business and Professions Code section 224, subdivision (b), provides, in pertinent part, that the Medical Board “Shall delegate to its executive direction the authority to adopt a ... stipulation for surrender of a license.”

12. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval by the Executive Director on behalf of the Medical Board. The parties agree that the Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

13. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full
force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General’s Office. Communications pursuant to this paragraph shall not disqualify the Executive Director, the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Executive Director on behalf of the Board does not, in her discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Executive Director, Respondent will assert no claim that the Executive Director, the Board or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

ORDER

IT IS HEREBY ORDERED that Physician’s and Surgeon’s Certificate No. G 21923, issued to Respondent Robert Andrew Achtel, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent’s Physician’s and Surgeon’s Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline
against Respondent. This stipulation constitutes a record of the discipline and shall become a part
of Respondent’s license history with the Medical Board of California.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
California as of the effective date of the Board’s Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in
the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
comply with all the laws, regulations and procedures for reinstatement of a revoked license in
effect at the time the petition is filed, and all of the charges and allegations contained in
Accusation No. 02-2013-229841 shall be deemed to be true, correct and admitted by Respondent
when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or
petition for reinstatement of a license, by any other health care licensing agency in the State of
California, all of the charges and allegations contained in Accusation, No. 02-2013-229841 shall
be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
Issues or any other proceeding seeking to deny or restrict licensure.
ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney, Robert B. Zaro, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: Nov. 9, 2016

ROBERT ANDREW ACHTEL, M.D.
Respondent

I have read and fully discussed with Respondent Robert Andrew Achtel, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 11/9/16

ROBERT B. ZARO, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 1-9-17

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 02-2013-229841
In the Matter of the Accusation Against:

ROBERT ACHTEL, M.D.
P.O. Box 476
Carmichael, CA 95609-0476
Physician's and Surgeon's Certificate No. G21923

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about January 18, 1972, the Medical Board of California issued Physician's and Surgeon's Certificate Number G21923 to Robert Achtel, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2017, unless renewed.
JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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 Board deems proper.

5. Section 2234 of the Code states:

"The board 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:

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

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

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

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

**FIRST CAUSE FOR DISCIPLINE**

**Gross Negligence**

[Bus. & Prof. Code, § 2234, subd. (b)]

6. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he was grossly negligent in the care and treatment of a pediatric cardiac patient. The circumstances are as follows:

Patient O.G.-M.

7. On or about October 10, 2012, Patient O.G.-M., a two-month old child, presented to Respondent with a heart murmur. Respondent ordered an echocardiogram and a Holter test. He then sent the child home. Respondent interpreted the results of the echocardiogram that day as, "large ASD with left to right shunt, probable membranous VSD, marked right atrial and right ventricular and pulmonary artery dilatation." The following day, the patient returned to have the Holter removed. The child was noted to have a bluish tint to his skin caused by oxygen-poor blood. He was immediately sent to the Emergency Department where a cardiologist reinterpreted the echocardiogram and found critical congenital heart disease - oor triatriatum with severe pulmonary hypertension. The patient was immediately transferred to a tertiary care center via helicopter.

8. On or about October 12, 2012, Respondent amended his initial echocardiogram report of Patient O.G.-M. to include the possibility of Ebstein anomaly and to state that the images transmitted over the internet were poor.
9. Respondent engaged in an extreme departure in his care and treatment of Patient O.G.-M. in that he failed to admit the patient with significant pulmonary hypertension.

SECOND CAUSE FOR DISCIPLINE
(Repeats Negligent Acts)
[Bus. & Prof. Code, § 2234, subdivision (c)]

10. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), for his repeated acts of negligence in his care and treatment of four patients. The circumstances are as follows:

Patient O.G.-M.

11. Paragraphs 7 and 8 are incorporated herein as if fully set forth.

12. Respondent engaged in a departure from the standard of care by ordering a Holter test for the evaluation of a heart murmur in the absence of an irregular heart rhythm.

13. Respondent engaged in a departure in his care and treatment of when he failed to admit the patient with significant pulmonary hypertension.

Patient J.C.

14. On or about April 7, 2010, Respondent started following Patient J.C. for a small atrial communication, a patent foramen ovale (PFO). On examination, the patient had a heart murmur with normal splitting of the second heart sound. An echocardiogram revealed the PFO. He was asked to return in one year.

15. On or about April 6, 2011, Patient J.C. underwent a subsequent echocardiogram. The results were normal. Respondent's interpretation was, "spontaneous closure of a PFO/ASD." His progress note of the same day stated, "today's echo/Doppler confirms the PFO is still present."

16. Respondent engaged in a departure from the standard of care in that his progress note did not reflect the results of the echocardiogram from on or about April 6, 2011.

Patient S.B.

17. Patient S.B., a thirteen-year-old female, was initially seen by Respondent on or about October 28, 2009, for frequent dizzy episodes. She had an echocardiogram which showed trivial mitral insufficiency. Patient S.B. also underwent a stress echocardiogram. Respondent noted
that he felt the patient did not have any cardiac condition. There was no clinical or
echocardiographic suggestion of mitral valve prolapse. Respondent, however, diagnosed the
patient with mitral valve prolapse. He did not explore any other diagnoses.

18. The consultation letter to the patient's primary care physician for the October 28,
2009, visit was not generated until November 7, 2009, and not signed by Respondent until
letter, however, was not generated until March 4, 2012, and not signed by Respondent until
March 7, 2012.

19. Respondent engaged in a departure from the standard of care in that he diagnosed
Patient S.B. with mitral valve prolapse in the absence of clinical or echocardiographic indication
and failed to explore alternative diagnoses.

20. Respondent engaged in a departure from the standard of care in that he delayed the
production of the consultation letters from the patient's October 28, 2009, and January 4, 2012,
visits.

21. Respondent engaged in a departure from the standard of care in that he ordered a
stress echocardiogram work up for pre-syncope in a teenager with a normal cardiac examination.

22. Respondent followed Patient A.B. after surgery for a congenital heart defect with
poor LV systolic function. The patient underwent echocardiograms on or about January 15, 2010,
Respondent's reports state "normal LV systolic motion" and/or "normal LV systolic and diastolic
function." The reported quantitative function was anywhere between 10% and 24%, which
should have been stated as decreased rather than normal.

23. Respondent engaged in a departure from the standard of care by misinterpreting the
echocardiograms as normal rather than decreased left ventricle systolic function.
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G21923, issued to Robert Achtel, M.D.;

2. Revoking, suspending or denying approval of Robert Achtel M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Robert Achtel, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

August 4, 2015

DATED: ____________________________

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant