

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

**In the Matter of the Accusation)
Against:)**

GERALD DAVID EBNER, M.D.)

Case No. 8002016019947

**Physician's and Surgeon's)
Certificate No. G25834)**

Respondent)

DECISION

The attached Stipulated Surrender of License and 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 AUGUST 22, 2017

IT IS SO ORDERED AUGUST 15, 2017

MEDICAL BOARD OF CALIFORNIA

By:



**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 CLAUDIA RAMIREZ
Deputy Attorney General
4 State Bar No. 205340
California Department of Justice
5 300 South Spring Street, Suite 1702
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6 Telephone: (213) 897-5678
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 800-2016-019947

13 GERALD DAVID EBNER, M.D.
14 1418 E. Main Street, Suite 210
Santa Maria, California 93454

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Physician's and Surgeon's Certificate
No. G 25834,

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
21 Board of California ("Board"). She brought this action solely in her official capacity and is
22 represented in this matter by Xavier Becerra, Attorney General of the State of California, by
23 Claudia Ramirez, Deputy Attorney General.

24 2. Gerald David Ebner, M.D. ("Respondent") is represented in this proceeding by
25 attorney Catherine J. Swysen, Esq. whose address is 125 East De La Guerra, Suite 102, Santa
26 Barbara, California, 93101-2276.

27 3. On or about October 15, 1973, the Board issued Physician's and Surgeon's Certificate
28 No. G 25834 to Respondent. That Certificate was in full force and effect at all times relevant to

1 the charges brought in Accusation No. 800-2016-019947 and will expire on December 31, 2017,
2 unless renewed.

3 JURISDICTION

4 4. Accusation No. 800-2016-019947 was filed before the Board and is currently pending
5 against Respondent. The Accusation and all other statutorily required documents were properly
6 served on Respondent on February 28, 2017. Respondent timely filed his Notice of Defense
7 contesting the Accusation. A copy of Accusation No. 800-2016-019947 is attached as Exhibit A
8 and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 800-2016-019947. Respondent also has carefully read,
12 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
13 and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
16 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
17 to the issuance of subpoenas to compel the attendance of witnesses and the production of
18 documents; the right to reconsideration and court review of an adverse decision; and all other
19 rights accorded by the California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent does not contest that, at an administrative hearing, Complainant could
24 establish a prima facie case with respect to the charges and allegations contained in Accusation
25 No. 800-2016-019947 and that he has thereby subjected his license to disciplinary action.

26 9. Respondent agrees that if he ever petitions for reinstatement of his Physician's and
27 Surgeon's Certificate No. G 25834, all of the charges and allegations contained in Accusation No.
28 800-2016-019947 shall be deemed true, correct and fully admitted by Respondent for purposes of

1 that reinstatement proceeding or any other licensing proceeding involving Respondent in the State
2 of California.

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

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Board. Respondent understands
8 and agrees that counsel for Complainant and the staff of the Board may communicate directly
9 with the Board regarding this stipulation and surrender, without notice to or participation by
10 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
11 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
12 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
13 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
14 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
15 be disqualified from further action by having considered this matter.

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

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

21 ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 25834, issued
23 to Respondent Gerald David Ebner, M.D., is surrendered and accepted by the Medical Board of
24 California.

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

1 I have read and fully discussed with Respondent Gerald David Ebner, M.D. the terms and
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I
3 approve its form and content.
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7 DATED: June 8, 2017

Catherine J. Swyden
8 CATHERINE J. SWYDEN
9 Attorney for Respondent

10 ENDORSEMENT

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

13 Dated: 6/21/17

Respectfully submitted,

14 XAVIER BECERRA
15 Attorney General of California
16 E. A. JONES III
17 Supervising Deputy Attorney General

Claudia Ramirez
18 CLAUDIA RAMIREZ
19 Deputy Attorney General
20 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-019947

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 CLAUDIA RAMIREZ
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4 State Bar No. 205340
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Feb. 28 20 17*
BY *[Signature]* ANALYST

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

11 In the Matter of the Accusation Against:

Case No. 800-2016-019947

12 GERALD DAVID EBNER, M.D.
13 1418 E. Main Street, Suite 210
Santa Maria, California 93454

ACCUSATION

14 Physician's and Surgeon's Certificate
15 No. G 25834,

16 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 15, 1973, the Board issued Physician's and Surgeon's Certificate
24 Number G 25834 to Gerald David Ebner, M.D. ("Respondent"). That certificate was in full force
25 and effect at all times relevant to the charges brought herein and will expire on December 31,
26 2017, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
4 indicated.

5 4. Section 2227 of the Code states:

6 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
7 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
8 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
9 action with the board, may, in accordance with the provisions of this chapter:

10 “(1) Have his or her license revoked upon order of the board.

11 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
12 order of the board.

13 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
14 order of the board.

15 “(4) Be publicly reprimanded by the board. The public reprimand may include a
16 requirement that the licensee complete relevant educational courses approved by the board.

17 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
18 the board or an administrative law judge may deem proper.

19 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
20 review or advisory conferences, professional competency examinations, continuing education
21 activities, and cost reimbursement associated therewith that are agreed to with the board and
22 successfully completed by the licensee, or other matters made confidential or privileged by
23 existing law, is deemed public, and shall be made available to the public by the board pursuant to
24 Section 803.1.”

25 5. Section 2234 of the Code states:

26 “The board shall take action against any licensee who is charged with unprofessional
27 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
28 limited to, the following:

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

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

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

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

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

25 6. Section 2266 of the Code states:

26 AThe failure of a physician and surgeon to maintain adequate and accurate records relating
27 to the provision of services to their patients constitutes unprofessional conduct.

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1 7. Section 726 of the Code states:

2 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
3 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
4 licensed under this division, under any initiative act referred to in this division and under Chapter
5 17 (commencing with Section 9000) of Division 3.

6 "This section shall not apply to sexual contact between a physician and surgeon and his or
7 her spouse or person in an equivalent domestic relationship when that physician and surgeon
8 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
9 in an equivalent domestic relationship."

10 **FIRST CAUSE FOR DISCIPLINE**

11 **[B&P Code Section 726]**

12 **(Sexual Misconduct)**

13 8. Respondent is subject to disciplinary action under section 726 of the Code in that he
14 committed sexual misconduct with patient K.L. The circumstances are as follows:

15 9. Respondent was patient K.L.'s obstetrician and gynecologist. He treated her for
16 various feminine health issues including pregnancy.

17 10. On or about January 14, 2016, K.L. presented with complaints of severe migraines,
18 heavy menses, pain in her right breast and needed hormone replacement therapy. At the
19 conclusion of the physical examination, and after a chaperone had left the room, Respondent took
20 both of patient K.L.'s hands in his and kissed her on the lips.

21 11. Respondent's acts and/or omissions as set forth in paragraphs 9 through 10, inclusive
22 above, whether proven individually, jointly, or in any combination thereof, constitute sexual
23 misconduct pursuant to section 726 of the Code. Therefore, cause for discipline exists.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **[B&P Code Section 2234, subd. (d)]**

3 **(Incompetence)**

4 12. Respondent is subject to disciplinary action under section 2234, subdivision (d), of
5 the Code in that he demonstrated a lack of medical knowledge of the proper treatment of
6 menopausal conditions.

7 13. The facts and circumstances are as set forth in paragraphs 9 through 10 above, and are
8 incorporated here by reference.

9 14. Hormone replacement is a means of replacing insufficient hormone levels as
10 determined by history or laboratory analysis. At menopause, a woman experiences decreased
11 levels of estrogen and progesterone due to ovarian failure. Standard of care for menopausal
12 symptoms begins with consideration of Estrogen levels.

13 15. On or about October 21, 2015, Patient K.L. presented with menopausal symptoms.
14 On or about October 21, 2015, Respondent prescribed Progesterone and dehydroepiandrosterone
15 ("DHEA") for patient K.L.'s menopausal symptoms. On or about January 14, 2016, Respondent
16 prescribed Progesterone and vitamin B12.

17 16. Progesterone, as prescribed, can be an effective treatment for the dysfunctional uterine
18 bleeding patient K.L. experienced after her endometrial ablation¹ in 2013. The patient reported
19 that the treatment plan was not effective for her continued menopausal symptoms. B12 therapy,
20 for low energy or dysphoria,² remains controversial in that its efficacy has not been established.
21 The value of DHEA therapy has not been proven. The logic behind this treatment plan, as
22 implemented, cannot be evaluated due to a complete lack of documentation. There is no mention
23 of Estrogen in patient K.L.'s medical records as a treatment option or of having evaluated the
24 patient's estrogen status.

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26 _____
27 ¹ Endometrial ablation is a procedure that destroys the uterine lining, or endometrium.
This procedure is used to treat abnormal uterine bleeding.

28 ² Dysphoria is the state of unease or generalized dissatisfaction with life.

1 17. In addition, Respondent failed to document patient K.L.'s subjective complaints,
2 bleeding history, symptoms, objective findings, relevant treatment plans, and options given to her
3 to treat her menopausal symptoms.

4 18. Respondent's acts and/or omissions as set forth in paragraphs 13 through 17,
5 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
6 incompetence pursuant to section 2234, subdivision (d), of the Code. Therefore, cause for
7 discipline exists.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **[B&P Code Section 2234, subd. (c)]**

10 **(Repeated Negligent Acts)**

11 19. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the
12 Code in that he engaged in repeated negligent acts in his care and treatment of patient K.L.

13 20. The facts and circumstances are as set forth in paragraphs 9 through 10 and 14
14 through 17 above, and are incorporated here by reference.

15 21. Inappropriately kissing patient K.L. is a simple departure from the standard of care.
16 The failure to document patient K.L.'s symptoms, objective findings, relevant treatment plans,
17 and options given to her to treat her menopausal symptoms is also a simple departure from the
18 standard of care.

19 22. Respondent's acts and/or omissions as set forth in paragraphs 20 through 21,
20 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
21 repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause
22 for discipline exists.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **[B&P Code Section 2266]**

3 **(Failure to Maintain Adequate Records)**

4 23. Respondent is subject to disciplinary action under section 2266 of the Code in that he
5 failed to maintain adequate and accurate records relating to the provision of services to patient
6 K.L. The circumstances are as follows:

7 24. The facts and circumstances are as set forth in paragraphs 9 through 10, 14 through
8 17, and 21 above, and are incorporated here by reference.

9 25. Respondent's acts and/or omissions as set forth in paragraph 24, inclusive above,
10 whether proven individually, jointly, or in any combination thereof, constitute inadequate record
11 keeping pursuant to section 2266 of the Code. Therefore, cause for discipline exists.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **[B&P Code Section 2234]**

14 **(Unprofessional Conduct)**

15 26. Respondent is subject to disciplinary action under section 2234 of the Code for
16 unprofessional conduct. The circumstances are as follows:

17 27. The facts and circumstances are as set forth in paragraphs 8 through 25 above, and are
18 incorporated by reference.

19 28. Respondent's acts and/or omissions as set forth in paragraph 27, inclusive above,
20 whether proven individually, jointly, or in any combination thereof, constitute unprofessional
21 conduct pursuant to section 2234 of the Code. Therefore, cause for discipline exists.

22 **PRAYER**

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

25 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 25834,
26 issued to Respondent Gerald David Ebner, M.D.;

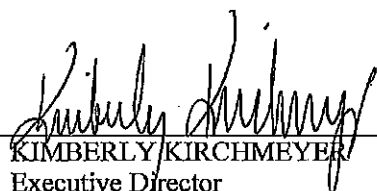
27 2. Revoking, suspending or denying approval of Respondent Gerald David Ebner,
28 M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

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3. Ordering Respondent Gerald David Ebner, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: February 28, 2017



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

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