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

In the Matter of the Accusation
Against:

DAVID LAWRENCE KAHN, M.D.) Case No. 800-2015-016774

Physician's and Surgeon's
Certificate No. C33917
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 November 9, 2017

IT IS SO ORDERED November 2, 2017

MEDICAL BOARD OF CALIFORNIA

By: Kimberly Kirchmeyer
Executive Director
In the Matter of the Accusation Against:  
DAVID LAWRENCE KAHN, M.D.  

3120 Webster Street #2  
Oakland, CA 94609-3421  

Physician's and Surgeon's Certificate  
No. C 33917  
Respondent.  

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

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 Xavier Becerra, Attorney General of the State of California, by David Carr, Deputy Attorney General.
2. David Lawrence Kahn, M.D. is represented in this proceeding by attorney Thomas J. Donnelly Esq., whose address is 201 North Civic Drive, Ste. 239, Walnut Creek, CA 94596.

3. On or about December 16, 1971, the Board issued Physician's and Surgeon's Certificate No. C 33917 to David Lawrence Kahn, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the allegations brought in Accusation No. 800-2015-016774 and will expire on November 30, 2017, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-016774 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 April 11, 2017. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2015-016774 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. 800-2015-016774. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and 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. 800-2015-016774, 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 factual basis 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 permanently retired from the active practice of medicine prior to the initiation of these proceedings. He has no intention to resume the practice of medicine nor was he going to renew his medical license after its expiration on November 30, 2017.

11. 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.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and 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. C 33917, issued to Respondent David Lawrence Kahn, 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 to practice medicine 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. 800-2015-016774 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE
I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Thomas J. Donnelly 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 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: October 18, 2017

DAVID LAWRENCE KAHN, M.D.
Respondent

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

DATED: October 18, 2017

THOMAS J. DONNELLY, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

DAVID CARR
Deputy Attorney General
Attorney for Complainant

Stipulated Surrender of License (Case No. 800-2015-016974)
Exhibit A

Accusation No. 800-2015-016774
In the Matter of the Accusation Against:

David Lawrence Kahn, M.D.

3120 Webster Street #2
Oakland, CA 94609-3421

Physician's and Surgeon's Certificate No. C 33917,

Respondent.

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 ("Board").

2. On December 16, 1971, the Medical Board issued Physician's and Surgeon's Certificate Number C 33917 to David Lawrence Kahn, M.D. ("Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the allegations brought herein and will expire on November 30, 2017, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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:

(DAVID LAWRENCE KAHN, M.D.) ACCUSATION NO. 800-2015-016774
“(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.”

6. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

7. The events described herein occurred in San Francisco, California.
FIRST CAUSE FOR DISCIPLINE  
(Unprofessional Conduct/Negligent Acts)

8. Respondent is subject to disciplinary action for unprofessional conduct under sections 2234 and 2234(c) in that his care and treatment of a patient included repeated negligent acts. The circumstances are as follows:

9. Respondent first saw patient CD1 on June 21, 2012, when CD consulted him about various cosmetic surgery procedures. CD filled out a health history questionnaire and Respondent ordered lab tests and obtained CD’s release of treatment records from her primary physician.

10. On November 15, 2012, CD arrived at Respondent’s outpatient surgical facility in San Francisco for scheduled multiple elective cosmetic surgeries, including eyelid blepharoplasty, rhinoplasty, face and neck lifts, chin augmentation, and liposuction of the abdomen and thighs. Respondent was assisted by a certified nurse anesthetist and a medical assistant in the 8 hour surgery. The patient was given general anesthesia and intubated; she was also given 1 gm of Keflex intravenously as a prophylactic antibiotic. The anesthesia record of CD’s vital signs indicates her body temperature throughout most of the hours of surgery was 95 degrees. The surgery was apparently uneventful and CD was released to go home that evening with instructions for post-operative wound care and additional doses of the antibiotic Keflex in oral form.

11. Respondent was informed approximately 9 days later by his office assistant that CD was experiencing some itching; Respondent ordered the antibiotic switched from Keflex to erythromycin. Respondent saw CD for the first time post-operatively on or about November 27, 2012. He noted some unusual vesicles and eschars and told CD to continue to take the oral antibiotic; he directed her to return in two days. Respondent made no medical record of this visit.

12. On the second post operative visit on November 29, 2012, Respondent and a colleague who happened to be at Respondent’s surgical center re-examined CD and determined

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1 The patient is identified herein by her initials to preserve confidentiality. The patient’s full name will be provided to Respondent in discovery.
her condition warranted immediate assessment in the emergency department of a nearby critical care hospital. Respondent's medical records for patient CD are devoid of any entry regarding this visit and Respondent's clinical findings and concerns. CD was admitted directly to the hospital with a diagnosis of necrotizing fasciitis. CD developed gangrenous tissue requiring debridement, intensive care, and intravenous antibiotics to treat septicemia. CD was released from the hospital 15 days after she was admitted.

13. Respondent has subjected his license to discipline for unprofessional conduct in that his administration of a single 1 gm intravenous dose of antibiotic over the course of an 8 hour surgery involving two separate and distant areas of the body was insufficient prophylaxis and was a departure from the standard of care which, in conjunction with the other departures of care alleged herein, constitute unprofessional conduct and repeated negligent acts in violation of sections 2234 and 2234(c).

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Negligent Acts)

14. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full. Respondent has subjected his license to discipline for unprofessional conduct in that his failure to normalize CD’s body temperature above the 95 degree reading noted for most of her 8 hour surgery to minimize the chance of infection and maintain proper metabolic processes was a departure from the standard of care which, in conjunction with the other departures of care alleged herein, constitute unprofessional conduct and repeated negligent acts in violation of sections 2234 and 2234(c).

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Gross Negligence/Negligence)

15. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full. Respondent has subjected his license to discipline for unprofessional conduct in that his failure to see patient CD for approximately 12 days post-operatively after an 8 hour surgery involving
multiple surgery sites or to ensure that CD was seen by an appropriate caregiver in the interim
was an extreme departure from the standard of care constituting unprofessional conduct and gross
negligence or negligence in violation of sections 2234, 2234(b), and/or 2234(c).

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Gross Negligence/Negligence)
16. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full.
Respondent has subjected his license to discipline for unprofessional conduct in that his failure to
effectively consider and address the unusual vesicles and eschars CD presented on the first post-
operative visit or obtain an immediate referral for such evaluation and treatment was
unprofessional conduct and an extreme or simple departure from the standard of care constituting
gross negligence or negligence, in violation of sections 2234, 2234(b), and/or 2234(c).

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Failure to Maintain Adequate Medical Records)
17. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full.
Respondent has subjected his license to discipline in that his failure to make any notes of the first
and second post-operative visits with CD despite the presence of problematic clinical conditions
constituted unprofessional conduct and violated the requirement of section 2266 that physicians
maintain adequate and accurate records relating to the provision of services to their patients.

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 C 33917,
   issued to David Lawrence Kahn, M.D.;
2. Revoking, suspending or denying approval of David Lawrence Kahn, M.D.'s
   authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering David Lawrence Kahn, 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: April 11, 2017

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

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