

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

In the Matter of the Accusation)
Against:)
)
)
HERBERT KLOSS, M.D.)
)
Physician's and Surgeon's)
Certificate No. G 59044)
)
Respondent)
_____)

Case No. 800-2016-020637

DECISION

The attached Stipulated Surrender of Licensee 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 February 17, 2017

IT IS SO ORDERED February 13, 2017

MEDICAL BOARD OF CALIFORNIA

By: _____

Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5742
6 Facsimile: (415) 703-5843
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 800-2016-020637

12 **Herbert Kloss, M.D.**

OAH No. 2016080877

13 Physician's & Surgeon's Certificate
14 No. G59044

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

16
17 In the interest of a prompt and speedy settlement of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California of the Department of Consumer
19 Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order
20 which will be submitted for approval and adoption as the final disposition of the Accusation.

21 **PARTIES**

22 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
23 Board of California ("Board"). She brought this action solely in her official capacity and is
24 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
25 Emily L. Brinkman, Deputy Attorney General.

26 2. Herbert Kloss, M.D. ("Respondent") is represented in this proceeding by attorney
27 Joseph S. Picchi, Esq., whose address is 2300 Contra Costa Boulevard, Suite 350,
28 Pleasant Hill, CA 94523-2398.

1 ORDER

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G59044, issued
3 to Respondent Herbert Kloss, M.D., is surrendered and accepted by the Medical Board of
4 California.

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

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

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

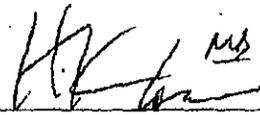
13 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of
14 California, the Board shall treat it as a new application for licensure. Respondent must comply
15 with all the laws, regulations and procedures for licensure in effect at the time the application or
16 petition is filed, and all of the charges and allegations contained in Accusation No. 800-2016-
17 020637 shall be deemed to be true, correct, and admitted by Respondent when the Board
18 determines whether to grant or deny the application or petition.

19 5. If Respondent should ever apply or reapply for a new license or certification or
20 petition for reinstatement of a license by any other health care licensing agency in the State of
21 California, all of the charges and allegations contained in Accusation No. 800-2016-020637 shall
22 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
23 Issues or any other proceeding seeking to deny or restrict licensure.

24
25 ACCEPTANCE

26 I have carefully read the above Stipulated Surrender of License and Order and have fully
27 discussed it with my attorney, Joseph S. Picchi, Esq. I understand the stipulation and the effect it
28 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of

1 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
2 Decision and Order of the Medical Board of California.

3
4 DATED: 1/4/17 
5 HERBERT KLOSS, M.D.
6 Respondent

7
8 I have read and fully discussed with Herbert Kloss, M.D, the terms and conditions and other
9 matters contained in this Stipulated Surrender of License and Order. I approve its form and
10 content.

11 DATED: 1/4/17 
12 JOSEPH S. PICCHI, ESQ.
13 Attorney for Respondent

14 ENDORSEMENT

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

17
18 Dated: 1/4/17 Respectfully submitted,
19
20 KAMALA D. HARRIS
21 Attorney General of California
22 JANE ZACK SIMON
23 Supervising Deputy Attorney General

24 
25 EMILY L. BRINKMAN
26 Deputy Attorney General
27 Attorneys for Complainant

Exhibit A

Accusation No. 800-2016-020637

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5742
6 Facsimile: (415) 703-5843
E-mail: Emily.Brinkman@doj.ca.gov
7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 17, 2016
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:
12 **Herbert Kloss, M.D.**
13 5057 84th Avenue SE
Mercer Island, WA 98040
14 **Physician's and Surgeon's Certificate**
15 **No. G59044,**
16 Respondent.

Case No. 800-2016-020637

ACCUSATION

17
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 16, 1998, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G59044 to Herbert Kloss, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2016, unless renewed.

27 ≡
28 ≡

1 JURISDICTION

2 3. This Accusation is brought before the Medical Board of California (Board),¹ under
3 the authority of the following laws. All section references are to the Business and Professions
4 Code unless otherwise indicated.

5 4. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
7 one year, placed on probation and required to pay the costs of probation monitoring, or such other
8 action taken in relation to discipline as the Board deems proper.

9 5. Section 2305 of the Code states:

10 "The revocation, suspension, or other discipline, restriction or limitation imposed by
11 another state upon a license or certificate to practice medicine issued by that state, or the
12 revocation, suspension, or restriction of the authority to practice medicine by any agency of the
13 federal government, that would have been grounds for discipline in California of a licensee under
14 this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action
15 for unprofessional conduct against the licensee in this state."

16 6. Section 141 of the Code states:

17 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
18 department, a disciplinary action taken by another state, by any agency of the federal government,
19 or by another country for any act substantially related to the practice regulated by the California
20 license, may be a ground for disciplinary action by the respective state licensing board. A
21 certified copy of the record of the disciplinary action taken against the licensee by another state,
22 an agency of the federal government, or another country shall be conclusive evidence of the
23 events related therein.

24 "(b) Nothing in this section shall preclude a board from applying a specific statutory
25 provision in the licensing act administered by that board that provides for discipline based upon a

26 _____
27 ¹ The term "Board" means the Medical Board of California. "Division of Medical
28 Quality" or "Division" shall also be deemed to refer to the Board (Bus. & Prof. Code section 2002).

1 disciplinary action taken against the licensee by another state, an agency of the federal
2 government, or another country."

3 **CAUSE FOR DISCIPLINE**

4 **(Discipline, Restriction, or Limitation Imposed by Another State)**

5 7. On February 11, 2016, the Washington Medical Quality Assurance Commission
6 (Washington Commission) and Respondent signed a Stipulation to Informal Disposition
7 (Stipulation). The Stipulation was entered following allegations connected to Respondent's
8 practice as a traveling anesthesiologist. Respondent employed a Nursing Assistant-Registered
9 (NAR) to assist him in providing anesthesia to pediatric dental patients. The Stipulation alleges
10 the following: a) Respondent allowed the NAR to provide anesthesia services beyond the scope of
11 her credentials (starting and administering IVs, administering intranasal Versed, and monitoring
12 patients under anesthesia); b) between December 2011 and December 2012, Respondent
13 administered anesthesia to one pediatric patient while another pediatric patient was in recovery
14 without monitoring (allowing the patient's parents or the NAR to monitor the patient); c)
15 Respondent would leave the operating room when patients were under general anesthesia to take
16 telephone calls or use a computer, allowing the NAR to monitor the patient; d) Respondent's
17 actions violated an Agreement dated August 20, 2012, in which he agreed to continuous
18 monitoring and being physically present and available during the administration of anesthesia.

19 8. As part of the Stipulation, Respondent agreed to undergo practice review by the
20 Washington Commission, to appear personally before the Washington Commission, attend and
21 successfully complete an ethics course, pay \$1,000 in cost recovery, and other standard terms and
22 conditions. Copies of the Washington Commission's Statement of Allegations and Summary of
23 Evidence and Stipulation to Informal Disposition are attached as Exhibit A.

24 9. Respondent's conduct and the action of the Washington Commission as set forth in
25 paragraphs 7 and 8, above, and within the actual Washington Commission documents attached as
26 Exhibit A, constitutes unprofessional conduct within the meaning of section 2305 and conduct
27 subject to discipline within the meaning of section 141.

28 ¶

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 G59044, issued to Herbert Kloss, M.D.;
2. Revoking, suspending or denying approval of Herbert Kloss, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Herbert Kloss, 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: May 17, 2016


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

SF2016200520
12220739.doc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Washington Medical Quality Assurance Commission Statement of Allegations and
Summary of Evidence and Stipulation to Informal Discipline

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice
as a Physician and Surgeon of:

HERBERT KLOSS, MD
License No. MD00017372

No. M2015-268

STATEMENT OF ALLEGATIONS
AND SUMMARY OF EVIDENCE

Respondent,

The Executive Director of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by evidence contained in Commission file number 2013-9669. The patient referred to in this Statement of Allegations and Summary of Evidence is identified in the attached Confidential Schedule.

1. ALLEGATIONS

1.1 On May 7, 1979, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is board certified in anesthesiology. Respondent's license is currently active.

1.2 Respondent provides anesthesia services for dentists serving pediatric patients who require general anesthesia for extensive dental rehabilitation, or who have special health care needs. Respondent provides ambulatory care and travels to the dentists' offices. Respondent administered anesthesia accompanied only by a Nursing Assistant-Registered (NAR).

1.3 Respondent directed and/or approved the NAR whom he employed to perform activities beyond the scope of her credentials, including starting and administering IVs, administering intranasal Versed (midazolam), and monitoring patients while they were under anesthesia. NARs are ineligible to accept delegation to administer medicine by injection or monitor patients at any time while they are under anesthesia. In addition, NARs are required to work under the direction of a Registered Nurse or Licensed Practical Nurse, not a physician.

1.4 During the period December 2011 through December 2012, Respondent frequently administered anesthesia to two pediatric patients simultaneously. Respondent would have his NAR employee or a patient's parent monitor one of the patients while

Respondent was in a different room attending to or administering another patient's anesthesia, cleaning equipment, or preparing for a procedure.

1.5 Respondent would often leave the operating room (OR) when patients were under general anesthesia to take telephone calls or to use a computer. During Respondent's absences from the OR to perform these tasks, Respondent would stand outside the door and would leave his NAR to monitor the patient.

1.6 In addition to creating a risk of patient harm, after August 20, 2012, Respondent's actions violated an Agreement Respondent had signed with the Department of Social and Health Services on that date in which he agreed to "continuous monitoring of the course of each office based anesthesia administration by remaining physically present and available for immediate diagnosing and treatment of emergencies."

2. SUMMARY OF EVIDENCE

- 2.1 Complaint dated November 8, 2013.
- 2.2 Respondent's statement with attachments.
- 2.3 Billing records.
- 2.4 Audit and investigative reports provided by Washington Health Care Authority and Washington State Attorney General Office.

3. ALLEGED VIOLATIONS

3.1 The facts alleged in Section 1, if proven, would constitute unprofessional conduct in violation of RCW 18.130.180(4), (7), (10) and WAC 246-841-405(5)(a) which provide in part:

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

...

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.

...

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice.

(10) Aiding or abetting an unlicensed person to practice when a license is required.

WAC 246-841-405. Nursing assistant delegation.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections.

4. NOTICE TO RESPONDENT

4.1 The Commission has determined that this case may be appropriate for resolution through a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2). A proposed Stipulation to Informal Disposition is attached, which contains the disposition the Commission believes is necessary to address the conduct alleged in this Statement of Allegations and Summary of Evidence.

4.2 If Respondent agrees that the disposition imposed by the Stipulation to Informal Disposition is appropriate, Respondent should sign and date the Stipulation to Informal Disposition and return it within fourteen (14) days to the Medical Quality Assurance Commission at P.O. Box 47866, Olympia, WA 98504-7866.

4.3 If Respondent does not agree that the terms and conditions contained in the Stipulation to Informal Disposition are appropriate, Respondent should contact Suzanne Mager, Staff Attorney for the Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, (360) 236-2791 within fourteen (14) days.

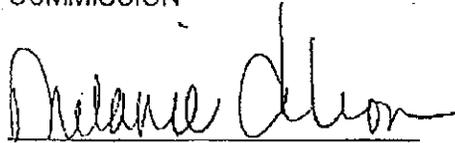
4.4 If Respondent does not respond within fourteen (14) days, the Commission will assume Respondent has declined to resolve the allegations by means of a Stipulation to Informal Disposition.

4.5 If Respondent declines to resolve the allegations by means of a Stipulation to Informal Disposition pursuant to RCW 18.130.172(2), the Commission may proceed to formal disciplinary action against Respondent by filing a Statement of Charges, pursuant to RCW 18.130.172(3).

4.6 The cover letter enclosed with this Statement of Allegations and Summary of Evidence was mailed to the name and address currently on file for Respondent's license. Respondent must notify, in writing, the Commission if Respondent's name and/or address changes.

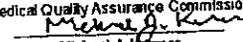
DATED: January 21, 2016.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE
COMMISSION


MELANIE DE LEON
EXECUTIVE DIRECTOR


SUZANNE L. MAGER, WSBA# 19284
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health.
Medical Quality Assurance Commission


Michael J. Kramer

3-1-16
Date



STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice
as a Physician and Surgeon of:

HERBERT KLOSS, MD
License No. MD00017372

Respondent.

No. M2015-268

**STIPULATION TO INFORMAL
DISPOSITION**

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations. This Stipulation to Informal Disposition (Stipulation) is not formal disciplinary action and shall not be construed as a finding of unprofessional conduct, inability to practice, or a practice restriction.

1. ALLEGATIONS

1.1 On May 7, 1979, the State of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is board certified in anesthesiology. Respondent's license is currently active.

1.2 Respondent provides anesthesia services for dentists serving pediatric patients who require general anesthesia for extensive dental rehabilitation, or who have special health care needs. Respondent provides ambulatory care and travels to the dentists' offices. Respondent administered anesthesia accompanied only by a Nursing Assistant-Registered (NAR).

1.3 Respondent directed and/or approved the NAR whom he employed to perform activities beyond the scope of her credentials, including starting and administering IVs, administering intranasal Versed (midazolam), and monitoring patients while they were under anesthesia. NARs are ineligible to accept delegation to administer medicine by injection or monitor patients at any time while they are under anesthesia. In addition, NARs are required to work under the direction of a Registered Nurse or Licensed Practical Nurse, not a physician.

1.4 During the period December 2011 through December 2012, Respondent frequently administered anesthesia to one pediatric patient while another pediatric

ORIGINAL

patient was in recovery, without monitoring by an appropriately licensed or credentialed medical care provider. Respondent would have his NAR employee or a patient's parent monitor one of the patients while Respondent was in a different room attending to or administering another patient's anesthesia, cleaning equipment, or preparing for a procedure.

1.5 Respondent would often leave the operating room (OR) when patients were under general anesthesia to take telephone calls or to use a computer. During Respondent's absences from the OR to perform these tasks, Respondent would stand outside the door and would leave his NAR to monitor the patient.

1.6 In addition to creating a risk of patient harm, after August 20, 2012, Respondent's actions violated an Agreement Respondent had signed with the Department of Social and Health Services on that date in which he agreed to "continuous monitoring of the course of each office based anesthesia administration by remaining physically present and available for immediate diagnosing and treatment of emergencies."

2. STIPULATION

2.1 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4)(7)(10) and WAC 246-841-405(5)(a).

2.2 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition (Stipulation) pursuant to RCW 18.130.172(1).

2.3 Respondent agrees to be bound by the terms and conditions of this Stipulation.

2.4 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

2.5 If the Commission accepts the Stipulation it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

2.6 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health web site, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public

Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

2.7 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

2.8 Respondent agrees to successfully complete the terms and conditions of this informal disposition.

2.9 A violation of the provisions of Section 3 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

3. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms.

3.1 **Practice Review.** Respondent agrees that a representative of the Commission will visit Respondent's office within four months of the effective date of this Stipulation in order to monitor Respondent's compliance with the Stipulation.

Respondent agrees that a representative may, at the discretion of the Commission visit his office semi-annually thereafter during the remainder of the term of this Stipulation to monitor Respondent's compliance. The representative will select, from the Respondent's appointment log or other schedule, medical and billing records for all patients on at least five days in the preceding six months. Respondent agrees that the representative also may interview Respondent and Respondent's employees, assistants, and billing staff. Respondent must cooperate with the representative during practice reviews and permit the representative to review and copy patient records and billing records.

3.2 **Personal Appearances.** Respondent must personally appear before the Commission in approximately six months, or as soon thereafter as the Commission's schedule permits. Respondent will be given the opportunity to make a statement and will be asked questions by the Commission. The purpose of personal appearances is to provide meaningful oversight of Respondent's compliance with the requirements of this Stipulation to Informal Disposition. Thereafter, Respondent must make personal appearances until the Commission terminates this Stipulation, unless the Commission waives the need for an appearance.

3.3 Ethics Course. Respondent must attend and successfully complete an ethics course approved in advance in writing by the Commission. Respondent must complete the course within four months of the effective date of this Stipulation. Successful completion means that Respondent must receive an "unconditional pass" at the conclusion of the course. Respondent will provide the course instructors with a copy of this Stipulation prior to the course. Respondent will sign all necessary waivers to allow the Commission staff to communicate with the course instructors as needed. Respondent will submit proof of the satisfactory completion of the course to the Commission. If the course instructors inform the Commission that Respondent did not receive an "unconditional pass," the Commission will require that Respondent re-take the same or similar course.

3.4 Partial Cost Recovery. Respondent must pay \$1,000 to the Commission as partial reimbursement of some of the costs of investigating and processing this matter. Payment must be by certified or cashier's check made payable to the Department of Health, and must be received by the Department of Health within 90 days of the effective date of this Stipulation. Respondent must send payment to:

Medical Quality Assurance Commission
Department of Health
P.O. Box 1099
Olympia, Washington 98507-1099.

3.5 Address for Reports and Other Communications with Commission.
All communications related to this Stipulation must be sent to:

Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

3.6 Obey Laws. Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington, including those governing the scope of practice of Respondent's employees and assistants. Respondent must practice within the standard of care at all times.

3.7 Costs. Respondent must assume all costs of complying with this Stipulation.

3.8 Violations. If Respondent violates any provision of this Stipulation in any respect, the Commission may initiate further action against Respondent's license.

3.9 Change of Address. Respondent must inform the Commission and the Adjudicative Clerk Office in writing, of changes in his residential and/or business address within thirty (30) days of such change.

3.10 Effective Date. The effective date of this Stipulation to Informal Disposition is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3.11 Termination of Stipulation. Respondent may petition the Commission in writing to terminate this Stipulation no sooner than 24 months from the effective date of this Stipulation. Respondent must provide proof that he has fully complied with the requirements of this Stipulation. When Respondent files such a petition, a date and time will be arranged for Respondent to personally appear before the Commission, unless the Commission waives the need for appearance.

4. COMPLIANCE WITH SANCTION RULES

4.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices created the risk of moderate to severe patient harm. Respondent's failure to provide undivided and uninterrupted medical supervision over pediatric patients under anesthesia created the risk of moderate to severe harm. If an emergency were to occur while two patients were under anesthesia, Respondent would not be able to assist both. Respondent's failure to enforce the scope of practice of his NAR employee also created the risk of moderate to severe patient harm.

4.2 Tier B requires the imposition of sanctions ranging from two years of oversight to five years of oversight, unless revocation. Under WAC 246-16-800 (3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

4.3 The aggravating and mitigating factors in this case, listed below, justify moving toward the low end of the range. The sanctions in this case include an ethics course, practice reviews, at least one personal appearance, partial cost recovery and other terms to protect the public.

4.4 These sanctions are appropriate within the Tier B range given the facts of the case and the following aggravating and mitigating factors:

Mitigating:

4.4.1 Respondent has made changes in his practice to ensure proper monitoring of patients under anesthesia and to ensure that his agents and employees do not exceed the scope of their certification or licensure.

4.4.2 Full and free disclosure to the Commission, in that Respondent was forthright and direct in his dealings with the Commission.

4.4.3 Length of time since the alleged acts occurred (having occurred over three years ago).

4.4.4 The Commission is unaware of any injuries that resulted from Respondent's alleged conduct.

Aggravating:

4.4.5 The patients under Respondent's care were children.

//

//

//

//

//

//

5. RESPONDENT'S ACCEPTANCE

I, HERBERT KLOSS, MD, Respondent, certify that I have read this Stipulation to Informal Disposition in its entirety; that my counsel of record, KEVIN A. PECK, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation to Informal Disposition, I understand that I will receive a signed copy.

Herbert Kloss
HERBERT KLOSS, MD
RESPONDENT

2-8-16
DATE

Kevin A. Peck
KEVIN A. PECK, WSBA# 12995
ATTORNEY FOR RESPONDENT

2/8/16
DATE

6. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

2/11, 2016.



STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

Mimi Winslow
PANEL CHAIR

PRESENTED BY:

Suzanne L. Mager
SUZANNE L. MAGER, WSBA# 19284
COMMISSION STAFF ATTORNEY

Rick Glein for SLM
Rick Glein, WSBA 23692

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health, Medical Quality Assurance Commission

Michael J. Kramer
Michael J. Kramer

3-1-16
Date

STIPULATION TO INFORMAL DISPOSITION
NO. M2015-268