

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

In the Matter of the Accusation)
Against:)
)
)
RICHARD WARREN CUNNINGHAM, MD)
)
Physician's and Surgeon's)
Certificate No. G40588)
)
Respondent)
_____)

Case No. 11-2013-229623

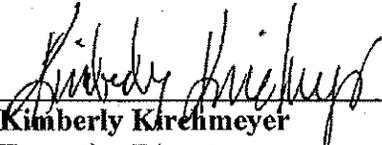
DECISION

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 March 18, 2016.

IT IS SO ORDERED March 11, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 

Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 RICHARD D. MARINO
Deputy Attorney General
4 State Bar No. 90471
California Department of Justice
5 300 So. Spring Street, Suite 1702
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Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 11-2013-229623

12 **RICHARD W. CUNNINGHAM, M.D.**
13 **445 Hidden Pines Lane**
Del Mar, CA 92014-3313

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Physician's and Surgeon's Certificate No.**
G40588,

15 Respondent.

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

22 **PARTIES**

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

27 //

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1 CULPABILITY

2 8. Respondent admits that, if the matter proceeded to hearing, Complainant would be
3 able to present a *prima facie* case for each and every charge and allegation in Accusation No.
4 11-2013-229623; agrees that cause exists for discipline; and, hereby, surrenders his Physician's
5 and Surgeon's Certificate No. G40588 for the Board's formal acceptance.

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

9 RESERVATION

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

14 CONTINGENCY

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

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

1 ACCEPTANCE

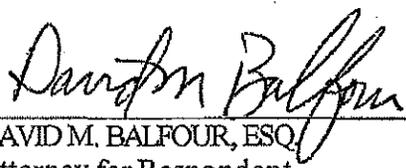
2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, David M. Balfour. I understand the stipulation and the effect it
4 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of
5 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 12-31-2015


9 RICHARD W. CUNNINGHAM, M.D.
Respondent

10 I have read and fully discussed with Respondent RICHARD W. CUNNINGHAM, M.D. the
11 terms and conditions and other matters contained in this Stipulated Surrender of License and
12 Order. I approve its form and content.

13 DATED: 12/31/2015


14 DAVID M. BALFOUR, ESQ.
Attorney for Respondent

15
16 ENDORSEMENT

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

19 Dated: Feb. 19, 2016

Respectfully submitted,

20 KAMALA D. HARRIS
Attorney General of California
21 JUDITH T. ALVARADO
Supervising Deputy Attorney General


22 RICHARD D. MARINO
23 Deputy Attorney General
24 Attorneys for Complainant

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Exhibit A

Accusation No. 11-2013-229623

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 RICHARD D. MARINO
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Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Sept 16 2015*
BY *[Signature]* ANALYST

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. 11-2013-229623

12 **Richard W. Cunningham, M.D.**
13 **445 Hidden Pines Lane**
Del Mar, CA 92014

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G40588,**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about August 20, 1979, the Board issued Physician's and Surgeon's Certificate
23 Number G40588 to Richard W. Cunningham, M.D. (Respondent). The Physician's and Surgeon's
24 Certificate expired on April 30, 2015, and has not been renewed.

25 **JURISDICTION**

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

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1 4. Section 2227 of the Code provides:

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

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

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

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

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

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

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

22 5. Section 2234 of the Code, states:

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

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

28 “(b) Gross negligence.

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

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

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

11 “(d) Incompetence.

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

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

15 “(g) The practice of medicine from this state into another state or country without
16 meeting the legal requirements of that state or country for the practice of medicine. Section
17 2314 shall not apply to this subdivision. This subdivision shall become operative upon the
18 implementation of the proposed registration program described in Section 2052.5.

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

22 6. Section 2241 of the Code provides:

23 “(a) A physician and surgeon may prescribe, dispense, or administer prescription
24 drugs, including prescription controlled substances, to an addict under his or her treatment
25 for a purpose other than maintenance on, or detoxification from, prescription drugs or
26 controlled substances.

27 “(b) A physician and surgeon may prescribe, dispense, or administer prescription
28 drugs or prescription controlled substances to an addict for purposes of maintenance on, or

1 detoxification from, prescription drugs or controlled substances only as set forth in
2 subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the
3 Health and Safety Code. Nothing in this subdivision shall authorize a physician and
4 surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a
5 person he or she knows or reasonably believes is using or will use the drugs or substances
6 for a nonmedical purpose.

7 “(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may
8 also be administered or applied by a physician and surgeon, or by a registered nurse acting
9 under his or her instruction and supervision, under the following circumstances:

10 “(1) Emergency treatment of a patient whose addiction is complicated by the presence
11 of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

12 “(2) Treatment of addicts in state-licensed institutions where the patient is kept under
13 restraint and control, or in city or county jails or state prisons.

14 “(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety
15 Code.

16 “(d) (1) For purposes of this section and Section 2241.5, “addict” means a person
17 whose actions are characterized by craving in combination with one or more of the
18 following:

19 “(A) Impaired control over drug use.

20 “(B) Compulsive use.

21 “(C) Continued use despite harm.

22 “(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is
23 primarily due to the inadequate control of pain is not an addict within the meaning of this
24 section or Section 2241.5.

25 7. Section 2242 of the Code, in pertinent part, provides:

26 “(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022
27 without an appropriate prior examination and a medical indication, constitutes
28 unprofessional conduct.

1 dangerous drugs to D.M. without performing an appropriate prior physical examination and
2 without medical indication, as follows:

3 A. Complainant refers to and, by this reference, incorporates herein paragraph 6,
4 above, as though fully set forth.

5 B. Respondent did not perform an appropriate prior physical examination and did
6 not have a proper medical indication before writing 110 prescriptions for controlled
7 substances and other dangerous drugs for D.M.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Prescribing To An Addict)**

10 8. Respondent Richard W. Cunningham, M.D. is subject to disciplinary action under
11 Business and Professions Code section 2241 in that Respondent prescribed to an individual he
12 knew or should have known was an addict, as follows:

13 A. Complainant refers to and, by this reference, incorporates herein paragraph 6,
14 above, as though fully set forth.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct)**

17 9. Respondent Richard W. Cunningham, M.D. is subject to disciplinary action under
18 Business and Professions Code section 2234, generally, as follows:

19 A. Complainant refers to and, by this reference, incorporates herein paragraph 6,
20 above, as though fully set forth.

21 B. During an interview with representatives of the Medical Board of California
22 investigating allegations of improper prescribing and other violations of the Medical
23 Practice Act, Respondent revealed that D.M. was his girlfriend and that he, Respondent,
24 personally used some of the controlled substances and other dangerous drugs prescribed by
25 him to D.M.

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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 G40588, issued to Richard W. Cunningham, M.D.;
2. Revoking, suspending or denying approval of Richard W. Cunningham, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Richard W. Cunningham, 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: September 16, 2015


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

Complainant

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