

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

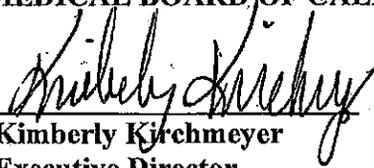
The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

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

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 DAVID CARR
Deputy Attorney General
4 State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5538
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 800-2015-016774

11 **DAVID LAWRENCE KAHN, M.D.**

OAH No. 2017060601

12
13 3120 Webster Street #2
Oakland, CA 94609-3421

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14
15 Physician's and Surgeon's Certificate
No. C 33917

16 Respondent.
17

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

24 PARTIES

25 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
26 of California (Board). She brought this action solely in her official capacity and is represented in
27 this matter by Xavier Becerra, Attorney General of the State of California, by David Carr, Deputy
28 Attorney General.

1 CULPABILITY

2 8. Respondent understands that the charges and allegations in Accusation No. 800-2015-
3 016774, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
4 Surgeon's Certificate.

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

10 10. Respondent permanently retired from the active practice of medicine prior to the
11 initiation of these proceedings. He has no intention to resume the practice of medicine nor was he
12 going to renew his medical license after its expiration on November 30, 2017.

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

16 RESERVATION

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

21 CONTINGENCY

22 13. This stipulation shall be subject to approval by the Board. Respondent understands
23 and agrees that counsel for Complainant and the staff of the Board may communicate directly
24 with the Board regarding this stipulation and surrender, without notice to or participation by
25 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
26 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
27 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
28 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this.

1 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
2 be disqualified from further action by having considered this matter.

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

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

8 **ORDER**

9 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 33917, issued
10 to Respondent David Lawrence Kahn, M.D., is surrendered and accepted by the Medical Board of
11 California.

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

16 2. Respondent shall lose all rights and privileges as a physician and surgeon to practice
17 medicine in California as of the effective date of the Board's Decision and Order.

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

20 4. If Respondent ever files an application for licensure or a petition for reinstatement in
21 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
22 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
23 effect at the time the petition is filed, and all of the charges and allegations contained in
24 Accusation No. 800-2015-016774 shall be deemed to be true, correct and admitted by Respondent
25 when the Board determines whether to grant or deny the petition.

26
27 **ACCEPTANCE**

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

6
 7 DATED: Oct 18/2017 *David Lawrence Kahn M.D.*
 8 DAVID LAWRENCE KAHN, M.D.
 9 Respondent

10 I have read and fully discussed with Respondent DAVID LAWRENCE KAHN, 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
 14 DATED: October 18 2017 *Thomas J. Donnelly*
 15 THOMAS J. DONNELLY, ESQ.
 16 Attorney for Respondent

17
 18 ENDORSEMENT

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

21 Dated: 10/19/2017 Respectfully submitted,
 22 XAVIER BECERRA
 23 Attorney General of California
 24 JANE ZACK SIMON
 25 Supervising Deputy Attorney General
 26 *David Carr*
 27 DAVID CARR
 28 Deputy Attorney General
 Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-016774

JURISDICTION

1
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 unless otherwise indicated.

4 4. Section 2227 of the Code states:

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

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

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

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

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

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

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

24 5. Section 2234 of the Code, states:

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

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 the
21 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: “The failure of a physician and surgeon to maintain
26 adequate and accurate records relating to the provision of services to their patients constitutes
27 unprofessional conduct.”

28 7. The events described herein occurred in San Francisco, California.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Negligent Acts)

1
2
3 8. Respondent is subject to disciplinary action for unprofessional conduct under sections
4 2234 and 2234(c) in that his care and treatment of a patient included repeated negligent acts. The
5 circumstances are as follows:

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

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

20 11. Respondent was informed approximately 9 days later by his office assistant that CD
21 was experiencing some itching; Respondent ordered the antibiotic switched from Keflex to
22 erythromycin. Respondent saw CD for the first time post-operatively on or about November 27,
23 2012. He noted some unusual vesicles and eschars and told CD to continue to take the oral
24 antibiotic; he directed her to return in two days. Respondent made no medical record of this visit.

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

27 ¹ The patient is identified herein by her initials to preserve confidentiality. The patient's
28 full name will be provided to Respondent in discovery.

1 her condition warranted immediate assessment in the emergency department of a nearby critical
2 care hospital. Respondent's medical records for patient CD are devoid of any entry regarding this
3 visit and Respondent's clinical findings and concerns. CD was admitted directly to the hospital
4 with a diagnosis of necrotizing faciitis. CD developed gangrenous tissue requiring debridement,
5 intensive care, and intravenous antibiotics to treat septicemia. CD was released from the hospital
6 15 days after she was admitted.

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

13
14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct/Negligent Acts)**

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

23
24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct/Gross Negligence/Negligence)**

26 15. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full.
27 Respondent has subjected his license to discipline for unprofessional conduct in that his failure to
28 see patient CD for approximately 12 days post-operatively after an 8 hour surgery involving

1 multiple surgery sites or to ensure that CD was seen by an appropriate caregiver in the interim
2 was an extreme departure from the standard of care constituting unprofessional conduct and gross
3 negligence or negligence in violation of sections 2234, 2234(b), and/or 2234(c).

4
5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct/Gross Negligence/Negligence)**

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

13
14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct/Failure to Maintain Adequate Medical Records)**

16 17. The allegations of paragraphs 9-12 above are incorporated herein as if set out in full.
17 Respondent has subjected his license to discipline in that his failure to make any notes of the first
18 and second post-operative visits with CD despite the presence of problematic clinical conditions
19 constituted unprofessional conduct and violated the requirement of section 2266 that physicians
20 maintain adequate and accurate records relating to the provision of services to their patients.

21
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 C 33917,
26 issued to David Lawrence Kahn, M.D.;
- 27 2. Revoking, suspending or denying approval of David Lawrence Kahn, M.D.'s
28 authority to supervise physician assistants, pursuant to section 3527 of the Code;

1 3. Ordering David Lawrence Kahn, M.D., if placed on probation, to pay the Board the
2 costs of probation monitoring; and

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

4
5 DATED: April 11, 2017


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

6
7
8
9 SF2017202413
10 Khan.Acc.3.docx

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28