

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

In the Matter of the Accusation)	
Against:)	
)	
)	
Robert Fulton Sterner, M.D.)	Case No. 800-2015-013063
)	
Physician's and Surgeon's)	
Certificate No. G 51708)	
)	
Respondent)	
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DECISION

The attached Stipulated Surrender of License and Disciplinary 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 April 17, 2017.

IT IS SO ORDERED April 10, 2017.

MEDICAL BOARD OF CALIFORNIA

By: _____

Kimberly Kirchmeyer
**KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 GIOVANNI F. MEJIA
Deputy Attorney General
4 State Bar No. 309951
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9072
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

In the Matter of the Accusation Against:

Robert Fulton Sterner, M.D.
1747 Hancock Street, Suite B
San Diego, CA 92101

**Physician's and Surgeon's Certificate
No. G 51708,**

Respondent.

Case No. 800-2015-013063

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Medical Board) and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Giovanni F. Mejia, Deputy Attorney General.
2. Robert Fulton Sterner, M.D., (Respondent) is represented in this proceeding by John L. Fleer, Esq., of the Law Offices of John L. Fleer, whose address is 1850 Mt. Diablo Blvd., Suite 120, Walnut Creek, CA 94596.

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1 and all other rights accorded by the California Administrative Procedure Act and other applicable
2 laws.

3 8. Having the benefit of counsel, Respondent hereby voluntarily, knowingly and
4 intelligently waives and gives up each and every right set forth above.

5 **CULPABILITY**

6 9. Respondent does not contest that, at an administrative hearing, complainant could
7 establish a prima facie case with respect to all of the charges and allegations in
8 Accusation No. 800-2015-013063, a true and correct copy of which is attached hereto as
9 Exhibit "A" and incorporated by reference as if fully set forth herein. Respondent further admits
10 that he has thereby subjected his Physician's and Surgeon's Certificate No. G 51708 to
11 disciplinary action and hereby surrenders his Physician's and Surgeon's Certificate No. G 51708
12 for the Board's formal acceptance.

13 10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 51708 is
14 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth
15 in the Disciplinary Order below.

16 11. Respondent further agrees that if he ever petitions for reinstatement of his Physician's
17 and Surgeon's Certificate No. G 51708, or if an accusation or petition to revoke probation is ever
18 filed against him before the Medical Board of California, all of the charges and allegations
19 contained in Accusation No. 800-2015-013063 shall be deemed true, correct, and fully admitted
20 by Respondent for purposes of any such proceeding or any other licensing proceeding involving
21 Respondent in the State of California or elsewhere.

22 12. Respondent understands that, by signing this stipulation, he enables the Executive
23 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his
24 Physician's and Surgeon's Certificate No. G 51708, without further notice to, or opportunity to be
25 heard by, Respondent.

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CONTINGENCY

1
2 13. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
3 part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . .
4 stipulation for surrender of a license."

5 14. This Stipulated Surrender of License and Disciplinary Order shall be subject to
6 approval of the Executive Director on behalf of the Medical Board. The parties agree that this
7 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive
8 Director for her consideration in the above-entitled matter and, further, that the Executive
9 Director shall have a reasonable period of time in which to consider and act on this Stipulated
10 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,
11 Respondent fully understands and agrees that he may not withdraw his agreement or seek to
12 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,
13 considers and acts upon it.

14 15. The parties agree that this Stipulated Surrender of License and Disciplinary Order
15 shall be null and void and not binding upon the parties unless approved and adopted by the
16 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full
17 force and effect. Respondent fully understands and agrees that in deciding whether or not to
18 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive
19 Director and/or the Board may receive oral and written communications from its staff and/or the
20 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
21 Executive Director, the Board, any member thereof, and/or any other person from future
22 participation in this or any other matter affecting or involving Respondent. In the event that the
23 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this
24 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
25 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
26 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
27 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
28 by the Executive Director on behalf of the Board, Respondent will assert no claim that the

1 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
2 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
3 of any matter or matters related hereto.

4 **ADDITIONAL PROVISIONS**

5 16. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
6 herein to be an integrated writing representing the complete, final and exclusive embodiment of
7 the agreements of the parties in the above-entitled matter.

8 17. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
9 Order, including copies of the signatures of the parties, may be used in lieu of original documents
10 and signatures and, further, that such copies shall have the same force and effect as originals.

11 18. In consideration of the foregoing admissions and stipulations, the parties agree the
12 Executive Director of the Medical Board may, without further notice to or opportunity to be heard
13 by Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 51708, issued
16 to Respondent Robert Fulton Sterner, M.D., is surrendered and accepted by the Medical Board of
17 California.

18 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G 51708
19 and the acceptance of the surrendered license by the Board shall constitute the imposition of
20 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
21 become a part of Respondent's license history with the Medical Board of California.

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

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

26 4. If Respondent ever files an application for licensure or a petition for reinstatement in
27 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
28 comply with all the laws, regulations and procedures for reinstatement of a revoked license in

1 effect at the time the petition is filed, and all of the charges and allegations contained in
2 Accusation No. 800-2015-013063 shall be deemed to be true, correct and fully admitted by
3 Respondent when the Board determines whether to grant or deny the petition.

4 5. Pursuant to the provisions of Business and Professions Code section 2307,
5 subdivision (b), Respondent shall be permitted to file a petition for reinstatement of his
6 Physician's and Surgeon's Certificate No. G 51708 after a period of three (3) years has elapsed
7 from the effective date of this Decision and Order.

8 6. With respect to the action that has been taken herein pursuant to California Business
9 and Professions Code section 822, any future reinstatement of Respondent's Physician's and
10 Surgeon's Certificate No. G 51708 shall be governed by the procedures contained in Article 12.5
11 of Chapter 1 of Division 2 of the California Business and Professions Code. (Bus. & Prof. Code,
12 § 823.)

13 7. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation No. 800-2015-013063 shall
16 be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement
17 of Issues or any other proceeding seeking to deny or restrict licensure.

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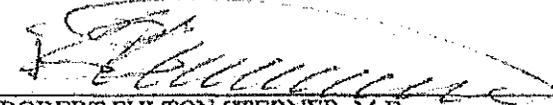
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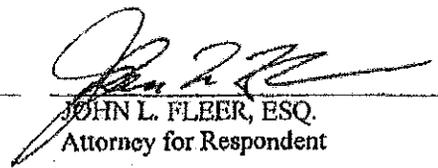
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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney, John L. Fleer, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 51708. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/1/17 
ROBERT FULTON STERNER, M.D.
Respondent

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

DATED: 3-1-17 
JOHN L. FLEER, ESQ.
Attorney for Respondent

ENDORSEMENT

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

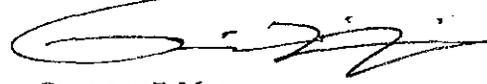
Dated: 3/28/17 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General

GIOVANNI F. MEJIA
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-013063

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 GIOVANNI F. MEJIA
Deputy Attorney General
4 State Bar No. 309951
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9072
7 Facsimile: (619) 645-2061

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 10, 2017
BY Robyn Fitzwater ANALYST

8 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 800-2015-013063

14 **Robert Fulton Sterner, M.D.**
1747 Hancock Street, Suite B
15 San Diego, CA 92101

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. G 51708,**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 28, 1983, the Medical Board issued Physician's and Surgeon's
24 Certificate No. G 51708 to Robert Fulton Sterner, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on November 30, 2017, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Medical Board, under the authority of the
3 following laws. All section references are to the Business and Professions 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
7 Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or
8 whose default has been entered, and who is found guilty, or who has entered into a
9 stipulation for disciplinary action with the board, may, in accordance with the provisions of
10 this chapter:

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

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

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

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

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

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

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1 5. Section 2234 of the Code, states:

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

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

7 “(b) Gross negligence.

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

11 “....”

12 6. Section 2266 of the Code states: AThe failure of a physician and surgeon to maintain
13 adequate and accurate records relating to the provision of services to their patients constitutes
14 unprofessional conduct.@

15 7. Unprofessional conduct under Business and Professions Code section 2234 is conduct
16 which breaches the rules or ethical conduct of the medical profession, or conduct which is
17 unbecoming to a member in good standing of the medical profession, and which demonstrated an
18 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
19 575.)

20 8. Section 820 of the Code states:

21 “Whenever it appears that any person holding a license, certificate or permit under
22 this division or under any initiative act referred to in this division may be unable to practice
23 his or her profession safely because the licentiate’s ability to practice is impaired due to
24 mental illness, or physical illness affecting competency, the licensing agency may order the
25 licentiate to be examined by one or more physicians and surgeons or psychologists
26 designated by the agency. The report of the examiners shall be made available to the
27 licentiate and may be received as direct evidence in proceedings conducted pursuant to
28 Section 822.”

1 9. Section 822 of the Code states:

2 "If a licensing agency determines that its licentiate's ability to practice his or her
3 profession safely is impaired because the licentiate is mentally ill, or physically ill affecting
4 competency, the licensing agency may take action by any one of the following methods:

5 "(a) Revoking the licentiate's certificate or license.

6 "(b) Suspending the licentiate's right to practice.

7 "(c) Placing the licentiate on probation.

8 "(d) Taking such other action in relation to the licentiate as the licensing agency in its
9 discretion deems proper.

10 "..."

11 10. Section 824 of the Code states: "The licensing agency may proceed against a
12 licentiate under either Section 820, or 822, or under both sections."

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 11. Respondent has subjected his Physician's and Surgeon's Certificate No. G 51708 to
16 disciplinary action under sections 2227 and 2234, subdivision (b) of the Code in that he engaged
17 in gross negligence in the practice of medicine. The circumstances are as follows:

18 12. At all times relevant to the charges brought herein, Respondent maintained a medical
19 office in San Diego, California. He saw approximately 100 patients a week, of which
20 approximately 30 to 35 were new-patients. A large portion of Respondent's practice consisted of
21 performing medical marijuana¹ evaluations, but he also saw patients for weight-control and anti-
22 aging issues, and administered Botox injections. None, or almost none, of Respondent's practice
23 consisted of primary care or pediatrics.

24 13. On or about March 20, 2015, Respondent saw patient B.G., a four-year-old girl with
25 neurodevelopmental delay, mixed receptive-expressive language disorder, possible autism

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27 ¹ "Marijuana" is a Schedule I controlled substance pursuant to Health and Safety Code
28 section 11507, subdivision (d). It is also commonly referred to as "cannabis."

1 associated with behavioral problems, motor and verbal tics, attention deficit hyperactivity
2 disorder (ADHD) and sleep disturbance, among other ailments.

3 14. Respondent's March 20, 2015 encounter with patient B.G. lasted approximately ten to
4 fifteen minutes. During this session, Respondent failed to conduct and/or contemporaneously
5 record an adequate examination of patient B.G.

6 15. Further, although Respondent received a very short symptom intake form completed
7 by patient B.G.'s mother and brief visit details for a prior visit to another physician, Respondent
8 failed to take, record or maintain any contemporaneous treatment notes of his own for the
9 March 20, 2015 encounter with patient B.G.

10 16. On or about March 20, 2015, Respondent issued a one-year medical cannabis
11 recommendation to patient B.G.

12 17. In or around August 2015, Respondent received a duly authorized request for copies
13 of patient B.G.'s medical records from an investigator with the Department of Consumer Affairs,
14 Division of Investigation, Health Quality Investigation Unit (HQIU).

15 18. On or about September 21, 2015, Respondent submitted copies of medical records for
16 patient B.G. in his possession, totaling 46 pages, to HQIU. However, Respondent had created a
17 37-page treatment note comprising the majority of the submitted medical records in or around
18 August 2015, following receipt of HQIU's request. The treatment note created in or around
19 August 2015 contained multiple inaccuracies regarding the March 20, 2015 patient encounter.

20 19. Respondent committed gross negligence in his care and treatment of patient B.G.,
21 which included, but was not limited to the following:

22 (a) On or about March 20, 2015, Respondent treated patient B.G., a young child with
23 complex neurodevelopmental, behavioral and medical concerns beyond the scope of
24 Respondent's training and practice background;

25 (b) On or about March 20, 2015, Respondent provided a medical cannabis
26 recommendation to patient B.G.;

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1 (c) On or about March 20, 2015, Respondent failed to generate a medical record at or
2 near the time of his encounter with patient B.G. providing the information necessary to
3 comprise a proper medical record; and

4 (d) On or about September 21, 2015, Respondent provided medical records for
5 patient B.G. that were largely fabricated at a date well after the patient encounter.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Repeated Negligent Acts)**

8 20. Respondent has further subjected his Physician's and Surgeon's Certificate
9 No. G 51708 to disciplinary action under sections 2227 and 2234, subdivision (c) of the Code in
10 that he engaged in repeated negligent acts as more particularly alleged in paragraphs 11 to 19,
11 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Adequate and Accurate Records)**

14 21. Respondent has further subjected his Physician's and Surgeon's Certificate
15 No. G 51708 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of
16 the Code in that he failed to maintain adequate and accurate records relating to the provision of
17 services to his patient as more particularly alleged in paragraphs 11 to 20, above, which are
18 hereby incorporated by reference and realleged as if fully set forth herein.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violating or Attempting to Violate, Directly or Indirectly, Any Provision of the**
21 **Medical Practice Act)**

22 22. Respondent has further subjected his Physician's and Surgeon's Certificate
23 No. G 51708 to disciplinary action under sections 2227 and 2234, subdivision (a), of the Code in
24 that he violated or attempted to violate, directly or indirectly, any provision of the Medical
25 Practice Act as more particularly alleged in paragraphs 11 to 21, above, and paragraph 23, below,
26 which are hereby incorporated by reference and realleged as if fully set forth herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(General Unprofessional Conduct)**

3 23. Respondent has further subjected his Physician's and Surgeon's Certificate
4 No. G 51708 to disciplinary action under sections 2227 and 2234 of the Code in that he engaged
5 in conduct which breaches the rules or ethical conduct of the medical profession, or conduct that
6 is unbecoming to a member in good standing of the medical profession, and which demonstrated
7 an unfitness to practice medicine as more particularly alleged in paragraphs 11 to 22, above,
8 which are hereby incorporated by reference and realleged as if fully set forth herein.

9 **SECTION 822 CAUSE FOR ACTION**

10 **(Mental or Physical Illness Affecting Competency)**

11 24. Respondent's Physician's and Surgeon's Certificate No. G 51708 is also subject to
12 Medical Board action pursuant to section 822 of the Code in that his ability to practice medicine
13 safely is impaired because he is mentally ill, or physically ill affecting competency, as more
14 particularly alleged hereinafter:

15 25. Paragraphs 11 to 23, above, are hereby incorporated by reference and realleged as if
16 fully set forth herein.

17 26. Pursuant to section 820 of the Code, at the request of the Medical Board, Respondent
18 voluntarily presented to a forensic psychiatric examination. S.O., M.D. (Dr. O.) conducted the
19 examination, which consisted of a forensic psychiatric interview and psychological testing
20 administered on or about August 23, 2016, as well as a review of relevant materials. Based on the
21 examination, Dr. O. concluded that, among other things, Respondent is impaired as a result of a
22 mental illness and unable to practice medicine safely.

23 **DISCIPLINARY CONSIDERATIONS**

24 27. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about June 12, 2009, in a prior disciplinary action entitled *In the*
26 *Matter of the Accusation Against Robert Fulton Sterner, M.D.* before the Medical Board of
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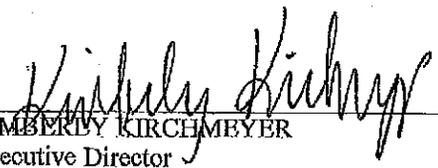
1 California, in Case No. 10-2006-176457,² Respondent's license was suspended for 15 days and
2 placed on probation for seven (7) years for, without limitation, improperly representing himself as
3 "Board Certified" in anti-aging medicine, gross negligence, repeated negligent acts,
4 incompetence, failing to maintain adequate and accurate medical records, and dishonesty. That
5 decision is now final and is incorporated by reference as if fully set forth herein.

6 **PRAYER**

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

- 9 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 51708, issued to
10 Respondent Robert Fulton Sterner, M.D.;
- 11 2. Revoking, suspending or denying approval of Respondent Robert Fulton
12 Sterner, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 13 3. Ordering Respondent Robert Fulton Sterner, M.D., if placed on probation, to pay the
14 Board the costs of probation monitoring; and
- 15 4. Taking such other and further action as deemed necessary and proper.
- 16
- 17

18 DATED: February 10, 2017


19 _____
20 KIMBERLY KIRCHMEYER
21 Executive Director
22 Medical Board of California
23 State of California
24 Complainant

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28 ² Office of Administrative Hearings Case No. L2007080889.