

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

In the Matter of the Accusation)	
Against:)	
)	
)	
Robert Michael Biter, M.D.)	Case No. 10-2012-224906
)	
Physician's and Surgeon's)	
Certificate No. A 77870)	
)	
Respondent)	
_____)	


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 November 26, 2013.

IT IS SO ORDERED November 19, 2013.

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Interim Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 ALEXANDRA M. ALVAREZ
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4 State Bar No. 187442
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8 *Attorneys for Complainant*

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

14 In the Matter of the Accusation Against:

Case No. 10-2012-224906

15 **ROBERT MICHAEL BITER, M.D.**
16 **P.O. Box 235148**
Encinitas, CA 92023

OAH No. 2013020316

17 **Physician's and Surgeon's Certificate No.**
18 **A77870**

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

19 Respondent.

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

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Interim Executive Director of the Medical
24 Board of California. She is represented in this matter by Kamala D. Harris, Attorney General of
25 the State of California, by Alexandra M. Alvarez, Deputy Attorney General.

26 2. Robert Michael Biter, M.D. (Respondent) is representing himself in this proceeding
27 and has chosen not to exercise his right to be represented by counsel at his own expense, in this
28 proceeding.

1 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,
2 Respondent fully understands and agrees that he may not withdraw his agreement or seek to
3 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,
4 considers and acts upon it.

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

23 **ADDITIONAL PROVISIONS**

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

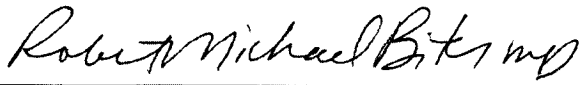
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1 be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement
2 of Issues or any other proceeding seeking to deny or restrict licensure.

3 **ACCEPTANCE**


4 I have carefully read this Stipulated Surrender of License and Disciplinary Order. I fully
5 understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate
6 No. A77870. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily,
7 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical
8 Board of California.

9
10 DATED: 10/28/13 
11 ROBERT MICHAEL BITER, M.D.
12 Respondent

13 **ENDORSEMENT**

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

17 Dated: 10/31/13 Respectfully submitted,
18 KAMALA D. HARRIS
19 Attorney General of California
20 THOMAS S. LAZAR
21 Supervising Deputy Attorney General


22 ALEXANDRA M. ALVAREZ
23 Deputy Attorney General
24 *Attorneys for Complainant*

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Exhibit A

Accusation No. 10-2012-224906

1 KAMALA D. HARRIS
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2 THOMAS S. LAZAR
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO, CALIFORNIA 2013
BY _____ ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 10-2012-224906

13 **ROBERT MICHAEL BITER, M.D.**
14 P.O. Box 235148
Encinitas, CA 92023

A C C U S A T I O N

15 Physician's and Surgeon's
16 Certificate No. A 77870

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

22 2. On or about February 6, 2002, the Medical Board of California issued Physician's
23 and Surgeon's Certificate No. A 77870 to Robert Michael Biter, M.D. (Respondent). The
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on September 30, 2013, unless renewed.

26 3. On November 20, 2012, a stipulated Interim Order of Suspension and Order was
27 issued immediately suspending Physician's and Surgeon's Certificate No. A 77870 and

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1 prohibiting respondent from practicing medicine in the State of California pending the issuance of
2 a final Decision and Order by the Medical Board in this case.

3 **PRIOR DISCIPLINARY HISTORY**

4 4. On or about August 10, 2012, the Board issued its Decision in the case entitled "*In*
5 *the Matter of the Second Amended Accusation Against: Robert Michael Biter, M.D.*," Case No.
6 10-2009-202129. That Decision, which became effective on September 7, 2012, resulted in the
7 revocation of his medical license, stayed, and seven (7) years probation on terms and conditions
8 that included, among other things, an actual suspension of his medical license from September 8,
9 2012, to November 8, 2012, and requirements that he successfully complete prescribing practices,
10 wrong-site surgery, medical record keeping, and ethics courses; and a clinical training program.

11 **JURISDICTION**

12 5. This Accusation is brought before the Medical Board of California (Medical Board)
13 for the Department of Consumer Affairs, State of California, under the authority of the following
14 laws. All section references are to the Business and Professions Code (Code) unless otherwise
15 indicated.

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

20 7. Section 2234 of the Code, states:

21 "The board shall take action against any licensee who is charged with
22 unprofessional conduct.¹ In addition to other provisions of this article,
23 unprofessional conduct includes, but is not limited to, the following:

24 ///

25 _____
26 ¹ Unprofessional conduct under California Business and Professions Code section 2234 is
27 conduct which breaches the rules of ethical code of the medical profession, or conduct which is
28 unbecoming to a member in good standing of the medical profession, and which demonstrates an
unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
575.)

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
2 abetting the 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
5 negligent acts or omissions. An initial negligent act or omission followed by a
6 separate and distinct departure from the applicable standard of care shall constitute
7 repeated negligent acts.

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

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

16 “(d) Incompetence.

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

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

22 “....”

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 9. Respondent has subjected his Physician's and Surgeon's Certificate No. A 77870 to
4 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
5 the Code, in that he has committed gross negligence in his care and treatment of patient A.L., as
6 more particularly alleged hereinafter:

7 A. Patient A.L. discovered that she was pregnant on or about September
8 30, 2011, and decided to seek obstetrical care from respondent.² On or about
9 October 4, 2011, patient A.L. had her first office visit with respondent's associate,
10 D.C., M.D., to confirm her pregnancy. At that time, patient A.L. was 36 years old
11 and never had a child. Patient A.L. advised Dr. D.C. that her last menstrual period
12 began on September 4, 2011. She also indicated that her menses were previously
13 regular, coming every 31 days and lasting 4 to 5 days. Dr. D.C. recorded patient
14 A.L.'s expected date of confinement (EDC) as June 13, 2012. He then ordered
15 serial quantitative HCG tests to confirm the pregnancy and to rule out an ectopic
16 pregnancy.

17 B. On or about October 24, 2011, patient A.L. saw Dr. D.C. for her first
18 prenatal visit. Dr. D.C. performed an ultrasound to confirm the presence of a fetal
19 heart rate (FHR), but did not measure the crown-rump length to determine the
20 gestational age and confirm the EDC.

21 C. Patient A.L. first saw respondent at her next prenatal visit on or about
22 November 21, 2011, when the gestational age was recorded in the chart as "11
23 1/7" weeks (11 weeks, 1 day). Because Patient A.L. had a history of a cold knife

24 *///*
25 _____
26 ² Patient A.L. had learned about respondent from doing an Internet search for the best
27 obstetrical/gynecological physicians in North County. She reviewed postings and Yelp reviews
28 which gave respondent both good and bad reviews. Patient A.L. believed that the community
seemed to rally around respondent despite his problems at S.M. Hospital.

1 cone (CKC) biopsy of the cervix,³ respondent performed a vaginal ultrasound
2 exam in order to rule out cervical incompetence. However, he did not measure the
3 crown-rump length to confirm the EDC. Respondent stated in his interview⁴ that
4 patients who have had CKC are at greater risk for an abnormal labor, including
5 difficulty dilating secondary to scar tissue; however, he did not address the
6 question as to whether a history of CKC made patient A.L. an unsuitable candidate
7 for a home birth.

8 D. On or about December 5, 2011, patient A.L. underwent an ultrasound
9 for an assessment of nuchal translucency.⁵ The assessment revealed a normal
10 nuchal translucency of 2.1 mm. The crown-rump length was also measured as 6.8
11 cm, which is consistent with a gestational age of 13 weeks 0 days. The EDC,
12 based on an ultrasonically determined gestation, age was June 11, 2012. Because
13 the sonographically determined due date was within 1 week of that previously
14 determined on the basis of LMP, the final EDC was selected as June 13, 2012.

15 E. On or about January 28, 2012, an anatomy scan was performed on
16 patient A.L. at 20 weeks 3 days gestation. Respondent interpreted the scan and
17 noted the absence of gross fetal anomalies and indicated a “final EDC” of June 13,
18 2012.

19 F. Approximately four months into patient A.L.’s pregnancy, respondent
20 asked patient A.L. and her husband how they saw their delivery going. Patient
21

22 ³ A cone biopsy is an extensive form of a cervical biopsy. It is called a cone biopsy
23 because a cone-shaped wedge of tissue is removed from the cervix and examined under a
24 microscope. A cone biopsy removes abnormal tissue that is high in the cervical canal. A small
amount of normal tissue around the cone-shaped wedge of abnormal tissue is also removed so
that a margin free of abnormal cells is left in the cervix.

25 ⁴ On or about September 12, 2012, respondent was interviewed by Medical Board Senior
26 Investigator Marybeth Rodriguez.

27 ⁵ This prenatal test (also called the NT or nuchal fold scan) can help a healthcare
28 practitioner assess a baby’s risk of having Down Syndrome and some other chromosomal
abnormalities as well as major congenital heart problems.

1 A.L. stated that she wanted to have her baby at S.M. Hospital because they lived
2 close to it. Respondent told them that he did not do deliveries at the hospital.
3 Respondent gave them two options for delivery. He told them he was opening a
4 state of the art birthing center which would have all the same emergency
5 equipment as a hospital, except there would be no epidural procedures done. The
6 other option was a home birth. He told them that it was the same as a birthing
7 center only the birth would occur in the comfort of their own home. He told them
8 the following: a nurse midwife would assist him, they would take care of her, they
9 would be her team, she could go on walks, and it would be "the most wonderful
10 experience" for them.

11 G. Patient A.L. and her husband were not sure about a home birth;
12 therefore, they opted for respondent's birthing center. Patient A.L. and her
13 husband were under the impression that the birthing center would be completed in
14 time for the birth because respondent had given them that option. They later
15 learned from another source that respondent had been talking about opening his
16 birthing center for several years and it would likely never be opened.

17 H. In or about April or May 2012, respondent told patient A.L. that the
18 birthing center would not be opened until September, which was after her June due
19 date. Respondent encouraged her to have a home birth. In or about May 2012,
20 patient A.L. and her husband had a meeting with respondent at their home.
21 Respondent brought L.M., a nurse midwife, with him. It was patient A.L.'s
22 understanding that L.M. would be the nurse midwife attending her birth.

23 I. On or about May 16, 2012, a vaginal-rectal specimen for Group B
24 Strep (GBS) culture was taken at 36 weeks' gestation and was subsequently
25 reported as negative.

26 J. On or about June 13, 2012, respondent noted on patient A.L.'s chart
27 the following: "EDC review. Based upon greater than 6 months of charted cycles
28 of 33 day average cycle and known conception. EDC change to 6/18/2012 within

1 normal for dating ultrasound range at 7 wks.” However, there was no cycle
2 charting and no known conception date, and there had been no dating ultrasound
3 performed at 7 weeks’ gestation. In his interview, respondent stated his usual
4 policy for EDC determination “...happens very early...[w]e set a date and we keep
5 it.” Respondent performed a pelvic examination on A.L. and noted her cervix to
6 be “closed/long/high.”

7 K. On or about June 20, 2012, respondent performed a cervical
8 examination on patient A.L. and noted her cervix to be dilated 1.5 cm. There was
9 no documentation of the description of the effacement, station, cervical
10 consistency, or position of the cervix, cumulatively known as the Bishop scoring
11 system, which is used to determine favorability for induction of labor.

12 L. On or about June 25, 2012, respondent performed a cervical
13 examination on patient A.L. and noted for the first time the presence of an
14 “eschar.”⁶ Beginning on or about June 20, 2012, respondent performed a
15 biophysical profile (BPP) but without the non-stress test (NST) component every 2
16 to 4 days on patient A.L. until she went into labor on or about June 30, 2012.

17 M. On or about June 29, 2012, patient A.L. had her last prenatal visit
18 with respondent. The baby’s gestational age was 42 weeks 5 days by patient
19 A.L.’s menstrual dates. Respondent manually broke down patient A.L.’s cervical
20 scar, resulting in 3 cm of cervical dilatation and ruptured her membranes during
21 the examination. Respondent did not think it was amniotic fluid and requested that
22 patient A.L. call back if it happened again. That afternoon, at 1400 hours, patient
23 A.L. notified respondent that her membranes had spontaneously ruptured. At
24 approximately 2132 hours, patient A.L. discharged a large amount of dark brown
25 liquid. Patient A.L.’s husband sent respondent a picture of the discharge and
26 respondent indicated he would come over to their house to assess. When

27
28 ⁶ Eschar is a scab formed especially after a burn.

1 respondent saw the discharge on the pad, he reassured them that it was only dried
2 blood and water.

3 N. On or about July 1, 2012, shortly after midnight, respondent arrived
4 at patient A.L.'s home. On or about 0014 hours, respondent noted that patient
5 A.L.'s cervix dilated from 3 cm to 7 cm during his manual "breakdown" of her
6 cervical scar. Respondent further noted that patient A.L. was completely effaced
7 and the fetal head was at the 0 station.

8 O. On or about 0030 hours, respondent noted the FHR at 140 bpm and
9 the presence of accelerations; however, he also noted the presence of decelerations
10 "at peak of ctx (contractions) to 110's, but back to baseline prior to end of ctx," as
11 well as the presence of thin meconium. In respondent's next note, at or about 0100
12 hours, respondent noted contractions 3 minutes apart, a low-grade fever of 99.2°F,
13 maternal pulse of 73, FHR in the 140s, and blood pressure of 162/79. The blood
14 pressure was not repeated until 0600 hours, when it was recorded at 128/68.
15 Respondent repeated cervical examinations on patient A.L. at 0230 and 0339 hours
16 and recorded them as 8 cm 100% effaced and 0 station and 9 cm 100% effaced and
17 0, respectively.

18 P. At or about 0340 hours, respondent summoned H.L., a midwife
19 with whom he had not previously worked, to assist with the home delivery. H.L.,
20 who arrived at 0454 hours, provided a variety of homeopathic remedies, including
21 blue and black cohosh, which she said were to assist with the contractions. Patient
22 A.L.'s temperature was recorded at 101°F at 0723 hours. At 0736 hours, the
23 cervix was unchanged at 9/100/- 1, yet respondent stated in his interview that
24 "She's making change, um, -1 indicates 1 cm below the ischial spine, so we are
25 having fetal descent." In fact, there was apparent regression of the fetal station, as
26 -1 means above the ischial spine.

27 Q. Respondent noted at 0835 hours that he reviewed transfer options
28 and indications with the patient. Although there was no record of a cervical

1 examination confirming the cervix to be completely dilated. the note at 0922 hours
2 stated, "Continuous EFM (electronic fetal monitor) during pushing." In his
3 interview, respondent stated "it's probably a misnomer that I wrote EFM." EFM is
4 not used at home births. The note at 0930 hours stated "Commence Stage 2."
5 According to the H.L.'s notes, which began at 0925 hours, the FHR ranged
6 between 100 and 150 bpm over the next hour.

7 R. The last recorded FHR was in the 130s at 1112 hours. The next
8 note at 1125 hours, written by H.L., reflects efforts at maternal and fetal
9 resuscitation with oxygen administered to patient A.L. at 4 liters/minute and
10 multiple changes in maternal position. The chart entry at 1147 hours stated that
11 911 was called. The last Labor Flow record entry at 1151 hours gave an oral
12 temperature of 102.5°F. Respondent made a late entry into the record, at 1807
13 hours that evening (7/1/12), reflecting his recall of events after 1125 hours that
14 morning. He noted the following: "11:25- initial fetal heart tones at 90's
15 asynchronous with maternal pulse ... Second asynchronous FHTs at 80's with
16 maternal pulse. 1136 a.m. - Unable to auscultate distinct FHT's after this time."

17 S. At approximately 1201 hours, patient A.L. was transported to SM
18 Hospital, where intrauterine fetal demise (IUFD) was confirmed shortly after
19 admission at 1222 hours. Patient A.L.'s blood pressure on admission was 149/71.
20 Her temperature at 1230 hours was 103.1 °F. Her cervix, which was described on
21 admission as still being 7 cm dilated, failed to progress in spite of oxytocin
22 augmentation of contractions. With diagnoses of IUFD, chorioamnionitis,⁷ thick
23 meconium, advanced maternal age, and possible evolving HELLP (hemolysis,
24 elevated liver enzymes, low platelets) syndrome, D.P., M.D., the attending

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26 ⁷ Chorioamnionitis is a condition where bacteria infects the chorion and amnion (the
27 membranes that surround the fetus) and the amniotic fluid (in which the fetus floats). This can
28 lead to infections in both the mother and fetus. In most cases, this may mean the fetus has to be
delivered as soon as possible.

1 obstetrician, assisted by Dr. Fenton, performed a Cesarean section on patient A.L.
2 The surgery was complicated by uterine atony.⁸ Patient A.L.'s estimated blood
3 loss was 2,000 cc. On or about July 6, 2012, patient A.L. was discharged
4 following a postoperative course complicated by possible atypical HELLP
5 syndrome. Baby L. was delivered at 1833 hours on July 1, 2012 and was stillborn.

6 T. On or July 23, 2012, an autopsy was performed on Baby L. by
7 K.M., M.D. The final anatomic diagnoses were: (1) sequelae consistent with
8 disseminated intravascular coagulation (DIC); (2) pneumonia secondary to gram-
9 positive cocci; (3) chorioamnionitis with gram-positive cocci; (4) meconium
10 aspiration; and (5) normal anatomic relationships consistent with reported
11 gestational age of 42 weeks. Dr. K.M. opined that "[t]hese findings are consistent
12 with this infant's demise being secondary to bacterial infection and disseminated
13 intravascular coagulation...[and] [t]he meconium aspiration was likely an agonal
14 event."

15 U. Patient A.L. does not believe that respondent gave her all of the options
16 available to her for the birth. Respondent did not provide her with a list of the
17 risks of having a home birth, so that patient A.L. could make an informed decision
18 about whether to have a home birth. Patient A.L. felt like she was pigeon-holed
19 into having a home birth by respondent. There was no birthing center and he
20 could not deliver at a hospital.

21 V. Respondent committed gross negligence in his care and treatment of
22 patient A.L. which included, but was not limited to, the following:

- 23 1. Failing to ensure that patient A.L. was an appropriate candidate for
24 home delivery and to obtain her informed consent for a home birth;
- 25 2. Failing to correctly determine the EDC and for changing the EDC when
26 that date had arrived;

27 ⁸ Uterine atony, or failure of the uterus to contract following delivery, is the most common
28 cause of postpartum hemorrhage.

1 **PRAYER**

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

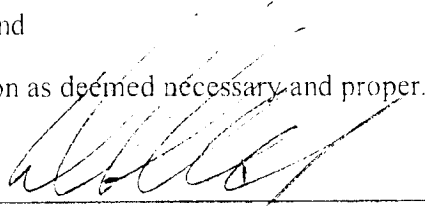
4 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 77870, issued to
5 respondent Robert Michael Biter, M.D.;

6 2. Revoking, suspending or denying approval of respondent Robert Michael Biter,
7 M.D.'s authority to supervise physician's assistants, pursuant to section 3527 of the Code;

8 3. Ordering respondent Robert Michael Biter, M.D. to pay the Medical Board of
9 California the costs of probation monitoring; and

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

11 DATED: December 19, 2012


12 LINDA K. WHITNEY
13 Executive Director
14 Medical Board of California
15 State of California
16 Complainant

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