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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:
11 **JOHN DAVID WARBRITTON III, M.D.**
12 **300 Frank H. Ogawa Plaza**
13 **Suite 700**
14 **Oakland, CA 94612**
15 **Physician's and Surgeon's Certificate No.**
G47015

Case No. 800-2015-016511

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
22 of California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Xavier Becerra, Attorney General of the State of California, by Carolyne Evans,
24 Deputy Attorney General.

25 2. John David Warbritton III, M.D. (Respondent) is represented in this proceeding by
26 attorney Seth Chazin, whose address is 1164 Solano Avenue, Albany CA 94706.

27 3. On or about February 22, 1982, the Board issued Physician's and Surgeon's
28 Certificate No. G47015 to John David Warbritton III, M.D. (Respondent). Respondent's

1 certificate is renewed and current with an expiration date of February 28, 2018. However,
2 Respondent's license is currently subject to a no practice order issued by the United States
3 District Court on October 21, 2016.

4 JURISDICTION

5 4. Accusation No. 800-2015-016511 was filed before the (Board), and is currently
6 pending against Respondent. The Accusation and all other statutorily required documents were
7 properly served on Respondent on November 21, 2016. Respondent timely filed his Notice of
8 Defense contesting the Accusation. A copy of Accusation No. 800-2015-016511 is attached as
9 Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2015-016511. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 CULPABILITY

24 8. Respondent understands that the charges and allegations in Accusation No. 800-2015-
25 016511, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
26 Surgeon's Certificate.

27 9. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation and that those charges constitute cause for discipline.
2 Respondent hereby gives up his right to contest those charges and surrenders Physician's and
3 Surgeon's Certificate No. G47015.

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

7 RESERVATION

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

12 CONTINGENCY

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

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

25 14. In consideration of the foregoing admissions and stipulations, the parties agree that
26 the Board may, without further notice or formal proceeding, issue and enter the following Order:
27
28

1 **ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G47015, issued
3 to Respondent John David Warbritton III, M.D., is surrendered and accepted by the Medical
4 Board of 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 files an application for licensure or a petition for reinstatement in
14 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
15 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
16 effect at the time the petition is filed, and all of the charges and allegations contained in
17 Accusation No. 800-2015-016511 shall be deemed to be true, correct and admitted by Respondent
18 when the Board determines whether to grant or deny the petition.

19
20 **ACCEPTANCE**

21 I have carefully read the above Stipulated Surrender of License and Order and have fully
22 discussed it with my attorney, Seth Chazin. I understand the stipulation and the effect it will have
23 on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and
24 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
25 of the Medical Board of California.

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27 DATED: 7th April 2017


28 JOHN DAVID WARBRITTON III, M.D.
Respondent

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I have read and fully discussed with Respondent John David Warbritton III, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 4/10/17


SETH CHAZIN
Attorney for Respondent

ENDORSEMENT

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

Dated: April 11, 2017

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



CAROLYNE EVANS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2015-016511

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Nov. 21 20 16*
BY *[Signature]* ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 800-2015-016511

13 **John David Warbritton III, M.D.**
14 **300 Frank H. Ogawa Plaza, Suite #700**
Oakland, CA 94612

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G47015,**

17 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, Department of Consumer
23 Affairs (Board)¹.

24 2. On or about February 22, 1982, the Board issued Physician's and Surgeon's
25 Certificate Number G47015 to John David Warbritton III, M.D. (Respondent). Respondent's
26 certificate is renewed and current with an expiration date of February 28, 2018. However,

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

1 Respondent's license is currently subject to a no practice order issued by the United States
2 District Court on October 18, 2016.

3 **JURISDICTION**

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

6 4. Section 2234 of the Code, states:

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

10 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
11 violation of, or conspiring to violate any provision of this chapter.

12 "(b) Gross negligence.

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

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

18 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
19 constitutes the negligent act described in paragraph (1), including, but not limited to, a
20 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
21 applicable standard of care, each departure constitutes a separate and distinct breach of the
22 standard of care.

23 "(d) Incompetence.

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

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

27 "(g) The practice of medicine from this state into another state or country without meeting
28 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not

1 apply to this subdivision. This subdivision shall become operative upon the implementation of the
2 proposed registration program described in Section 2052.5.

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

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

10 6. Section 726 of the Code states:

11 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
12 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
13 licensed under this division, under any initiative act referred to in this division and under Chapter
14 17 (commencing with Section 9000) of Division 3.

15 "This section shall not apply to sexual contact between a physician and surgeon and his or
16 her spouse or person in an equivalent domestic relationship when that physician and surgeon
17 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
18 in an equivalent domestic relationship."

19 **CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct/Sexual Misconduct)**

21 7. Respondent is subject to disciplinary action under sections 2234 (a) and (f) for
22 unprofessional conduct and Section 726 in that he in engaged in sexual misconduct while treating
23 two patients.² The circumstances are as follows:

24 Patient A

25 8. In 2009, Patient A (a 59 year old female), was referred by an insurance company to
26 Respondent, a qualified medical evaluator (QME), who examines and evaluates injured workers

27 ² The patients will be identified as Patient A and B to protect their identity and privacy.
28 The Respondent may learn the patients' information through the discovery process.

1 and writes medical reports that are used by insurance companies to determine whether the
2 individual is eligible for compensation benefits. Patient A was referred to Respondent for an
3 evaluation of a shoulder injury that stemmed from an industrial accident. Prior to the referral,
4 Patient A had several surgeries for cervical and spinal issues.

5 9. In 2009, Patient A had her first visit with Respondent. Patient A's husband attended
6 the appointment. Respondent's staff did not want Patient A's husband to go into the exam room
7 with Patient A but she insisted and ultimately her husband was permitted in the exam room.
8 During this visit, Respondent ran his fingers through Patient A's hair and said to Patient A's
9 husband "I guess she is fairly attractive." Respondent then proceeded to tell Patient A's husband
10 that he could leave his wife. When Patient's A's husband did not respond, Respondent stated
11 "You really love her." When Respondent discussed Patient A having a surgery performed by
12 surgeon R.R., he referred to the surgeon as a "street thug with a knife."³

13 10. Between 2009 and 2015, Patient A was required by the insurance company to see
14 Respondent approximately once a year. Patient A's husband attended every appointment with
15 Patient A. During Patient A's second appointment, Respondent told Patient A's husband that he
16 was a good looking man and could still leave Patient A because she was disabled and that he
17 could go be with someone else.

18 11. In late 2012/early 2013, Patient A went to Respondent's office for an appointment.
19 At the conclusion of the appointment, Patient A and her husband were at the reception desk.
20 While Patient A was facing the reception desk, Respondent approached her from behind and
21 placed his chest to her back, while Patient A's husband was looking away from them.
22 Respondent rubbed his body against Patient A's back. The employee behind the desk saw
23 Respondent placing his body on Patient A.

24 12. During many of Patient A's appointments with Respondent, Respondent repeatedly
25 asked Patient A's husband, why such a handsome man like him (referring to Patient A's husband)

27 ³ The physician and surgeon will be identified as R.R. to protect his identity and privacy.
28 The Respondent may learn the physician's name through the discovery process.

1 was with someone like Patient A, commented that Patient A was injured and disabled, and told
2 Patient A's husband to get out of his relationship with Patient A while he could.

3 13. On or about September 2, 2015, Patient A went to Respondent's office for an
4 appointment. Once in the exam room, a female employee (Employee) of Respondent's medical
5 practice, gave Patient A a hospital gown to wear. The Employee asked Patient A to undress to
6 her bra and underwear and to put on the gown. This was the first appointment where Patient A
7 was required to wear a gown. Patient A inquired why she needed to wear the gown, and was
8 advised that Respondent needed to do a thorough exam. Before Respondent entered the room,
9 Patient A's husband told her to put her hands on top of her lap. Patient A's husband felt that
10 based on Respondent's comments and actions during prior appointments, he felt it was necessary
11 for Patient A to protect herself from Respondent.

12 14. When Respondent entered the room, he sat near Patient A and placed his hand on her
13 thigh, on top of the gown, while he asked her questions related to the appointment. Subsequently,
14 Respondent placed his hand on the inner portion of Patient A's thigh on a portion not covered by
15 the gown. Respondent moved his hands up her thigh under the gown but Patient A kept her legs
16 together and her hands on top of her lap so that Respondent could not move his hand further.

17 15. Shortly thereafter, the Employee returned to the room. Respondent stated that "he's
18 had her" (referring to his Employee) since she was 16 years old and that he had been having sex
19 with her since she was 16 years old. Respondent also described an incident where his wife caught
20 his Employee at their residence taking a shower. Respondent stated that he told his wife that his
21 Employee was dirty and insinuated that she was dirty from having sex with him so she needed to
22 take a shower. During this conversation, Respondent and the Employee put their arms around
23 each other and exchanged hugs.

24 16. Throughout this appointment, Respondent made inappropriate comments unrelated to
25 Patient A's care. For instance, Respondent asked Patient A's husband what was so special about
26 Patient A referring to why Patient A's husband was still in a relationship with Patient A.
27 Respondent also talked about going to Taiwan and the Philippines and indicated that he had some
28 type of business in Taiwan. Respondent told Patient A and her husband that he himself had been

1 suffering from a bad back and asked if they thought he was a handsome man and if they thought
2 someone would ever fall in love with him.

3 17. Respondent told Patient A that he was on her side and that she could no longer work
4 and that he was going to give her a good disability rating. Patient A left the exam room to use the
5 restroom. During that time, Respondent asked Patient A's husband about being in the Philippines
6 and stated that he could tell that Patient A's husband liked it overseas and asked him what he
7 liked best about being overseas. Respondent stated that he liked young girls and insinuated that
8 that is what he liked best about the Philippines and Taiwan. Respondent then asked Patient A's
9 husband if he had an age requirement and stated that he brought his Employee back with him
10 from overseas. Respondent then asked Patient A's husband what made him stay with Patient A
11 and that she must have something special.

12 Patient B

13 18. In 2008, Patient B (a 59 year old female) was referred to Respondent by a workers
14 compensation insurance company for a medical evaluation of an upper back and cervical injury
15 that she suffered during the course of her employment.

16 19. Between 2008 and 2014, Patient B saw Respondent several times. During those
17 visits, Respondent used profane and inappropriate language during their conversations. For
18 instance, when discussing treatment he would say things like "this fucking surgery." Respondent
19 also told Patient B "you're fine, you got it going on," "you were fine back in your day," and "I
20 know you've broken a lot of hearts." Respondent also commented about his personal life and told
21 Patient B that his daughter "is a real bitch." Respondent spoke about his own back injury and
22 how one could go to Mexico and "buy Oxycontin for \$20.00 a pill."

23 20. During some of the examinations, Patient B was required to wear a hospital gown.
24 When she was required to wear the gown, she would undress to her bra and underwear. Patient B
25 felt uncomfortable being around Respondent during all of the exams but especially when wearing
26 the gown. During a visit, when Respondent was standing behind Patient B, Patient B felt that he
27 stood behind her longer than normal to look at her buttocks. Patient B used her hand to keep the
28 back of the gown closed. When Respondent was behind Patient B, he used his hands to swipe the

1 back of the gown so that the gown would open. Subsequently, Patient B requested two gowns to
2 protect her body from being exposed.

3 21. After attending a few appointments with Respondent, Patient B complained to her
4 workers compensation attorney, R.W.⁴ that she did not like Respondent, but was unable to get
5 another doctor assigned to her case.

6 22. On or about April 21, 2014, Patient B went to Respondent's office for a scheduled
7 appointment. She went to the appointment by herself. Since Patient B had trouble remembering
8 some of the advice and instructions that are provided to her by physicians, she digitally recorded
9 the appointment to assist her with remembering important information. Her cell phone was stored
10 in a small pouch that was around her neck. The appointment was recorded on her cell phone with
11 the voice recording feature.

12 23. During the April 2014 appointment, Patient B was wearing a hospital gown with only
13 her bra and underwear. Patient B and Respondent discussed whether she should undergo surgery.
14 During their conversation, Respondent stated that his back was twice as bad as Patient's B's back.
15 Respondent examined Patient B and she vocalized that the exam was painful. Respondent said
16 that he was going to stop hurting her. Respondent then asked how her husband was and whether
17 he loved her. Patient B told Respondent that the healing of her injury was in God's hands. At the
18 conclusion of the exam, Respondent said he was going to say a prayer for her. He approached her
19 and placed his right hand on her shoulder and then cupped her right breast with his left hand. He
20 put his head down and for a few seconds mumbled something unintelligible.

21 24. Patient B reported the molestation incident to Attorney R.W., who told her that he
22 would help her find another doctor. Patient B did not return to Respondent's office and
23 Respondent was subsequently removed from her medical case.

24 25. Respondent's conduct as described above, constitutes unprofessional conduct in
25 violation of Sections 2234 (a) and (f) and sexual misconduct in violation of Section 726.

26 ///

27 ⁴ The attorney will be identified as R.W. to protect his identity and privacy. The
28 Respondent may learn the attorney's name through the discovery process

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 and Surgeon's Certificate Number G47015, issued
5 to John David Warbritton III, M.D.;

6 2. Revoking, suspending or denying approval of John David Warbritton III, M.D.'s
7 authority to supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering John David Warbritton III, M.D., if placed on probation, to pay the Board
9 the costs of probation monitoring; and

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

11
12 DATED: November 21, 2016



13 KIMBERLY KIRCHMEYER
14 Executive Director
15 Medical Board of California
16 Department of Consumer Affairs
17 State of California
18 *Complainant*