

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

**In the Matter of the Accusation)
Against:)**

Deborah Metzger, M.D.)

Case No. 19-2010-204971

**Physician's and Surgeon's)
Certificate No. C50171)**

**Respondent)
_____)**

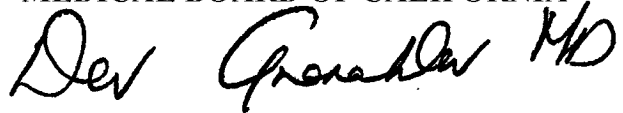
DECISION

The attached Stipulated Settlement 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 September 25, 2013.

IT IS SO ORDERED: August 26, 2013.

MEDICAL BOARD OF CALIFORNIA



Dev Gnanadev, M.D., Vice Chair
Panel B

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
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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. 19-2010-204971

OAH No. 2012100409

13 **DEBORAH METZGER, M.D.**
851 Fremont Avenue, Ste. 104
14 Los Altos, CA 94024

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's License No. C50171

16 Respondent.

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

19 1. Kimberly Kirchmeyer is the Interim Executive Director of the Medical Board of
20 California. She brought this disciplinary action solely in her official capacity and is represented
21 by Kamala D. Harris, Attorney General of the State of California, by Lawrence Mercer, Deputy
22 Attorney General.

23 2. Deborah Metzger, M.D., is represented in this matter by her attorney Leigh E.
24 Johnson, 3150 Hilltop Mall Road, Ste. 62, Richmond, CA 94806.

25 3. On or about November 20, 1998, the Medical Board of California issued
26 Physician's and Surgeon's Certificate Number C50171 to Deborah Metzger, M.D. (Respondent).
27 At all relevant times, said certificate has been current and valid. Effective February 25, 2005,
28 Respondent's Physician's and Surgeon's Certificate was revoked, and the revocation was stayed,

1 provided that Respondent successfully complete the terms and conditions of a five year probation.
2 Respondent completed that probation on February 25, 2010. Unless renewed, the certificate will
3 expire on March 31, 2014.

4 JURISDICTION

5 4. Accusation No. 19-2010-204971 (Accusation) was duly filed and served on
6 Respondent on January 27, 2012. Respondent timely filed a Notice of Defense and requested a
7 hearing on the charges against her. A copy of the Accusation is attached hereto as Exhibit A and
8 is incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with her counsel and understands
11 the charges and allegations in the Accusation. Respondent has also carefully read, fully discussed
12 with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

22 CULPABILITY

23 8. Respondent admits that she failed to keep adequate and accurate medical records,
24 as more fully set forth in the Accusation, a violation of Business and Professions Code section
25 2266, and that she has thereby subjected her license to disciplinary action.

26 9. Respondent agrees that her Physician's and Surgeon's Certificate is subject to
27 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the
28 Disciplinary Order below.

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RESERVATION

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

CONTINGENCY

11. This Stipulation shall be subject to the approval of the Board. Respondent understands and agrees that Board staff and counsel for complainant may communicate directly with the Board regarding this stipulation, without notice to or participation by Respondent or her counsel. If the Board fails to adopt this Stipulation as its Order in this matter, the Stipulation shall be of no force or effect; it shall be inadmissible in any legal action between the parties; and the Board shall not be disqualified from further action in this matter by virtue of its consideration of this Stipulation. Respondent also understands and agrees that she will not be able to withdraw or modify this Stipulation while it is before the Board for consideration.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C50171 issued to Respondent Deborah Metzger, M.D., is revoked. However, the revocation is stayed and Respondent's certificate is placed on three (3) years probation, on the following terms and conditions:

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1 1. MONITORING -- PRACTICE: Within 30 calendar days of the effective date of
2 this Decision, Respondent shall submit to the Board or its designee for prior approval as a
3 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
4 whose licenses are valid and in good standing, and who are preferably American Board of
5 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
6 personal relationship with Respondent, or other relationship that could reasonably be expected to
7 compromise the ability of the monitor to render fair and unbiased reports to the Board, including,
8 but not limited to, any form of bartering, shall be in Respondent's field of practice, and must
9 agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

10 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
11 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
12 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
13 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
14 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
15 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
16 signed statement for approval by the Board or its designee.

17 Within 60 calendar days of the effective date of this Decision, Respondent's practice shall
18 be monitored by the approved monitor. Respondent shall make all records available for
19 immediate inspection and copying on the premises by the monitor at all times during business
20 hours, and shall retain the records for the entire term of probation.

21 If Respondent fails to obtain approval of a monitor within 60 days of the effective date of
22 this Decision, Respondent shall receive a notification from the Board or its designee to cease the
23 practice of medicine within three (3) calendar days after being so notified. Respondent shall
24 cease the practice of medicine until a monitor is approved to provide monitoring responsibility.
25 The monitor(s) shall submit a quarterly written report to the Board or its designee which includes
26 an evaluation of Respondent's performance, indicating whether Respondent's practices are within
27 the standards of practice of medicine and whether respondent is practicing medicine safely and
28 billing. It shall be the sole responsibility of Respondent to ensure that the monitor submits the

1 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
2 preceding quarter.

3 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days
4 of such resignation or unavailability, submit to the Board or its designee, for prior approval, the
5 name and qualifications of a replacement monitor who will be assuming that responsibility within
6 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days
7 of the resignation or unavailability of the monitor, Respondent shall receive a notification from
8 the Board or its designee to cease the practice of medicine within three (3) calendar days and,
9 after being so notified, Respondent shall cease the practice of medicine until a replacement
10 monitor is approved and prepared to assume immediate monitoring responsibility.

11 In lieu of a monitor, Respondent may participate in a professional enhancement program
12 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
13 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
14 chart review, semi-annual practice assessment, and semi-annual review of professional growth
15 and education. Respondent shall participate in the professional enhancement program at
16 respondent's expense during the term of probation.

17 Failure to maintain all records, or to make all appropriate records available for immediate
18 inspection and copying on the premises, or to comply with this condition as outlined above is a
19 violation of probation.

20 2. PROFESSIONALISM PROGRAM: Within 60 calendar days of the effective date
21 of this Decision, Respondent shall enroll in a professionalism program that meets the
22 requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall
23 participate in and successfully complete that program. Respondent shall provide any information
24 and documents deemed pertinent. Respondent shall successfully complete the program within six
25 (6) months after Respondent's initial enrollment, and the longitudinal component of the program
26 not later than the time specified by the program, but no later than one (1) year after attending the
27 classroom component. The professionalism program shall be at respondent's expense and shall
28 be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

1 A professionalism program taken after the acts that gave rise to the charges in the
2 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
3 or its designee, be accepted towards the fulfillment of this condition if the program would have
4 been approved by the Board or its designee had the program been taken after the effective date of
5 the Decision.

6 Respondent shall submit a certification of successful completion to the Board or its
7 designee not later than fifteen (15) calendar days after the effective date of the Decision,
8 whichever is later.

9 3. NOTIFICATION: Within seven (7) days of the effective date of this decision, the
10 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
11 Chief Executive Officer at every hospital where privileges or membership are extended to
12 Respondent, at any other facility where Respondent engages in the practice of medicine,
13 including all physician and locum tenens registries or other similar agencies, and to the Chief
14 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
15 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
16 calendar days.

17 This condition shall apply to any change(s) in hospitals, other facilities or insurance
18 carrier.

19 4. SUPERVISION OF PHYSICIAN ASSISTANTS: During probation, Respondent
20 is prohibited from supervising physician assistants.

21 5. OBEY ALL LAWS: Respondent shall obey all federal, state and local laws, all
22 rules governing the practice of medicine in California and remain in full compliance with any
23 court ordered criminal probation, payments, and other orders.

24 6. QUARTERLY DECLARATIONS: Respondent shall submit quarterly
25 declarations under penalty of perjury on forms provided by the Board, stating whether there has
26 been compliance with all the conditions of probation.

27 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
28 of the preceding quarter.

1 7. COMPLIANCE WITH PROBATION UNIT: Respondent shall comply with the
2 Board's probation unit and all terms and conditions of this decision.

3 8. CHANGE OF ADDRESS: Respondent shall, at all times, keep the Board
4 informed of Respondent's business and residence addresses, email address (if available), and
5 telephone number. Changes of such addresses shall be immediately communicated in writing to
6 the Board or its designee. Under no circumstances shall a post office box serve as an address of
7 record, except as allowed by Business and Professions Code section 2021(b).

8 9. PLACE OF PRACTICE: Respondent shall not engage in the practice of medicine
9 in Respondent's or her patient(s)' place of residence, unless the patient resides in a skilled nursing
10 facility or other similar licensed facility.

11 10. LICENSE RENEWAL: Respondent shall maintain a current and renewed
12 California physician's and surgeon's license.

13 11. TRAVEL OUTSIDE STATE: Respondent shall immediately inform the Board or
14 its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or
15 is contemplated to last, more than thirty (30) calendar days.

16 In the event Respondent should leave the State of California to reside or to practice
17 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
18 departure and return.

19 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE: Respondent shall be
20 available in person upon request for interviews either at Respondent's place of business or at the
21 probation unit office, with or without prior notice throughout the term of probation.

22 13. NON-PRACTICE WHILE ON PROBATION: Respondent shall notify the Board
23 or its designee in writing within 15 calendar days of any periods of non-practice lasting more than
24 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
25 defined as any period of time Respondent is not practicing medicine in California as defined in
26 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
27 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
28 time spent in an intensive training program which has been approved by the Board or its designee

1 shall not be considered non-practice. Practicing medicine in another state of the United States or
2 Federal jurisdiction while on probation with the medical licensing authority of that state or
3 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
4 not be considered as a period of non-practice.

5 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
6 months, Respondent shall successfully complete a clinical training program that meets the criteria
7 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
8 Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.

10 Periods of non-practice will not apply to the reduction of the probationary term.
11 Periods of non-practice will relieve Respondent of the responsibility to comply with the
12 probationary terms and conditions with the exception of this condition and the following terms
13 and conditions of probation: Obey All Laws; and general probation requirements (§§ 6-11).

14 14. COMPLETION OF PROBATION: Respondent shall comply with all financial
15 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
16 completion of probation. Upon successful completion of probation, Respondent's certificate shall
17 be fully restored.

18 15. VIOLATION OF PROBATION: Failure to fully comply with any term or
19 condition of probation is a violation of probation. If Respondent violates probation in any
20 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
21 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
22 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
23 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
24 shall be extended until the matter is final.

25 17. LICENSE SURRENDER: Following the effective date of this decision, if
26 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
27 the terms and conditions of probation, Respondent may request to surrender his or her license.
28 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in

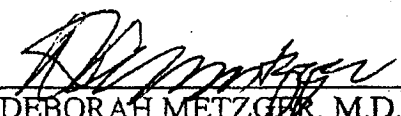
1 determining whether or not to grant the request, or to take any other action deemed appropriate
2 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
3 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
4 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
5 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
6 application shall be treated as a petition for reinstatement of a revoked certificate.

7 18. PROBATION MONITORING COSTS: Respondent shall pay the costs associated
8 with probation monitoring each and every year of probation, as designated by the Board, which
9 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
10 California and delivered to the Board or its designee no later than January 31 of each calendar
11 year.

12 ACCEPTANCE

13 I have carefully read the Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney. I understand the stipulation and the effect it will have on my
15 Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary
16 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
17 of the Medical Board of California.

18 DATED:

19  7/24/13
20 DEBORAH METZGER, M.D.
21 Respondent

22 I have read and fully discussed with Respondent Deborah Metzger, M.D. the terms and
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
24 I approve its form and content.

25 DATED: 7/24/13

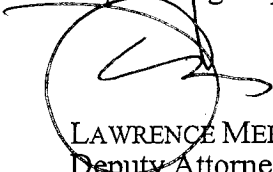
26 
27 LEIGH E. JOHNSON, ESQ.
28 Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: July 25, 2013

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General


LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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EXHIBIT A

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO
BY: 210102013 ANALYST

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

In the Matter of the Accusation Against:

Case No. 19-2010-204971

DEBORAH METZGER, M.D.

851 Fremont Avenue, Ste. 104
Los Altos, CA 94024

Physician's and Surgeon's License
No. C50171

ACCUSATION

Respondent.

Complainant alleges:

PARTIES

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

2. On or about November 20, 1998, the Medical Board of California issued Physician's and Surgeon's Certificate Number C50171 to Deborah Metzger, M.D. (Respondent). At all relevant times, said certificate has been current and valid. Effective February 25, 2005, Respondent's Physician's and Surgeon's Certificate was revoked, and the revocation was stayed, provided that Respondent successfully complete the terms and conditions of a five year probation.

1 Respondent completed that probation on February 25, 2010. Unless renewed, the certificate will
2 expire on March 31, 2012.

3 JURISDICTION

4 3. This Accusation is brought before the Medical Board of California (Board¹) under
5 the authority of the following laws. All section references are to the Business and Professions
6 Code unless otherwise indicated.

7 4. Section 2004 of the Code provides, in pertinent part, that the Medical Board shall
8 have responsibility for:

9 “(a) The enforcement of the disciplinary and criminal provisions of the Medical
10 Practice Act.

11 (b) The administration and hearing of disciplinary actions.

12 (c) Carrying out disciplinary actions appropriate to findings made by a panel or an
13 administrative law judge.

14 (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
15 disciplinary actions.

16 (e) Reviewing the quality of medical practice carried out by physician and
17 surgeon certificate holders under the jurisdiction of the board. . .”

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

22 6. Section 2228 of the Code provides that a probation imposed by the Board may
23 include, but is not limited to the following:

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27 ¹ As used herein, the term “board” means the Medical Board of California. As used
28 herein, “Division of Medical Quality” shall also be deemed to refer to the board.

1 “(a) Requiring the licensee to obtain additional professional training and to pass
2 an examination upon the completion of training. The examination may be written or oral, or both,
3 and may be a practical or clinical examination, or both, at the option of the board or the
4 administrative law judge.”

5 “(b) Requiring the licensee to submit to a complete diagnostic examination by one
6 or more physicians and surgeons appointed by the board. If an examination is ordered, the board
7 shall receive and consider any other report of a complete diagnostic examination given by one or
8 more physicians and surgeons of the licensee’s choice.”

9 “(c) Restricting or limiting the extend, scope, or type of practice of the licensee,
10 including requiring notice to applicable patients that the licensee is unable to perform the
11 indicated treatment, where appropriate.”

12 7. Section 2234 of the Code provides:

13 “The Division of Medical Quality shall take action against any licensee who is
14 charged with unprofessional conduct. In addition to other provisions of this article,
15 unprofessional conduct includes, but is not limited to, the following:

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

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

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

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1 8. Section 2234.1 provides, in pertinent part:

2 “(a) A physician and surgeon shall not be subject to discipline pursuant to
3 subdivision (b), (c), or (d) of Section 2234 solely on the basis that the treatment or advice he or
4 she rendered to a patient is alternative or complementary medicine, including the treatment of
5 persistent Lyme disease, if the treatment or advice meets all of the following requirements:

6 “(1) It is provided after informed consent and a good-faith prior examination of
7 the patient and medical indication exists for the treatment or advice, or it is provided for health or
8 well-being.

9 “(2) It is provided after the physician and surgeon has given the patient
10 information concerning conventional treatment and describing the education, experience, and
11 credentials of the physician and surgeon related to the alternative or complementary medicine that
12 he or she practices.

13 “(3) In the case of alternative or complementary medicine, it does not cause a
14 delay in, or discourage traditional diagnosis of, a condition of the patient.

15 “(4) It does not cause death or serious bodily injury to the patient. . .”

16 9. Section 2266 of the Code provides that it is unprofessional conduct for a physician
17 to fail to maintain adequate and accurate medical records.

18 **FACTUAL BACKGROUND**

19 10. As set forth above, Respondent’s Physician’s and Surgeon’s Certificate was placed
20 on probation, effective February 25, 2005. Included in the terms and conditions of Respondent’s
21 probation was the requirement that her medical practice be monitored by a physician and surgeon
22 in her specialty. Respondent proposed, and the Board approved, a physician with training and
23 experience in OB/GYN and Integrative Medicine. Over the course of nearly five years,
24 Respondent in concert with that monitor developed and implemented certain protocols and
25 procedures for her medical practice and record keeping. The agreed protocols and procedures
26 included asking all new patients about their desire for future fertility, asking all patients about
27 their method of contraception and last menstrual period at every visit, and counseling patients
28

1 regarding preconception preparation and potentially toxic or teratogenic effects of their
2 medications and supplements.

3 11. For several years, Respondent appeared to have brought her practice into
4 conformity with the agreed protocols and procedures; however, in or about late 2009, the practice
5 monitor learned that the charts she had reviewed had been reviewed by Respondent prior to the
6 monitor's review. The monitor was concerned that Respondent might be concealing deficiencies
7 in her practice and record keeping, so she then selected patient charts for review without advance
8 notice to Respondent. In the selected cases, the monitor discovered that Respondent was not in
9 compliance with the agreed protocols and procedures. The Board was notified and an
10 investigation ensued, resulting in the charges set forth in this Accusation.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Patient M.H.²)**

13 **(Repeated Negligent Acts/Inadequate Records)**

14 12. Respondent is subject to disciplinary action under sections 2234(c) and 2266, in
15 that Respondent was repeatedly negligent in her care and treatment of Patient M.H., and failed to
16 keep adequate and accurate records relating to the patient. The circumstances are as follows:

17 A. According to Respondent's records Patient M.H., who was then aged 42,
18 first consulted with Respondent on March 23, 2006. At that time, M.H. reported multiple medical
19 issues, including chronic fatigue, infertility, chronic pelvic pain, fatigue, and Irritable Bowel
20 Syndrome and migraine headaches. At the initial visit Respondent obtained a history and
21 performed a comprehensive, albeit not exhaustive, physical examination. Vital signs were
22 recorded and abnormal findings on the examination were noted in the records.

23 B. Patient M.H. continued under Respondent's care and treatment through
24 June 2010. Respondent rarely recorded the patient's vital signs at each visit and, after 2008,
25 discontinued charting them at all.

26
27 _____
28 ² Patient names are abbreviated to protect privacy.

1 C. After the initial evaluation in March 2006, and continuing through 2010,
2 and despite the patient's multiple continuing medical problems, Respondent routinely did not
3 perform and/or document a physical examination on each visit. Respondent's records are notable
4 for containing only one complete physical examination in four years, with only one or two
5 intervening, focused examinations of the patient's abdomen.

6 13. Respondent's Physician and Surgeon's Certificate is subject to disciplinary action
7 pursuant to sections 2234(c) and 2266, in that Respondent was repeatedly negligent in her care
8 and treatment of M.H., including but not limited to the following:

9 A. Respondent routinely failed to assess and/or to record the patient's vital
10 signs;

11 B. Respondent routinely failed to perform and/or failed to chart a physical
12 examination of the patient.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Patient K.K.)**

15 **(Repeated Negligent Acts/Inadequate Records)**

16 14. Respondent is subject to disciplinary action under sections 2234(c) and 2266, in
17 that Respondent was repeatedly negligent in her care and treatment of Patient K.K., and failed to
18 keep adequate and accurate records relating to the patient. The circumstances are as follows:

19 A. Patient K.K., a 37 year old woman living in North Carolina, came under
20 Respondent's care and treatment in January 2008 and continued to consult with her, by telephone
21 and in person, through February 2010. Respondent's records fail to specify which medical
22 consultations were by telephone and which were office visits, but at least two, and likely three,
23 were in-person medical visits.

24 B. On January 14, 2008, Patient K.K. contacted Respondent for initial
25 evaluation with chief complaints that included endometriosis, infertility, chronic pelvic pain,
26 dysmenorrhea, depression and weight issues. Patient K.K. indicated that she was interested in
27 fertility enhancement and she provided several completed questionnaires, including such health
28 concerns as fertility, polycystic ovary syndrome, chronic pelvic pain and endometriosis. There is

1 no record of a physical examination on this occasion (which may have been a telephone
2 consultation), nor are any vital signs recorded. Respondent developed a problem list that
3 included 16 medical concerns, including (and listed as problems 1-4): Endometriosis, chronic
4 pelvic pain, fertility and abnormal vaginal bleeding.

5 C. On March 31, 2008, Patient K.K. had her second encounter with
6 Respondent. Albeit correspondence from the patient indicates that this was an office visit, a
7 physical examination was not performed and/or was not documented in Respondent's chart.
8 Albeit the patient stated that she wanted to become pregnant, the date of the patient's last
9 menstrual period is also not noted. Respondent performed a glucose challenge test and based on
10 two elevated insulin levels, made a diagnosis of insulin resistance; despite the fact that the
11 diagnosed insulin resistance increased the patient's risk of high blood pressure, no blood pressure
12 reading or other vital signs are recorded. At that time, based upon positive Western blot test
13 results, Respondent diagnosed Lyme disease and wrote that Lyme disease was possibly the main
14 culprit in K.K.'s fertility and allergy issues. Respondent prescribed multiple, potentially
15 teratogenic medications and supplements to treat the disorder, including Artemisin, Biaxin,
16 Diflucan, Doxycycline, Hydroxychloroquine and Samento. Respondent explained some, but not
17 all, of the potential teratogenic effects of the drugs and supplements prescribed by her.

18 D. Following the March office visit, Patient K.K. continued treatment under
19 Respondent's direction for more than 18 months without a documented face-to-face evaluation
20 and examination. In the course of the approximately 12 interim encounters with the patient
21 during this period, Respondent consistently failed to document the patient's last menstrual period.

22 E. Respondent tested and treated K.K. for serotonin and progesterone
23 allergies. In 2008-2009, Respondent prescribed sublingual hormone drops. Although
24 Respondent obtained K.K.'s informed consent to allergy testing, she failed to obtain and/or failed
25 to document the patient's informed consent to treatment with experimental therapies for these
26 diagnoses.

27 F. On October 12, 2009, the patient returned to Respondent's office. At that
28 time she reported feeling much improved and that she was on a five week pulsing course of

1 Samento for Lyme disease. Respondent either did not perform or did not document a physical
2 examination, nor did she record the patient's vital signs. The date of her last menstrual period
3 was also not recorded.

4 G. On February 10, 2010, Patient K.K. again consulted with Respondent,
5 apparently by telephone. She reported that she continued to suffer headaches and Pre-Menstrual
6 Syndrome symptoms before her period; however, Respondent did not note when her last period
7 occurred.

8 15. Respondent's Physician and Surgeon's Certificate is subject to disciplinary action
9 pursuant to sections 2234(c) and 2266, in that Respondent was repeatedly negligent in her care
10 and treatment of K.K., including but not limited to the following:

11 A. Respondent failed to perform and/or failed to document a physical
12 examination of the patient on the occasions when the patient presented for an office visit;

13 B. Respondent failed to document vital signs, including but not limited to
14 blood pressure, on those occasions when K.K. presented to her office -- despite the fact that the
15 patient's history and condition placed her at increased risk for elevated blood pressure;

16 C. Respondent did not document the date of the last menstrual period for
17 Patient K.K. after the initial encounter;

18 D. Respondent failed to counsel Patient K.K. regarding all potential
19 teratogenic effects of the medications and supplements prescribed by Respondent or their
20 compatibility with the patient's desire to become pregnant;

21 E. Respondent failed to advise Patient K.K. regarding the experimental status
22 of hormone and neurotransmitter allergies and, for that reason, did not obtain the patient's
23 informed consent.

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A. On all but two occasions, Respondent failed to record the patient's vital signs;

B. On all but three occasions, Respondent failed to document findings on physical examination;

C. Respondent repeatedly failed to record the date of the patient's last period or the characteristics of her menses;

D. Respondent failed to counsel and/or to document counseling regarding the potential for contraceptive failure as a consequence of long-term antibiotic therapies.

PRAYER

WHEREFORE, complainant prays that a hearing be held and that the Board issue an order:

1. Revoking or suspending Physician's and Surgeon's Certificate number C50171, issued to Deborah Metzger, M.D.;

2. Prohibiting Deborah Metzger, M.D., from supervising a Physician Assistants;

3. Ordering Deborah Metzger, M.D., if placed on probation, to pay the costs of probation monitoring;

4. Taking such other and further action as may be deemed proper and appropriate.

DATED: January 27, 2012

LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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