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
Kimberly Kirchmeyer
Interim Executive Director

KAMALA D. HARRIS
Attorney General of California
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Attorneys for Complainant

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.** **P.O. Box 235148** **Encinitas, CA 92023** **Physician's and Surgeon's Certificate No. A77870** Respondent.	Case No. 10-2012-224906 OAH No. 2013020316 **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 Interim Executive Director of the Medical Board of California. She is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Alexandra M. Alvarez, Deputy Attorney General.

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

3. On or about February 6, 2002, the Medical Board of California issued Physician's and Surgeon's Certificate No. A77870 to Robert Michael Biter, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 10-2012-224906, expired on September 30, 2013, and has not been renewed.

4. On November 20, 2012, a stipulated Interim Order of Suspension and Order was issued immediately suspending Physician's and Surgeon's Certificate No. A 77870 and prohibiting Respondent from practicing medicine in the State of California pending the issuance of a final Decision and Order by the Medical Board in this case.

JURISDICTION

5. On December 19, 2012, Accusation No. 10-2012-224906 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. On December 19, 2012, a true and correct copy of Accusation No. 10-201-224906 and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 10-2012-224906 is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and fully understands the charges and allegations in Accusation No. 10-2012-224906. Respondent also has carefully read and fully understands the effects of this Stipulated Surrender of License and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in Accusation No. 10-2012-224906; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent hereby voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent agrees that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 10-2012-224906, a true and correct copy of which is attached hereto as Exhibit "A," and that he has thereby subjected his Physician's and Surgeon's Certificate No. A77870 to disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. A77870, or if an accusation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 10-2012-224906 shall be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California or elsewhere.

11. Respondent understands that by signing this stipulation he is enabling the Executive Director of the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. A77870, on behalf of the Board, without further notice to, or opportunity to be heard by, him.

CONTINGENCY

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

13. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval of the Executive Director on behalf of the Medical Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated

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

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

ADDITIONAL PROVISIONS

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A77870, issued to Respondent Robert Michael Biter, M.D., is surrendered and accepted by the Medical Board of California.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A77870 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Medical Board of California.

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

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

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 10-2012-224906 shall be deemed to be true, correct and fully admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 10-2012-224906 shall

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

ACCEPTANCE

I have carefully read this Stipulated Surrender of License and Disciplinary Order. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A77870. 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: 10/28/13

ROBERT MICHAEL BITER, M.D.
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: 10/31/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

ALEXANDRA M. ALVAREZ
Deputy Attorney General
Attorneys for Complainant

SD2012704448

Exhibit A

Accusation No. 10-2012-224906

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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 MICHAEL BITER, M.D.** P.O. Box 235148 Encinitas, CA 92023 Physician's and Surgeon's Certificate No. A 77870 Respondent.	Case No. 10-2012-224906 **A C C U S A T I O N**

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

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

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

PRIOR DISCIPLINARY HISTORY

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

JURISDICTION

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

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

7. Section 2234 of the Code, states:

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

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[1] Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules of ethical code of the medical profession, or conduct which is 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.)

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

"(b) Gross negligence.

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

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

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

"(d) Incompetence.

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

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

"...."

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

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

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

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

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

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

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[2] Patient A.L. had learned about respondent from doing an Internet search for the best obstetrical/gynecological physicians in North County. She reviewed postings and Yelp reviews 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.

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

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

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

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

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[3] A cone biopsy is an extensive form of a cervical biopsy. It is called a cone biopsy because a cone-shaped wedge of tissue is removed from the cervix and examined under a 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.

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

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

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

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

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

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

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

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

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

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

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

[6] Eschar is a scab formed especially after a burn.

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

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

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

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

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

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

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

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

[7] Chorioamnionitis is a condition where bacteria infects the chorion and amnion (the membranes that surround the fetus) and the amniotic fluid (in which the fetus floats). This can 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.

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

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

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

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

1. Failing to ensure that patient A.L. was an appropriate candidate for home delivery and to obtain her informed consent for a home birth;

2. Failing to correctly determine the EDC and for changing the EDC when that date had arrived;

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

3. Failing to document fetal well-being during labor, precluding a diagnosis of fetal acidosis, likely associated with a systemic infection;

4. Failing to diagnose and treat an arrest of labor which, with prolonged rupture of membranes, resulted in chorioamnionitis and death of the fetus, as well as uterine atony; and

5. Failing to repeat the GBS culture on or about June 20, 2012, and/or begin prophylactic antibiotics with intravenous penicillin by 0800 hours on July 1, 2012.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

10. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 77870 under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he has committed repeated negligent acts in his care and treatment of patient A.L., as more particularly alleged in paragraph 9, above, which is hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

11. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 77870 to disciplinary action under sections 2227 and 2234, as defined by section 2266 of the Code, in that he failed to maintain adequate and accurate records relating to his care and treatment of patient A.L., as more particularly alleged in paragraphs 9 and 10, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

12. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 77870 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), in that he demonstrated incompetence in his care and treatment of patient A.L., as more particularly alleged herein:

A. Paragraphs 9 and 10, above, is hereby incorporated by reference and realleged as if fully set forth herein;

B. Respondent demonstrated incompetence in his care and treatment of patient A.L., which included, but was not limited to the following:

1. Failing to correctly determine the EDC and for changing the EDC when that date had arrived; and

2. Failing to repeat the GBS culture on or about June 20, 2012, and/or begin prophylactic antibiotics with intravenous penicillin by 0800 hours on July 1, 2012.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent has further subjected his Physician's and Surgeon's Certificate No. A 77870 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 9, 10, 11, and 12, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

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PRAYER

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

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

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

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

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

DATED: December 19, 2012

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

SD2012704448