

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

In the Matter of the Second Amended)	
Accusation Against:)	
)	
)	
GREGORY F. HOOPER, M.D.)	Case No. 03-2008-190670
)	
Physician's and Surgeon's)	
Certificate No. G 68160)	
)	
Respondent.)	
_____)	

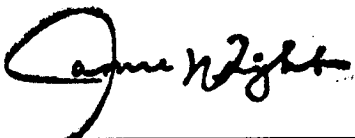
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on March 12, 2015.

IT IS SO ORDERED February 10, 2015.

MEDICAL BOARD OF CALIFORNIA



By: _____
Jamie Wright, J.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Second Amended
Accusation Against:

12 **GREGORY F. HOOPER, M.D.**

13 500 E. Remington Drive #20
14 Sunnyvale, CA 94087

15 **Physician's and surgeon's certificate No.**
16 **G68160**

17 Respondent.

Case No. 03-2008-190670

OAH No. 2014101010

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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
22 Board of California. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Emily L.
24 Brinkman, Deputy Attorney General.

25 2. Respondent Gregory F. Hooper, M.D. ("Respondent") is represented in this
26 proceeding by attorney Cyrus Tabari, whose address is: Sheuerman, Martini, Tabari, Zenere &
27 Garvin, 1033 Willow Street, San Jose, CA 95125.
28

3. On or about March 12, 1990, the Medical Board of California issued Physician's and surgeon's certificate No. G68160 to Gregory F. Hooper, 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 Second Amended Accusation No. 03-2008-190670 and will expire on October 31, 2015, unless renewed.

JURISDICTION

4. Accusation No. 03-2008-190670 was filed before the Medical Board of California (Board), Department of Consumer Affairs. The Accusation and all other statutorily required documents were properly served on Respondent on July 28, 2009. Respondent timely filed his Notice of Defense contesting the Second Amended Accusation.

5. The First Amended Accusation No. 03-2008-190670 was filed before Board. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on October 27, 2010.

6. The Second Amended Accusation No. 03-2008-190670 was filed before Board, and is currently pending against Respondent. The Second Amended Accusation and all other statutorily required documents were properly served on Respondent on May 14, 2012.

7. A copy of Second Amended Accusation No. 03-2008-190670 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

8. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Accusation No. 03-2008-190670. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

9. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Accusation; 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;

1 the right to reconsideration and court review of an adverse decision; and all other rights accorded
2 by the California Administrative Procedure Act and other applicable laws.

3 10. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 11. Respondent does not contest that, at an administrative hearing Complainant could
7 establish a prima facie case with respect to the charges and allegations contained in the Second
8 Amended Accusation No. 03-2008-190670 and that he has thereby subjected his license to
9 disciplinary action.

10 12. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
11 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
12 Disciplinary Order below.

13 13. Respondent agrees that if he ever petitions for early termination or modification, or if
14 the Board ever petitions for revocation of probation, all of the charges and allegations contained
15 in the Second Amended Accusation No. 03-2008-190670 shall be deemed true, correct and fully
16 admitted by Respondent for purposes of that proceeding.

17 CONTINGENCY

18 14. This stipulation shall be subject to approval by the Medical Board of California.
19 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
20 Board of California may communicate directly with the Board regarding this stipulation and
21 settlement, without notice to or participation by Respondent or his counsel. By signing the
22 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
23 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
24 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
25 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
26 action between the parties, and the Board shall not be disqualified from further action by having
27 considered this matter.
28

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

16. 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

1. REVOCATION. Certificate No. G68160 issued to Respondent GREGORY F. HOOPER, M.D. is revoked. However, revocation stayed and Respondent is placed on probation for five (5) years upon the following terms and conditions.

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

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

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

1 3. **PROFESSIONAL BOUNDARIES PROGRAM.** Within 60 calendar days from the
2 effective date of this Decision, Respondent shall enroll in a professional boundaries program
3 equivalent to the Professional Boundaries Program offered by the Physician Assessment and
4 Clinical Education Program at the University of California, San Diego School of Medicine
5 (“Program”). Respondent, at the Program’s discretion, shall undergo and complete the Program’s
6 assessment of Respondent’s competency, mental health and/or neuropsychological performance,
7 and at minimum, a 24 hour program of interactive education and training in the area of
8 boundaries, which takes into account data obtained from the assessment and from the Decision(s),
9 Accusation(s) and any other information that the Board or its designee deems relevant. The
10 Program shall evaluate Respondent at the end of the training and the Program shall provide any
11 data from the assessment and training as well as the results of the evaluation to the Board or its
12 designee.

13 Failure to complete the entire Program not later than six (6) months after Respondent’s
14 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
15 in writing to a later time for completion. Based on Respondent’s performance in and evaluations
16 from the assessment, education, and training, the Program shall advise the Board or its designee
17 of its recommendation(s) for additional education, training, psychotherapy and other measures
18 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
19 Program recommendations. At the completion of the Program, Respondent shall submit to a final
20 evaluation. The Program shall provide the results of the evaluation to the Board or its designee.
21 The professional boundaries program shall be at Respondent’s expense and shall be in addition to
22 the Continuing Medical Education (CME) requirements for renewal of licensure.

23 The Program has the authority to determine whether or not Respondent successfully
24 completed the Program.

25 A professional boundaries course taken after the acts that gave rise to the charges in the
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
27 or its designee, be accepted towards the fulfillment of this condition if the course would have
28

1 been approved by the Board or its designee had the course been taken after the effective date of
2 this Decision.

3 If Respondent fails to complete the Program within the designated time period, Respondent
4 shall cease the practice of medicine within three (3) calendar days after being notified by the
5 Board or its designee that Respondent failed to complete the Program.

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

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

23 Within 60 calendar days of the effective date of this Decision, and continuing throughout
24 probation, Respondent's practice and billing shall be monitored by the approved monitor.
25 Respondent shall make all records available for immediate inspection and copying on the
26 premises by the monitor at all times during business hours and shall retain the records for the
27 entire term of probation.
28

1 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
2 date of this Decision, Respondent shall receive a notification from the Board or its designee to
3 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
4 shall cease the practice of medicine until a monitor is approved to provide monitoring
5 responsibility.

6 The monitor(s) shall submit a quarterly written report to the Board or its designee which
7 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
8 are within the standards of practice of both medicine and billing, and whether Respondent is
9 practicing medicine safely and billing appropriately. It shall be the sole responsibility of
10 Respondent to ensure that the monitor submits the quarterly written reports to the Board or its
11 designee within 10 calendar days after the end of the preceding quarter.

12 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
13 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
14 name and qualifications of a replacement monitor who will be assuming that responsibility within
15 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
16 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
17 notification from the Board or its designee to cease the practice of medicine within three (3)
18 calendar days after being so notified Respondent shall cease the practice of medicine until a
19 replacement monitor is approved and assumes monitoring responsibility.

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

26 6. THIRD PARTY CHAPERONE. During probation, Respondent shall have a third
27 party chaperone present while consulting, examining or treating female patients. Respondent
28

1 shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its
2 designee for approval name(s) of persons who will act as the third party chaperone.

3 If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of
4 the effective date of this Decision, Respondent shall receive notification from the Board or its
5 designee to cease the practice of medicine within three (3) calendar days after being so notified.
6 Respondent shall cease the practice of medicine until a chaperone is approved to provide
7 monitoring responsibility.

8 Each third party chaperone shall sign (in ink or electronically) and date each patient
9 medical record at the time the chaperone's services are provided. Each third party chaperone
10 shall read the Decision(s) and the Accusation(s), and fully understand the role of the third party
11 chaperone.

12 Respondent shall maintain a log of all patients seen for whom a third party chaperone is
13 required. The log shall contain: 1) patient initials, address and telephone number; 2) medical
14 record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger,
15 in chronological order, shall make the log available for immediate inspection and copying on the
16 premises at all times during business hours by the Board or its designee, and shall retain the log
17 for the entire term of probation.

18 Respondent is prohibited from terminating employment of Board-approved third party
19 chaperone solely because that person provided information as required to the Board or its
20 designee.

21 If the third party chaperone resigns or is no longer available, Respondent shall, within 5
22 calendar days of such resignation or unavailability, submit to the Board or its designee, for
23 approval, the name of the person(s) who will act as the third party chaperone. If Respondent fails
24 to obtain approval of a replacement chaperone within 60 calendar days of the resignation or
25 unavailability of the chaperone, Respondent shall receive a notification from the Board or its
26 designee to cease the practice of medicine within three (3) calendar days after being so notified.
27 Respondent shall cease the practice of medicine until a replacement chaperone is approved and
28 assumes monitoring responsibility.

1 Respondent shall provide written notification to Respondent's patients that a third party
2 chaperone shall be present during all consultations, examination, or treatment with female
3 patients. Respondent shall maintain in the patient's file a copy of the written notification, shall
4 make the notification available for immediate inspection and copying on the premises at all times
5 during business hours by the Board or its designee, and shall retain the notification for the entire
6 term of probation.

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

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

16 9. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
17 prohibited from supervising physician assistants.

18 10. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
19 governing the practice of medicine in California and remain in full compliance with any court
20 ordered criminal probation, payments, and other orders.

21 11. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
22 under penalty of perjury on forms provided by the Board, stating whether there has been
23 compliance with all the conditions of probation.

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

26 12. GENERAL PROBATION REQUIREMENTS.

27 Compliance with Probation Unit
28

1 Respondent shall comply with the Board's probation unit and all terms and conditions of
2 this Decision.

3 Address Changes

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

9 Place of Practice

10 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
11 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
12 facility.

13 License Renewal

14 Respondent shall maintain a current and renewed California physician's and surgeon's
15 license.

16 Travel or Residence Outside California

17 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
18 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
19 (30) calendar days.

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

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

26 14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
27 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
28 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is

1 defined as any period of time Respondent is not practicing medicine in California as defined in
2 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month
3 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All
4 time spent in an intensive training program which has been approved by the Board or its designee
5 shall not be considered non-practice. Practicing medicine in another state of the United States or
6 Federal jurisdiction while on probation with the medical licensing authority of that state or
7 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
8 not be considered as a period of non-practice.

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

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

14 Periods of non-practice will not apply to the reduction of the probationary term.

15 Periods of non-practice will relieve Respondent of the responsibility to comply with the
16 probationary terms and conditions with the exception of this condition and the following terms
17 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

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

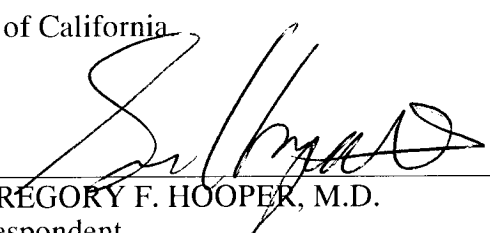
1 17. LICENSE SURRENDER. Following the effective date of this Decision, if
2 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
3 the terms and conditions of probation, Respondent may request to surrender his or her license.
4 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
5 determining whether or not to grant the request, or to take any other action deemed appropriate
6 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
7 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
8 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
9 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
10 application shall be treated as a petition for reinstatement of a revoked certificate.

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

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
18 discussed it with my attorney, Cyrus Tabari. I understand the stipulation and the effect it will
19 have on my Physician's and surgeon's certificate. I enter into this Stipulated Settlement and
20 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
21 Decision and Order of the Medical Board of California.

22
23 DATED: 1/9/2015



GREGORY F. HOOPER, M.D.
Respondent

25 ///

26 ///

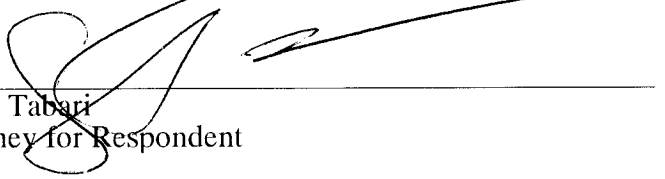
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1 I have read and fully discussed with Respondent Gregory F. Hooper, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

3 I approve its form and content.

4 DATED: 1/9/15


Cyrus Tabari
Attorney for Respondent

6 ENDORSEMENT

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

9 Dated: 1/9/2015

Respectfully submitted,

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

13 
14 EMILY L. BRINKMAN
15 Deputy Attorney General
16 Attorneys for Complainant

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Exhibit A

Second Amended Accusation No. 03-2008-190670

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JANE ZACK SIMON [SBN 116564]
LAWRENCE A. MERCER [SBN 111898]
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Telephone: (415) 703-5544 [Simon]
6 (415) 703-5539 [Mercer]
Facsimile: (415) 703-5480

7 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against,

14 **GREGORY F. HOOPER, M.D.**
15 **500 E. Remington Drive #20**
Sunnyvale, CA 94087

16 Physician's and Surgeon's Certificate No. G68160

17 Respondent.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO MAY 14, 2012
BY: Hecht ANALYST

Case No. 03-2008-190670

SECOND AMENDED ACCUSATION

18
19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Linda K. Whitney (Complainant) brings this Second Amended Accusation
23 ("Accusation") solely in her official capacity as the Executive Director of the Medical Board of
24 California.
- 25 2. On or about March 12, 1990, the Medical Board of California issued
26 Physician's and Surgeon's Certificate Number G68160 to Gregory F. Hooper, M.D. (Respondent).
27 The certificate is renewed and current with an expiration date of October 31, 2013. Disciplinary
28 action has been taken against the certificate as follows: On September 1, 1995 an Interim

1 Suspension Order was issued suspending Respondent's certificate. An Accusation was thereafter
2 filed against Respondent. Following an administrative hearing, on November 20, 1997, a
3 Decision became effective under which Respondent's license was revoked, stayed, subject to five
4 years probation with terms and conditions. Following the completion of his probation,
5 Respondent's license was restored to clear status effective November 20, 2002.

6 JURISDICTION

7 3. This Second Amended Accusation is brought before the Medical Board of
8 California¹ (the "Board") under the authority of the following laws.²

9 A. Section 2004 of the Code provides that the Board is responsible for the
10 enforcement of the disciplinary and criminal provisions of the Medical Practice Act, the
11 administration and hearing of disciplinary actions, carrying out disciplinary actions
12 appropriate to findings made by a panel or an administrative law judge, suspending,
13 revoking, or otherwise limiting certificates after the conclusion of disciplinary actions, and
14 reviewing the quality of medical practice carried out by physician and surgeon certificate
15 holders under the jurisdiction of the Board.

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

21 C. Section 2234 of the Code states, in pertinent part, that the Board shall take
22 action against any licensee who is charged with unprofessional conduct. In addition to
23
24

25 ¹ As used herein, the term "Board" means the Medical Board of California. The term
26 "Division of Medical Quality" shall also be deemed to refer to the Board.

27 ² All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 other provisions of this article, unprofessional conduct includes, but is not limited to, the
2 following:

3 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
4 the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the
5 Medical Practice Act]

6 (b) Gross Negligence

7 (c) Repeated negligent acts

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

11 D. Section 726 of the Code provides that the commission of any act of sexual
12 abuse, misconduct, or relations with a patient constitutes unprofessional conduct and
13 grounds for disciplinary action.

14 E. Section 2220.7 of the Code provides:

15 “(a) A physician and surgeon shall not include or permit to be included any of the
16 following provision in an agreement to settle a civil dispute arising from his or her
17 practice, whether the agreement is made before or after filing the action:

18 (1) A provision that prohibits another party to the dispute from contacting
19 or cooperating with the board.

20 (2) A provision that prohibits another party to the dispute from filing a
21 complaint with the board.

22 (3) A provision that requires another party to the dispute to withdraw a
23 complaint he or she has filed with the board.

24 (b) A provision described in subdivision (a) is void as against public policy.

25 (c) A physician and surgeon who violates this section is subject to disciplinary
26 action by the board.”

27 ///

28 ///

1 F. Section 810 of the Code provides that it shall constitute unprofessional
2 conduct and grounds for disciplinary action for a licensee to knowingly present or
3 cause to presented, prepare, make any false or fraudulent claim for the payment of a
4 loss under a contract of insurance; knowingly prepare, make or subscribe any writing,
5 with intent to present or use the same, or to allow it to be presented or used in support
6 of any false or fraudulent claim.

7 G. Section 2261 of the Code provides that knowingly making or signing any
8 certificate or other document directly or indirectly related to the practice of medicine
9 which falsely represents the existence or nonexistence of a state of facts, constitutes
10 unprofessional conduct.

11 PAST DISCIPLINARY HISTORY

12 4. In 1995, an accusation was filed against Respondent alleging sexually
13 inappropriate conduct with a number of female patients. In each case, Respondent was charged
14 with sexual misconduct, gross negligence and repeated negligent acts as a result of his conduct in
15 using his ungloved hand to express milk from the breasts of lactating patients. At least one
16 patient felt "fondled" by respondent, and most, if not all, of the women complained that
17 respondent's actions made them uncomfortable. In one case, Respondent was charged with
18 inappropriately exposing intimate areas during an examination. At hearing, Respondent
19 contended that he was following a Danish study regarding mastitis, and was conducting his own
20 informal study of the issue. Following hearing, the Medical Board adopted a Decision which
21 contained findings that Respondent's conduct in failing to chart patient visits and instituting an
22 unauthorized study constituted repeated negligent acts, but not sexual misconduct. Respondent's
23 license was Revoked, stayed, and subject to 5 years probation. Terms and conditions of probation
24 included completion of an educational program, completion of an ethics course, completion of an
25 oral clinical examination, a practice monitor, and a third party presence for treatment of female
26 patients. Respondent completed his probation on November 20, 2002.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Sexual Misconduct/Gross Negligence/Negligence/Unprofessional Conduct)**

3 5. Respondent practices in Sunnyvale, California. His practice is a primary care
4 practice, and he also provides gynecology services to his female patients.

5 6. Respondent began to treat Patient RS,³ a 22 year old woman, on February 8,
6 2008. Patient RS sought treatment from Respondent after an insurance change required her to
7 seek a new primary physician, and because needed refills of medication for her asthma and
8 treatment for back pain. She also complained of flu-like symptoms. Respondent conducted a
9 brief examination, and scheduled RS for a more comprehensive follow-up visit.

10 During her February 8, 2008 visit, Patient RS revealed to Respondent certain aspects of her past
11 medical history, including the fact that she had had a Pap smear in December 2007, and that she
12 had a history of colposcopy in 2007.

13 7. Patient RS returned to Respondent's office on February 21, 2008, for her
14 follow-up visit. Patient RS changed into a gown, but left her brassiere and panties on.
15 Respondent conducted an examination. Without asking Patient RS's permission or indicating that
16 he was going to do so, Respondent unhooked Patient RS's bra, then pulled her gown and bra
17 down to the waist, leaving both breasts exposed. Respondent began to "vigorously grope and
18 squeeze" both of Patient RS's breasts. At one point both of Respondent's hands were on Patient
19 RS's breasts. Respondent made comments about the size of RS.'s breasts while he was touching
20 them, and his breathing was heavy. When Respondent was done, Patient RS replaced her gown
21 and bra by herself. Respondent then instructed Patient RS to remove her underpants, and he left
22 the room. He returned to the room, and proceeded to perform a pelvic examination and Pap
23 smear, although RS had expressed her discomfort with having this examination because she was
24 not aware that she was scheduled for one and she was having her period. After the pelvic exam
25 was complete, Patient RS informed Respondent that she had observed blood in her stool for
26 approximately two weeks. Respondent instructed RS to position herself on all fours with her face

27 _____
28 ³ The patient is referred to by initial to protect privacy.

1 on the exam table. Respondent did a rectal exam and a recto-vaginal exam, and asked Patient RS
2 to squeeze his examining finger. Respondent then advised RS that she had an anal fissure.
3 Respondent made several comments about anal sex.

4 8. Respondent's office submitted the Pap smear specimen collected on February
5 21, 2008, to the laboratory for analysis. The lab results were reported to Respondent within
6 approximately a week, and set forth abnormal findings requiring medical follow-up. Respondent
7 did not advise Patient RS of the results of the Pap smear until June 21 2008.

8 9. Respondent's conduct constitutes unprofessional conduct, and/or sexual
9 misconduct, and/or gross negligence, and/or negligence, and is cause for discipline under Sections
10 2234, and/or 2234(b) and/or 2234(c) and/or 726 in that:

11 a. Respondent conducted an intimate examination of Patient RS without offering a
12 chaperone.

13 b. Respondent unfastened Patient RS's bra without asking her permission or
14 advising her that he was going to do so.

15 c. Respondent coerced Patient RS into submitting to a pelvic examination after
16 she expressed reluctance to have one.

17 d. Respondent inappropriately fondled and squeezed Patient RS's breasts during
18 the course of a purported medical examination.

19 e. Respondent removed Patient RS's gown and bra and unnecessarily kept her
20 uncovered from the waist up for a lengthy period of time.

21 f. Respondent inappropriately conducted a retrovaginal examination while Patient
22 RS was on her hands and knees and inappropriately asked her to squeeze his fingers.

23 g. Respondent made inappropriate remarks about the size of Patient RS's breasts
24 and anal sex.

25 h. Respondent failed to timely transmit the abnormal results of Patient RS's Pap
26 smear.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Confidentiality Agreement/Unprofessional Conduct)**

3 10. Shortly after the February, 2008 office visit described in the First Cause
4 for Discipline, Patient RS filed a civil action naming Respondent as a defendant and seeking
5 damages resulting from Respondent's actions during the February 21, 2008 office visit.

6 11. In May, 2009 Patient RS entered into a written settlement agreement with
7 Respondent under which Patient RS agreed to dismiss her civil complaint in exchange for
8 payment of a specified amount of money.

9 12. The settlement agreement also included the following provisions:

10 (a) "Dr. Gregory Hooper will write a letter of apology to RS. This letter is to be kept
11 confidential, and all copies will be destroyed once the letter has been read. Releasor
12 agrees she will not show or provide access to the letter to anyone but her lawyers."

13 (b) "The parties to this agreement agree to keep the terms set forth herein, and the
14 facts upon which the complaint filed by Releasor is based, confidential. The parties
15 agree that the confidentiality terms of this agreement are material to the agreement
16 reached, and can be enforced by an action for specific performance. Releasor agrees
17 to refrain from: posting on the internet any of her dealings with Releasees; any
18 negative comments about Releasees on any website; or from identifying Releasees in
19 any way in connection with the events described in her complaint. Releasor may
20 discuss her experience with Releasees with any therapist or other healthcare provider,
21 so long as the identity of Releasees is not disclosed. Releasor may also write about
22 her experiences in any other forum, so long as no identifying information regarding
23 Releasees is not included in any written account."

24 13. In June, 2010 the Medical Board issued and served on Respondent an
25 investigational subpoena duces tecum for production of the settlement agreement. Respondent's
26 response to the subpoena, through his counsel, included the following assertion of confidentiality:
27 "the settlement agreement between Dr. Hooper and [RS] included a confidentiality provision.
28 Nevertheless, Dr. Hooper is willing to produce a copy, but his waiver of confidentiality is limited

1 to production of the document. He reserves the right to nevertheless assert his right to enforce the
2 confidentiality provision.” In July, 2010, another investigational subpoena duces tecum was
3 issued seeking production of additional documents and materials pertaining to the settlement
4 agreement between Respondent and RS. Respondent responded to the subpoena by producing
5 some of the materials sought, but again specifically asserting the confidentiality provision of the
6 Settlement Agreement and reserving his right to object to the admission or use of these
7 documents at any hearing.

8 14. Respondent’s conduct in entering into a settlement agreement containing
9 confidentiality provisions applicable to communications with the Medical Board, and/or in
10 providing for destruction of information pertinent to a Medical Board investigation, and/or in
11 asserting the confidentiality provision in response to the Board’s request for information,
12 constitutes unprofessional conduct and cause for discipline pursuant to sections 2220.7 and/or
13 2234 of the Code.

14 THIRD CAUSE FOR DISCIPLINE

15 (Dishonest/Corrupt Acts/False Representations/Insurance Fraud)

16 15. TRICARE Military Health Systems (“TRICARE”) is the United
17 States Department of Defense (DOD) worldwide health care program for uniformed services
18 members, both active duty and retired, and their families. TRICARE provides cost-sharing for
19 medically necessary services for covered injuries and illnesses. TRICARE is divided into
20 geographical regions and each region has a contractor that sets the terms and conditions for
21 credentialing and certifying medical providers for participation in the TRICARE program in
22 accordance with applicable regulations and policies. TRICARE will not cover medical care unless
23 a medical provider has been approved by the regional contractor. Within DOD, TRICARE
24 chiropractic services are only available at designated military hospitals on a specific space
25 available basis. TRICARE coverage for physical therapy services is limited to services properly
26 ordered and monitored by a physician and rendered by an authorized physical therapist or other
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1 properly licensed individual. TRICARE requires the insured to pay a co-payment for most
2 covered services. In 2006-2007, Respondent was in medical practice with his father, Lawrence
3 Hooper, M.D. at 500 E. Remington Drive, Suite 20/21 in Sunnyvale, California. Lawrence
4 Hooper, M.D. was an approved TRICARE provider; Respondent was not.

5 16. In 2006⁴ the Department of Defense conducted a criminal investigation of
6 Respondent's medical practice after it received a complaint of improper billing. The DOD
7 investigation revealed that Respondent practiced medicine with his father Lawrence Hooper,
8 M.D. at the office on Remington Drive in Sunnyvale ("Hooper Office"). Lawrence Hooper, M.D.
9 was semi-retired and worked only part time. The Hooper Office was under the direction of
10 Respondent. The medical practice also employed a chiropractor, Karl Hoffower ("Hoffower")
11 who was known as the "Chief" of "Physical and Rehabilitation Medicine." Respondent has no
12 formal training in physical therapy and Hoffower is not a physical therapist. The DOD
13 investigation revealed a pattern of practice in which Respondent routinely referred his patients to
14 Hoffower for chiropractic treatment. The chiropractic treatment was then billed to TRICARE as
15 physical therapy, using Lawrence Hooper's name and identifying Lawrence Hooper as the
16 rendering provider. The following examples typify the practices of Respondent's office:
17

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19 A. Patient RC was insured through TRICARE. She initially saw Lawrence Hooper
20 for a brief visit. RC complained of cervical pain, a "pinched nerve feeling" and a knot in
21 her neck. Lawrence Hooper referred her to Hoffower. At Hoffower's recommendation,
22 RC began chiropractic treatment four times per week, at the Hooper Office. The
23 treatment provided by Hoffower included neck and back adjustments or manipulations
24

25
26 ⁴ The Department of Defense conducted its criminal investigation from 2006 until 2011.
27 At the request of the DOD investigators, the Medical Board of California provided assistance
28 during the investigation. However, it was not until March, 2011 that the Department of Defense
and the United States Attorney authorized the Medical Board to utilize information obtained
during the course of the DOD investigation. (See, Business and Professions Code §2230.5(f).)

1 and exercises; RC was told she was receiving chiropractic care. RC became concerned
2 when she noticed that her TRICARE claim summary showed that the chiropractic
3 treatment had been billed as occupational and physical therapy. Accompanied by DOD
4 Investigator Tracey Perron⁵, RC attended a scheduled appointment with Hoffower on
5 November 6, 2006. Hoffower examined RC and performed an ultrasound on her neck and
6 upper back. Hoffower performed chiropractic adjustments on RC's neck and back. RC
7 returned for additional sessions on November 8, 10 and 15, 2006. RC reported that on
8 each visit, Hoffower performed chiropractic adjustments and used the neck pump, back
9 roller, and balance board.
10

11 B. While working with the DOD investigators, on August 21, 2006 RC
12 placed a monitored telephone call to Respondent's office and asked to speak with
13 someone regarding TRICARE billings. RC was referred to a "Kerry Hooper"
14 (Respondent's wife) and she told Kerry Hooper that she was concerned that she would
15 have to pay for chiropractic care which was not covered by her TRICARE policy. Kerry
16 Hooper advised RC that the office billed chiropractic services as physical therapy, and
17 assured RC that she would not have to pay out of pocket for any services. A DOD
18 investigator on November 16, 2006 placed a call to Respondent's office, posing as a
19 patient. The investigator spoke to "Debbie," an employee of Respondent's practice and
20 told Debbie that Respondent had informed her she was a good chiropractic candidate and
21 had scheduled her for an appointment. The investigator stated that she subsequently
22 learned that chiropractic services were not covered under her TRICARE policy. Debbie
23 informed the investigator that the "chiropractic upstairs is actually it's called
24 physiotherapy" and had the "same benefits as physical therapy" and would be "billed out
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28 ⁵ Agent Perron posed as a friend of RC's and presented herself as a potential patient.

1 like physical therapy. It's just being rendered by a DC, which is a chiropractor under an
2 M.D." Debbie advised the investigator that she would need to get a referral from a
3 medical doctor to be seen by the chiropractor because "it is basically being billed out as
4 physical therapy." The investigator asked if Hoffower was a physical therapist, and was
5 told that he was a chiropractor, that the chiropractor is a "higher degree" than a physical
6 therapist, and that Hoffower provided "physiotherapy" which would be covered by
7 TRICARE insurance.

8
9 C. The Hooper Office submitted reimbursement claims to TRICARE for RC's
10 visits on November 6, 10 and 13, 2006. The claims submitted identified L. Hooper as the
11 provider, used Lawrence Hooper's approved provider status, and billed for a physician
12 office visit and various physical therapy modalities. The Hooper Office also submitted a
13 "referral/authorization form" dated November 6, 2006 to TRICARE indicating that L.
14 Hooper had conducted medical review and that "physiotherapy" was requested for RC.
15 RC was not seen by L. Hooper or any other physician on that date, and all services were
16 provided by Hoffower.

17
18 D. On February 2, 2007, Agent Perron, working in an undercover capacity
19 presented to the Hooper Office complaining of neck and upper back pain. Agent Perron
20 represented that she was a military dependent with TRICARE coverage. A member of the
21 Hooper Office staff scheduled her to see Respondent, and instructed Agent Perron to sign
22 in on a "chiropractic" sign in sheet. A medical assistant took a brief history and recorded
23 vital signs during a period of approximately three minutes. Thereafter, Gregory Hooper
24 entered the room and spent approximately 10 minutes with Agent Perron. Respondent
25 conducted no physical examination, except for massaging Agent Perron's neck.
26 Respondent spoke to her about the benefits of chiropractic care, particularly when
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1 combined with physical therapy. He spent the majority of the time discussing potential
2 cosmetic procedures, and offered Agent Perron a complimentary cosmetic procedure
3 consultation for a later date. During the discussion about cosmetic procedures, Hoffower
4 entered the exam room and discussed chiropractic treatment with Agent Perron. Hoffower
5 advised Agent Perron that she needed x-rays before he could perform an adjustment.
6 Hoffower directed Agent Perron to "Dr. Verma," another chiropractor in the Hooper
7 Office, who took Agent Perron to the basement for x-rays. Agent Perron was scheduled
8 for a follow-up appointment with Hoffower, as well as for her complimentary cosmetic
9 consultation. Respondent's staff advised Agent Perron that no co-payment was required.
10 The Hooper Office submitted a claim to TRICARE for services utilizing the billing code
11 99204. This code requires a comprehensive history, comprehensive examination and
12 medical decision making of moderate complexity, and typically involves 45 minutes with
13 the patient. The requesting physician and servicing provider was identified as Lawrence
14 B. Hooper.
15

16
17 E. On February 6, 2007 Agent Perron returned to the Hooper Office. She was
18 directed by staff to sign in on the "chiropractic" sheet, and was seen by Hoffower.
19 Hoffower went over Agent Perron's x-rays and advised her that her spinal condition was
20 moderately severe and "We definitely need to do some adjustments. We need to correct
21 your spine and get you a curve." Hoffower recommended treatment and "correction"
22 three times per week for four to six months. Hoffower explained various exercises and
23 had Agent Perron perform exercises, use a back roller and balance board. Hoffower also
24 performed chiropractic adjustments on Agent Perron's back and neck, and directed her to
25 perform exercises at home to correct the curve in her neck. Hoffower advised Agent
26 Perron that if there was improvement after several months, he would be able to "go to
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1 TRICARE and say 'look we have a curve. It is going to help her.' Following her session
2 with Hoffower, Agent Perron was seen by Respondent for a cosmetic consultation. Agent
3 Perron discussed with Respondent her upcoming chiropractic appointments with
4 Hoffower. Agent Perron was not required to pay a co-payment for either of her February
5 6, 2007 sessions. The Hooper Office submitted a claim to TRICARE for an office visit
6 and physical and occupational therapy represented to have been provided by L. Hooper.
7 The claim also included a "modifier" claiming that another component of care was
8 addressed. The claim form submitted to TRICARE for the February 6, 2007 "initial
9 exam" identified Lawrence B. Hooper as the requesting physician; the requested service
10 was "therapy" and the "servicing provider" was identified as Lawrence B. Hooper.
11

12 17. Respondent knew that TRICARE would not pay for chiropractic services
13 provided to military dependents in his private medical practice. Respondent also knew that
14 TRICARE would not pay for medical services provided by a physician who was not a TRICARE
15 approved provider. Respondent falsely billed for medical services he provided, under Lawrence
16 Hooper's name; Respondent falsely billed for chiropractic treatment by characterizing it as
17 physical and/or occupational therapy provided by Lawrence Hooper; Respondent failed to charge
18 required co-payments. Respondent knew that TRICARE would not reimburse claims if it knew
19 that the nature of the treatment was intentionally misrepresented to give the false appearance that
20 the treatment was provided by a medical doctor or physical therapist, as opposed to a
21 chiropractor.
22

23 18. Respondent's conduct in falsely representing the nature of the care and
24 treatment provided in order to obtain payment from TRICARE constitutes unprofessional
25 conduct, and acts of dishonesty or corruption substantially related to the qualifications, functions
26 or duties of a physician and surgeon, and cause for discipline exists pursuant to Business and
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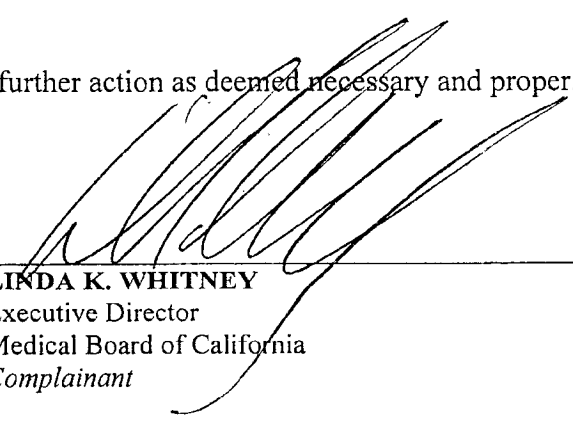
1 Professions Code sections 2234 and 2234(e). Respondent's conduct also constitutes the knowing
2 making or signing of documents which falsely represented the existence or nonexistence of facts,
3 and cause for discipline exists pursuant to section 2261 of the Code. Respondent's conduct also
4 constitutes the knowing presentation of false or fraudulent insurance claims, and cause for
5 discipline pursuant to Business and Professions Code section 810.

6 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate
11 Number G68160, issued to Gregory F. Hooper, M.D.
12 2. Revoking, suspending or denying approval of Gregory F. Hooper, M.D.'s
13 authority to supervise physician assistants,
14 3. Ordering Respondent, if placed on probation, to pay the costs of probation
15 monitoring; and
16 4. Taking such other and further action as deemed necessary and proper.
17

18
19 DATED: May 14, 2012


20 **LINDA K. WHITNEY**
21 Executive Director
22 Medical Board of California
23 Complainant
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