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

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| **In the Matter of the Petition to Revoke Probation Against:** | ) | |
| **BRIAN KEITH GAMBLE, M.D.** | ) | **Case No. 8002016021205** |
| **Physician's and Surgeon's Certificate No. A76121** | ) | |
| **Respondent** | ) | |

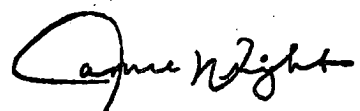
## DECISION

**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 October 13, 2017.**

**IT IS SO ORDERED: September 14, 2017.**

**MEDICAL BOARD OF CALIFORNIA**



**Jamie Wright, J.D., Chair**
**Panel A**

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRISTINE R. FRIAR
Deputy Attorney General
State Bar No. 228421
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-6404
Facsimile: (213) 897-9395
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Petition to Revoke Probation Against:<br><br>BRIAN KEITH GAMBLE, M.D.<br><br>10701 Riverside Drive, #16<br>Toluca Lake, CA 91602<br><br>Physician's and Surgeon's Certificate No. A 76121,<br><br>Respondent. | Case No. 800-2016-021205<br><br>OAH No. 2017020039<br><br>**STIPULATED SETTLEMENT 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 Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Christine R. Friar, Deputy Attorney General.

2. Respondent Brian Keith Gamble, M.D. (Respondent) is represented in this proceeding by attorney Theodore A. Cohen of the Law Offices of Theodore A. Cohen located at 3701 Wilshire Boulevard, Suite 535, Los Angeles, CA 90010.

3. On August 8, 2001, the Board issued Physician's and Surgeon's Certificate No. A 76121 to Brian Keith Gamble, M.D. Said license was in full force and effect at all times relevant to the charges brought in Petition to Revoke Probation No. 800-2016-021205, and will expire on May 31, 2019, unless renewed.

## JURISDICTION

4. Petition to Revoke Probation No. 800-2016-021205 was filed before the Board, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on November 9, 2016. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation.

5. A copy of Petition to Revoke Probation No. 800-2016-021205 is attached as Exhibit A and is incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Petition to Revoke Probation No. 800-2016-021205. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement 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 the Petition to Revoke Probation; 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 voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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## CULPABILITY

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Petition to Revoke Probation No. 800-2016-021205 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in Petition to Revoke Probation No. 800-2016-021205 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.

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

## CONTINGENCY

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

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

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14. 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. A76121 issued to Respondent Brian Keith Gamble, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for eleven (11) years from October 21, 2010, the effective date of the Board's adoption of the original Stipulate Settlement this case (Case No. 06-2009-202941). on the following terms and conditions.

1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or

the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by

the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to

cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his or her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the Board shall impose any or all of the consequences set forth in section 1361.52 (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

4. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of

psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

5. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's

attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

6. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

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

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

8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

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

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

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

11. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

Controlled Substances; and Biological Fluid Testing.

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

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

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

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

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## ACCEPTANCE

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

DATED: 6 23 17

BRIAN KEITH GAMBLE, M.D.
*Respondent*

I have read and fully discussed with Respondent BRIAN KEITH GAMBLE, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/23/17

THEODORE A. COHEN
*Attorney for Respondent*

## ENDORSEMENT

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

Dated: 6/26/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRISTINE R. FRIAR
Deputy Attorney General
*Attorneys for Complainant*

LA2016501010

# Exhibit A

**Petition to Revoke Probation No. 800-2016-021205**

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
CHRISTINE R. FRIAR
Deputy Attorney General
State Bar No. 228421
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6404
Facsimile: (213) 897-9395
*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Nov. 9 20 16
BY _____ ANALYST

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

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|---|---|
| In the Matter of the Petition to Revoke Probation Against:<br><br>BRIAN KEITH GAMBLE, M.D.<br><br>10701 Riverside Drive, Suite 16<br>Toluca Lake, California 91602<br><br>Physician's and Surgeon's Certificate No. A 76121,<br><br>Respondent. | Case No. 800-2016-021205<br><br>**PETITION TO REVOKE PROBATION** |

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On August 8, 2001, the Board issued Physician's and Surgeon's Certificate No. A 76121 to Respondent Brian Keith Gamble, M.D. (Respondent). This Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2017, unless renewed.

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3. In a disciplinary action entitled *In the Matter of the Suspension Order Issued Against Brian Keith Gamble, M.D.*, Case No. 06-2002-137664, on or about July 30, 2003, a Suspension Order was issued by the Superior Court of California, County of Los Angeles, Central District against Respondent pursuant to Penal Code Section 23. The Suspension order, which was effective July 30, 2003, stated that Respondent was prohibited from practicing or attempting to practice any aspect of medicine during the pendency of a criminal action pending against him (Case Nos. BA249419 and BA231928), unless he enters the Medical Board Diversion Program and the Program authorizes him to practice medicine.

4. In a disciplinary action entitled *In the Matter of the Accusation Against Brian Keith Gamble, M.D.*, Case No. 06-2009-202941, on or about February 18, 2010, Respondent stipulated to the suspension of his Physician's and Surgeon's Certificate due to his use of illegal drugs. Effective October 21, 2010, the Board issued a Decision and Order, in which Respondent's California Physician's and Surgeon's Certificate Number A 76121 was revoked. The revocation, however, was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with special terms and conditions, which include but are not limited to: abstention from alcohol.

5. On December 28, 2011, Complainant filed a Petition to Revoke Probation against Respondent based on Respondent's positive tests for alcohol in violation of the terms and conditions of his probation.

6. On February 24, 2012, Complainant filed an Accusation and First Amended Petition to Revoke Probation against Respondent. Pursuant to a Stipulated Settlement entered into between the Board and Respondent, the Board issued a Decision, effective August 29, 2012, in which Respondent's California Physician's and Surgeon's Certificate Number A 76121 was revoked (Decision). The revocation, however, was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with special terms and conditions, which include but are not limited to: abstention from alcohol. The seven (7) year probationary term commenced on September 23, 2010, the date of the Board's order adopting the previous Stipulated Settlement. Respondent was also suspended from the practice of medicine for

thirty-five (35) days. A copy of that Decision is attached as Exhibit A and is incorporated by reference.

7. On September 21, 2016, the Board filed a Petition for Interim Suspension Order against Respondent alleging that he had violated Condition B of his probation, as set forth in the Decision.

8. On October 14, 2016, a Stipulated Settlement and Order on Petition for Interim Suspension Order was executed by the parties and the Presiding Administrative Law Judge and is currently in place. The Stipulated Settlement and Order provides, in pertinent part, that "[u]pon the execution of the Order by the Presiding Administrative Law Judge, the Board will file an Accusation and/or Petition to Revoke Probation against Respondent within thirty (30) days. If Respondent requests a hearing on the Accusation and/or Petition to Revoke Probation, the Board shall provide Respondent with a hearing within sixty (60) days of the request, unless Respondent stipulates to a later hearing. If the Board does not file an Accusation and/or Petition to Revoke Probation within thirty (30) days of the execution of this Order by the Presiding Administrative Law Judge, this Order shall be dissolved."

## JURISDICTION

9. This Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

10. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

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

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

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

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

11. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

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## FIRST CAUSE TO REVOKE PROBATION

**(Prohibited Use of Alcohol)**

12. At all times after the effective date of Respondent's probation, Condition B of the Decision, (attached hereto as Exhibit A), stated:

"ALCOHOL – ABSTAIN FROM USE

"i) Respondent shall abstain completely from the use of products or beverages containing alcohol. If Respondent has a confirmed positive biological fluid test for alcohol, Complainant may apply, ex parte, for an interim order suspending Respondent's right to practice medicine. If same is granted, Respondent shall not resume the practice of medicine until further order of the court or final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of any order suspending Respondent's right to practice medicine. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing.

"ii) A decision shall be received from the Administrative Law Judge or the Board within 15 days of any hearing unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

"iii) If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of an order suspending Respondent's right to practice medicine, the suspension order shall be dissolved."

13. Respondent's probation is subject to revocation because he failed to abstain from the use of products or beverages containing alcohol in violation of Condition B of his probation, referenced above. The circumstances are as follows:

A. On March 21, 2016, Respondent provided a blood sample which tested positive for alcohol. Specifically, the sample tested positive for phosphatidyl ethanol (PEth) with a quantitative value of 881 ng/mL.

14. Respondent's ability to practice medicine safely is impaired because he is not abiding by the terms of his probation. Specifically, he is not abstaining from the use of alcohol.

## SECOND CAUSE TO REVOKE PROBATION

**(Violation of Probation)**

15. At all times after the effective date of Respondent's probation, Condition M stated: "VIOLATION OF PROBATION Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final."

16. Respondent's probation is subject to revocation because he violated Condition M of his probation when he failed to abstain from the use of alcohol, as set forth above in paragraphs 12 through 14, in violation of Condition B of his probation.

## DISCIPLINE CONSIDERATIONS

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that in a disciplinary action entitled *In the Matter of the Suspension Order Issued Against Brian Keith Gamble, M.D.*, Case No. 06-2002-137664, on or about July 30, 2003, a Suspension Order was issued by the Superior Court of California, County of Los Angeles, Central District against Respondent pursuant to Penal Code Section 23. The Suspension order, which was effective July 30, 2003, stated that Respondent was prohibited from practicing or attempting to practice any aspect of medicine during the pendency of a criminal action pending against him (Case Nos. BA249419 and BA231928), unless he enters the Medical Board Diversion Program and the Program authorizes him to practice medicine.

18. Complainant further alleges that in a disciplinary action entitled *In the Matter of the Accusation Against Brian Keith Gamble, M.D.*, Case No. 06-2009-202941, that on or about February 18, 2010, Respondent stipulated to the suspension of his Physician's and Surgeon's

Certificate due to his use of illegal drugs. The Board issued a Decision and Order, effective October 21, 2010, in which Respondent's California Physician's and Surgeon's Certificate Number A 76121 was revoked. The revocation, however, was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with special terms and conditions, which include but are not limited to: abstention from alcohol. The Decision and Order was issued pursuant to a Stipulated Settlement and Disciplinary Order in which Respondent admitted to the charges in the Accusation, which alleged that Respondent had misused cocaine and methamphetamine.

19. On December 28, 2011, Complainant filed a Petition to Revoke Probation against Respondent based on Respondent's positive tests for alcohol in violation of the terms and conditions of his probation.

20. On February 24, 2012, Complainant filed an Accusation and First Amended Petition to Revoke Probation against Respondent. Respondent was alleged to have committed dishonesty and made false representations when he participated in a scheme to sell prescriptions to drug users without medical justification; excessively prescribed; failed to maintain adequate and accurate records, failed to obey all laws and failed to abstain from the use of alcohol. Pursuant to a Stipulated Settlement entered into between the Board and Respondent, the Board issued a Decision, effective August 29, 2012, in which Respondent's California Physician's and Surgeon's Certificate Number A 76121 was revoked. The revocation, however, was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of seven (7) years with special terms and conditions, which include but are not limited to: abstention from alcohol. Respondent was also suspended from the practice of medicine for thirty-five (35) days. Pursuant to that Stipulated Settlement paragraph 8(b), "should the Board... hereinafter institute any other action against Respondent, including but not limited to an Accusation and/or Petition to Revoke Probation, the allegations and facts set forth in the Accusation shall be deemed admitted for all purposes."

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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 the probation that was granted by the Medical Board of California in Case No. 06-2009-202941 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 76121 issued to Brian Keith Gamble, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 76121 issued to Brian Keith Gamble, M.D.;

3. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;

4. If placed on probation, ordering him to pay the costs of probation monitoring and

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

DATED: November 9, 2016

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
*Complainant*

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# Exhibit A

**Decision and Order**

**Medical Board of California Case No. 800-2016-021205**

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

| | | |
|---|---|---|
| In the Matter of the Accusation/Petition to Revoke Probation Against: | ) | |
| BRIAN K. GAMBLE, M.D. | ) | Case No. D1-2009-202941 |
| Physician's and Surgeon's Certificate No. A 76121 | ) | |
| Respondent | ) | |

## DECISION

The attached Stipulated Settlement 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 August 29, 2012.

IT IS SO ORDERED: July 30, 2012.

MEDICAL BOARD OF CALIFORNIA

Shelton Duruisseau

Shelton Duruisseau, Ph.D., Chair
Panel A

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true and correct copy of the original on file in this office.

Signature

Title

3/29/2016
Date

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
KLINT JAMES MCKAY
Deputy Attorney General
State Bar No. 120881
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 576-1327
Facsimile: (213) 897-9395
E-mail: Klint.McKay@doj.ca.gov
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation/Petition to Revoke Probation Against:<br><br>**BRIAN K. GAMBLE, M.D.**<br><br>**22960 Garzota Dr.**<br>**Valencia, California 91354**<br><br>**Physician's and Surgeon's Certificate No. A 76121**<br><br>Respondent. | Case No. D1-2009-202941<br><br>OAH Case No. 2012020804<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs ("Board"), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

## PARTIES

1. Linda K. Whitney ("Complainant") is the Executive Director of the Board, and the Complainant in this matter. She brings this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Klint James McKay, Deputy Attorney General.

2. Respondent Brian Keith Gamble, M.D., ("Respondent") is represented in this proceeding by Jenille Smith, of Smith & Zimmerman, 1300 Clay St., Suite 600, Oakland, California.

3. On or about August 8, 2001, the Board issued Physician and Surgeon's Certificate No. A 76121 to Respondent. Said Physician and Surgeon's Certificate was and is in full force and effect at all times relevant to the charges brought in the Accusation referenced below and will expire on May 31, 2013, unless renewed.

## JURISDICTION

4. An Accusation and First Amended Petition to Revoke Probation (hereinafter "Petition"), denominated as Case No. D1-2009-202941 was filed before the Board on February 24, 2012, and is currently pending against Respondent. The Petition and all other statutorily required documents were properly served on Respondent on February 24, 2012. Respondent timely filed his Notice of Defense contesting the Petition. A copy of Petition No. D1-2009-202941 is attached hereto as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, has been given the opportunity to fully discuss the provisions hereof with counsel, and understands the charges and allegations in Accusation No. D1-2009-202941. Respondent has also carefully read, has been given the opportunity to fully discuss the provisions hereof with counsel if he so desired, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

## CULPABILITY

8. a) Respondent admits each and every charge and allegation in the Second Cause to Revoke Probation. Respondent agrees that Complainant could establish a *prima facie* case with respect to all other allegations in the Petition.

b) If Respondent ever petitions to modify or terminate any term or condition set forth herein, including but not limited to probation, or should the Board or any other regulatory agency in California or elsewhere hereinafter institute any other action against Respondent, including but not limited to an Accusation and/or Petition to Revoke Probation, the allegations and facts set forth in the Accusation shall be deemed admitted for all purposes.

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

## CONTINGENCY

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

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

12. 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 and Surgeon's Certificate No. A 76121 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for seven (7) years from September 23, 2010, the effective date of the Board order adopting the previous Stipulation. As part of probation, Respondent is suspended from the practice of medicine for 35 (thirty five) days, beginning the sixteenth (16th) day after the effective date of order adopting this Stipulation.

A. CONTROLLED SUBSTANCES – ABSTAIN FROM USE

i) Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

ii) Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

iii) If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Complainant may apply, ex parte, for an interim order suspending Respondent's right to practice medicine. If same is granted, Respondent shall not resume the practice of medicine until further order of the court or final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of any order suspending Respondent's right to practice medicine. If Respondent requests a hearing on

the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing.

iv) A decision shall be received from the Administrative Law Judge or the Board within 15 days of any hearing unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

v) If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of an order suspending Respondent's right to practice medicine, the suspension order shall be dissolved.

B. ALCOHOL – ABSTAIN FROM USE

i) Respondent shall abstain completely from the use of products or beverages containing alcohol. If Respondent has a confirmed positive biological fluid test for alcohol, Complainant may apply, ex parte, for an interim order suspending Respondent's right to practice medicine. If same is granted, Respondent shall not resume the practice of medicine until further order of the court or final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of any order suspending Respondent's right to practice medicine. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing.

ii) A decision shall be received from the Administrative Law Judge or the Board within 15 days of any hearing unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

iii) If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of an order suspending Respondent's right to practice medicine, the suspension order shall be dissolved.

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C. BIOLOGICAL FLUID TESTING

i) Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, Respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

ii) A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent. If Respondent fails to cooperate in a random biological fluid testing program within the specified time frame, Respondent may, in the Board's sole discretion, receive a notification from the Board or its designee to immediately cease the practice of medicine.

iii) Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing.

iv) A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period. If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

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D. PSYCHOTHERAPY

i) Within 60 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

ii) The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

iii) Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

iv) Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

E. NOTIFICATION Within fourteen (14) days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and *locum tenens* registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 21 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

F. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is prohibited from supervising physician assistants.

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

H. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

I. GENERAL PROBATION REQUIREMENTS

i) Compliance with Probation Unit

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

ii) Address Changes

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

iii) Place of Practice

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

iv) License Renewal

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

v) Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days. In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

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

K. NON PRACTICE WHILE ON PROBATION

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

ii) Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice. In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

iii) Respondent's period of non-practice while on probation shall not exceed two (2) years. Periods of non-practice will not apply to the reduction of the probationary term. Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

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

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

N. LICENSE SURRENDER

i) Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license.

ii) The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances.

iii) Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine.

iv) Respondent will then no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

year. Failure to pay any and all costs within 30 days of the date they are due shall constitute a violation of probation.

P. MODIFICATION OR TERMINATION OF PROBATION Respondent may not file a Petition to modify the terms of probation or terminate the probationary period pursuant to Business and Professions Code section 2307 earlier than two years from the effective date of an order adopting this Stipulation.

## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have been given the opportunity to fully discuss it with my attorney. I understand the Stipulation and the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/24/12

BRIAN KEITH GAMBLE, M.D., Respondent

**APPROVED AS TO FORM AND CONTENT:**

DATED: 5/30/12

JENILLE SMITH, Counsel for Respondent

## ENDORSEMENT

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

DATED: 6/6/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

KLINT JAMES MCKAY
Deputy Attorney General
*Attorneys for Complainant*

LA2011504814
DOJ Matter ID: D1-2009-202941
Stipulated Settlement and Disciplinary Order

EXHIBIT A

Accusation and First Amended Petition to Revoke Probation

KAMALA D. HARRIS.
Attorney General of California
ROBERT McKIM BELL,
Supervising Deputy Attorney General,
KLINT JAMES McKAY,
Deputy Attorney General
State Bar No. 120881
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 576 - 1327
Facsimile: (213) 897 - 9395
*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 24, 2012
BY [illegible] ANALYST

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

| | |
|---|---|
| In the Matter of the Accusation and First Amended Petition to Revoke Probation Against:<br><br>BRIAN KEITH GAMBLE, M.D.<br><br>22960 Garzota Dr.<br>Valencia, California 91354<br><br>Physician's & Surgeon's Certificate A 76121,<br><br>Respondent. | Case No. D1-2009-202941<br><br>OAH Case No.<br><br>**ACCUSATION AND FIRST AMENDED PETITION TO REVOKE PROBATION** |

Complainant alleges:

## PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation and First Amended Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about August 8, 2001, the Board issued Physician's and Surgeon's Certificate number A 76121 to Brian Keith Gamble, M.D. (Respondent). That license was in full force and

effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

3. On April 27, 2010, in a disciplinary action entitled *In the Matter of the Accusation Against Brain Keith Gamble*, Case No. 06-2009-202941 before the Medical Board of California, the Board issued a decision, effective October 21, 2010, in which Respondent's medical license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of five years, upon various terms and conditions. A true and correct copy of that Decision, together with the underlying Stipulated Settlement and Disciplinary Order and Accusation, is attached as Exhibit A, and is incorporated by reference.

4. On December 28, 2011, a Petition to Revoke Probation was filed by Complainant and is now pending against Respondent based on Respondent's positive tests for alcohol in violation of Condition B of the Stipulated Settlement.

## JURISDICTION

5. This Accusation and First Amended Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by

imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

7. Section 2228 of the Code states:

"The authority of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to, the following:

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

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

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care.

8. Section 2234 of the Code states:

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"The Division of Medical Quality[1] shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct[2] includes, but is not limited to, the following:

"(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 [Chapter 5, the Medical Practice Act].

"(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."

9. Section 2242 of the Code states:

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[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "Board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§ 2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

[2] Unprofessional conduct under Code section 2234 is conduct that 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. (*Shea v. Board of Medical Quality Assurance* (1978) 81 Cal.App.3d 564, 575.)

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

10. Section 2261 of the Code states that "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of medicine or podiatry which falsely represents the existence or nonexistence of a state of facts, constitutes unprofessional conduct."

11. Section 2266 of the Code states that "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."

## FIRST CAUSE FOR DISCIPLINE
(Dishonesty)

12. Respondent is subject to discipline under Code sections 2234 subdivision (a) for violation of the Medical Practice act and subdivision (e) for acts of dishonesty or corruption in that he participated in a scheme to sell prescriptions to drug users without medical justification. The facts and circumstances are:

A. In March, 2011, two admitted addicts, John S. and Karen C., met one Suzanne Slayton at her hotel room in Santa Clarita, and accompanied Ms. Slayton to Respondent's house. Respondent then gave Ms. Slayton prescription pads so that she could write prescriptions for them.

B. At an interview in the Board's Cerritos District office on November 22, 2011, Respondent indicated that Ms. Slayton was a friend of his and he spoke with her on the telephone daily, often multiple times per day, as well as visiting her apartment. He also indicated he gave her hundreds of dollars per month, but could not explain why he did so.

C. On January 3, 2012, police raided Ms. Slayton's apartment, and found 40 prescription pads in Respondent's name, some of which had been signed, either by Respondent and/or someone else signing Respondent's name. Ms. Slayton told the police that she was selling the prescriptions. After Ms. Slayton was arrested, her first call was to Respondent. It is apparent that Respondent was selling prescriptions directly or through Ms. Slayton to others who would use them to wrongfully obtain drugs from unsuspecting pharmacies.

13. The acts of Respondent with respect to the above constitute dishonest conduct and moral turpitude subjecting Respondent to discipline pursuant to the referenced statutes.

## SECOND CAUSE FOR DISCIPLINE
(Excessive Prescribing)

14. Respondent is subject to discipline pursuant to Code section 725 in that Respondent's conduct as above set forth constitutes repeated acts of clearly excessive prescribing.

## THIRD CAUSE FOR DISCIPLINE
(False Representations)

15. Respondent is subject to discipline pursuant to Code sections 2261 and 2242 in that Respondent's execution of the prescriptions in Ms. Slayton's possession, including but not limited to those written to John Stutz and Karen Colbert, constitutes a false representation that they were issued with adequate medical justification.

## FOURTH CAUSE FOR DISCIPLINE
(Failure to Maintain Adequate and Accurate Records)

16. Respondent is subject to discipline pursuant to Code section 2266 for failure to maintain adequate and accurate records with respect to prescriptions written by him as set forth in the preceding Cause for Discipline.

## PETITION TO REVOKE PROBATION

### FIRST CAUSE TO REVOKE PROBATION
(Failure to Obey all Laws)

17. At all times after the effective date of respondent's probation, Conditions G and N of the Stipulated Settlement and Disciplinary Order attached hereto as part of Exhibit A stated as follows:

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

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

18. Respondent's conduct as set forth above constitutes blatant violations of statutory provisions of the Code as well as a criminal offense. His probation is therefore subject to revocation.

## SECOND CAUSE TO REVOKE PROBATION
**(Prohibited Use of Alcohol)**

19. At all times after the effective date of respondent's probation, Conditions B of the Stipulated Settlement and Disciplinary Order attached hereto as part of Exhibit A stated as follows:

"B. ALCOHOL - ABSTAIN FROM USE

Respondent shall abstain completely from the use of products or beverages containing alcohol."

20. Respondent's probation is subject to revocation because he failed to comply with Probation Condition B by consuming alcohol, as confirmed by four positive and three questionable tests on the EtG (Ethyl Glucuronide) and the EtS (Ethyl Sulfate) tests. EtG and EtS are two highly reliable measures of residue created as alcohol is processed by the body.

21. Respondent tested positive for both EtG and EtS on January 21, 2011, February 11, 2011, September 12, 2011, and September 13, 2011. Additionally, both tests registered "questionable" results (meaning the tests results were higher than normal but not high enough to be positive) on December 6, 2010, March 8, 2011 and June 13, 2011. Questionable results often indicate that alcohol had in fact been consumed, but far enough before the tests were administered that the metabolites dropped below the positive level. Taken together, the seven tests indicate beyond dispute that Respondent consumed alcohol in violation of Probation Condition B.

22. As a result of the above, Respondent's probation is subject to revocation.

## DISCIPLINE CONSIDERATIONS

23. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about February 18, 2010, Respondent stipulated to the suspension

of his Physician's and Surgeon's Certificate, as referenced above, due to his use of illegal drugs. His use of such drugs gave rise the Accusation referred to above which was filed against Respondent on or about April 27, 2010 and which was resolved by the Stipulated Settlement and Disciplinary Order attached hereto as Exhibit A. The current alleged offenses relate directly to his renewed or continued involvement in the illegal distribution of drugs.

## 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 76121, issued to Brian Keith Gamble, M.D.;

2. Revoking, suspending or denying his authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. If placed on probation, ordering him to pay the Medical Board of California the costs of probation monitoring;

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

DATED: February 24, 2012.

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

*Complainant*

**Exhibit A**

**Stipulated Settlement and Disciplinary Order**

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

| | | |
|---|---|---|
| In the Matter of the Accusation Against: | ) | |
| Brian Keith Gamble, M.D. | ) | File No. 06-2009-202941 |
| Physician's and Surgeon's Certificate No. A 76121 | ) | |
| 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 October 21, 2010

IT IS SO ORDERED September 23, 2010

MEDICAL BOARD OF CALIFORNIA

By: Shelton Duruisseau
Shelton Duruisseau, Ph.D.
Chairperson, Panel A

EDMUND G. BROWN JR.
Attorney General of California
KLINT JAMES MCKAY
Deputy Attorney General
State Bar No. 120881
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 576-1327
Facsimile: (213) 897-9395
E-mail: Klint.McKay@doj.ca.gov
*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>BRIAN KEITH GAMBLE, M.D.<br>2813 West 182nd Street<br>Torrance, California 90504<br><br>Physician's & Surgeon's Certificate<br>No A 76121,<br><br>Respondent. | Case No. 06-2009-202941<br><br>OAH No. 2010050457<br><br>STIPULATED SETTLEMENT<br>AND DISCIPLINARY ORDER |

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs ("Board"), the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Linda K. Whitney ("Complainant") is the Executive Director of the Board, and the Complainant in this matter. Ms. Johnston brought this action solely in her official capacity

and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Klint James McKay, Deputy Attorney General.

2. Respondent Brian Keith Gamble, M.D., ("Respondent") is unrepresented in this proceeding.

3. On or about August 8, 2001, the Board issued Physician and Surgeon's Certificate No. A 76121 to Respondent. Said Physician and Surgeon's Certificate was suspended on February 18, 2010, by stipulation and remains so; prior that time, it was in full force and effect at all times relevant to the charges brought in the Accusation referenced below and will expire on May 31, 2011, unless renewed.

## JURISDICTION

4. Accusation No. 06-2009-202941 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 27, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 06-2009-202941 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, has been given the opportunity to fully discuss the provisions hereof with counsel if he so desired, and understands the charges and allegations in Accusation No. 06-2009-202941. Respondent has also carefully read, has been given the opportunity to fully discuss the provisions hereof with counsel if he so desired, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

## CULPABILITY

7. Respondent admits each and every charge and allegation in the Accusation.

8. Respondent agrees that his Physician and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

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

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

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.

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## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician and Surgeon's Certificate No. A 76121 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years from the effective date of the Board Order adopting this Stipulation.

A. CONTROLLED SUBSTANCES – ABSTAIN FROM USE

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition. Within 15 calendar days of receiving any lawful prescription medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

B. ALCOHOL – ABSTAIN FROM USE

Respondent shall abstain completely from the use of products or beverages containing alcohol.

C. BIOLOGICAL FLUID TESTING

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. Prior to practicing medicine, respondent shall, at respondent's expense, contract with a laboratory or service - approved in advance by the Board or its designee - that will conduct random, unannounced, observed, urine testing a minimum of four times each month. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. Failure to submit to or comply with the

time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation.

D. PSYCHOTHERAPY

i) Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

ii) Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary. The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

iii) Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

iv) Respondent shall pay the cost of all psychotherapy and psychiatric evaluations. Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

E. NOTIFICATION Prior to engaging in the practice of medicine, the Respondent shall provide a true copy of the Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent,

at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

F. SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is prohibited from supervising physician assistants.

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

H. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

I. PROBATION UNIT COMPLIANCE

i) Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

ii) Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

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

J. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee, upon request at various intervals, and either with or without prior notice throughout the term of probation.

K. RESIDING OR PRACTICING OUT-OF-STATE

i) In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

ii) All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

iii) Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

iv) Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

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L. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

i) In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice.

ii) Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

iii) All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

iv) Respondent's license shall be automatically canceled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

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

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

O. LICENSE SURRENDER

i) Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license.

ii) The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances.

iii) Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action.

iv) If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

P. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

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## ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have been given the opportunity to fully discuss it with an attorney. I understand the Stipulation and the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 7/15/10

BRIAN KEITH GAMBLE, M.D., Respondent

## ENDORSEMENT

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

DATED: 15 July, 2010

EDMUND G. BROWN JR., Attorney General
of the State of California

By: _____
KLINT JAMES McKAY,
Deputy Attorney General,
Attorneys for Complainant

DOJ Matter ID: 06-2009-202941
Stipulated Settlement and Disciplinary Order

EDMUND G. BROWN, JR.
Attorney General of California
KLINT JAMES MCKAY
Deputy Attorney General
State Bar No. 120881
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 576-1327
Facsimile: (213) 897-9395
E-mail: Klint.McKay@doj.ca.gov
*Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO: Apr 27, 2010
BY: [illegible] ANALYST

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

| In the Matter of the Accusation Against: | Case No. 06-2009-202941 |
|---|---|
| BRIAN KEITH GAMBLE, M.D.<br>2813 West 182nd Street<br>Torrance, California 90504<br><br>Physician's & Surgeon's Certificate<br>No A 76121,<br><br>Respondent | ACCUSATION |

Complainant alleges:

## PARTIES

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

2. On or about August 8, 2001, the Board issued Physician's and Surgeon's Certificate number A76121 to Brian Keith Gamble, M.D. ("Respondent"). Although Respondent's Certificate is currently suspended, the Certificate was in full force and effect at all times relevant to the charges brought herein. It will expire on May 31, 2011, unless renewed.

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## JURISDICTION

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

## STATUTORY PROVISIONS

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division [1], may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the division.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

"(4) Be publicly reprimanded by the division.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

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[1] California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

5. Section 2228 of the Code states:

"The authority of the board or a division of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to the following:

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

"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the division. If an examination is ordered, the board or division shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee's choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care, as defined by the Division of Medical Quality.

6. Section 2234 of the Code states:

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

"(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 [Chapter 5, the Medical Practice Act].

"(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.".

7. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

8. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.

"(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. The Division of Medical Quality may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing may order the denial of the license when the time for appeal has elapsed or the judgment of

conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

9. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code sections 2234, subdivisions (a), (e), and (f) based on his use of illegal drugs. The facts and circumstances are as follows:

A. On October 5, 2009, the Board received a report pursuant to California Business and Professions Code section 805 from Robert Adler, M.D., Children's Hospital Los Angeles, regarding Respondent. According to the report, on September 11, 2009, Respondent was observed falling asleep at work at Childrens' Hospital, mumbling incoherently, and otherwise acting in a manner such that the hospital requested that Respondent submit to a test for illegal substances; the result was positive for cocaine. On September 18, 2009, Respondent was suspended from his employment.

B. On October 24, 2009, Respondent was found sitting in an idling car by Culver City police officers in the parking lot of the Half Moon Motel, located at 3958 Sepulveda Boulevard in Culver City. During the officers' conversation with Respondent, Respondent appeared very animated and could not sit still. He moved his hands around as if he could not relax, continuously moved around in his seat, licked his lips as if his mouth was dry, and appeared to be grinding his teeth. The officers recognized these characteristics as commonly exhibited by individuals under the influence of narcotics. Drug paraphernalia with drug residue and forged prescription pads were subsequently found in Respondent's vehicle.

C. On February 17, 2010, Respondent was interviewed at the Board's Cerritos District Office by Investigator Jaime Sandoval and and Deputy Attorney General Klint James McKay. Respondent admitted that he had used cocaine in the days preceding his appearance at

Children's Hospital described above as well as prior to his encounter with the Culver City police, and that he had used cocaine as well as methamphetamine within several weeks prior to February 17, 2010.

D. Thereafter, Respondent executed a voluntary suspension of his medical Certificate on February 18, 2010; the Certificate remains suspended.

10. Respondent's misuse of cocaine and methamphetamine constitutes unprofessional conduct within the meaning of Code section 2234.

SECOND CAUSE FOR DISCIPLINE
(Use of Illegal Substances)

11. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code section 2239 based on the facts set forth above.

PRAYER

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

1. Revoking or suspending Physician's & Surgeon's Certificate No. A76121, issued to Brian Keith Gamble, M.D.;

2. Revoking, suspending or denying approval of his authority to supervise physician assistants, pursuant to Section 3527 of the Code;

3. If placed on probation, ordering him to pay the costs of probation monitoring; and

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

DATED: April 27, 2010.

LINDA K. WHITNEY,
Interim Executive Director,
Medical Board of California,
Complainant

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