

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

In the Matter of the Accusation Against:)

BARRY LYNN FRIEDBERG, M.D.)

**Physician's and Surgeon's)
Certificate No. G 29706)**

Respondent)

Case No. 11-2012-225049

DECISION AND ORDER

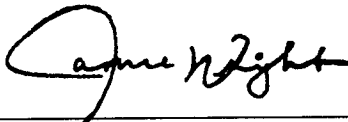
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 19, 2015.

IT IS SO ORDERED: January 20, 2015.

MEDICAL BOARD OF CALIFORNIA

By:



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

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
CALIFORNIA DEPARTMENT OF JUSTICE
5 300 So. Spring Street, Suite 1702
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 11-2012-225049

12 **BARRY LYNN FRIEDBERG, M.D.**
13 **P.O. Box 8222**
Newport Beach, CA 92658
14 **Physician's & Surgeon's Certificate No.**
G29706

OAH No. 2014030600

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
21 Board of California (Board). She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Tan N. Tran, Deputy Attorney General.

24 2. Respondent BARRY LYNN FRIEDBERG, M.D. ("Respondent") is represented in
25 this proceeding by attorney Steven A. Silverstein, whose address is: 701 South Parker Street,
26 Suite 5500, Orange, California 92868.

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1 3. On or about July 1, 1975, the Medical Board of California issued Physician's &
2 Surgeon's Certificate No. G29706 to BARRY LYNN FRIEDBERG, M.D. (Respondent). The
3 Physician's & Surgeon's Certificate was in full force and effect at all times relevant to the charges
4 brought in Accusation No. 11-2012-225049 and will expire on December 31, 2014, unless
5 renewed.

6 JURISDICTION

7 4. Accusation No. 11-2012-225049 was filed before the Medical Board of California
8 (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The
9 Accusation and all other statutorily required documents were properly served on Respondent on
10 February 3, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

11 5. A copy of Accusation No. 11-2012-225049 is attached as exhibit A and incorporated
12 herein by reference.

13 ADVISEMENT AND WAIVERS

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Accusation No. 11-2012-225049. Respondent has also carefully read,
16 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
17 Disciplinary Order.

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

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

27 ///

28 ///

1 CULPABILITY

2 9. Respondent does not contest that at an administrative hearing, complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in First
4 Amended Accusation No. 11-2012-225049, and that he has thereby subjected his Physician's
5 and Surgeon's Certificate No. G 29706 to disciplinary action.

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

9 CIRCUMSTANCES IN MITIGATION

10 11. Respondent BARRY LYNN FRIEDBERG, M.D. has never been the subject of any
11 disciplinary action. He is admitting responsibility at an early stage in the proceedings.

12 RESERVATION

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

17 CONTINGENCY

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

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

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

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Physician's & Surgeon's Certificate No. G29706 issued to
9 Respondent BARRY LYNN FRIEDBERG, M.D. (Respondent) is revoked. However, the
10 revocation is stayed and Respondent is placed on probation for three (3) years on the following
11 terms and conditions.

12 1. EDUCATION COURSE. Within 60 calendar days of the effective date of this
13 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
14 for its prior approval educational program(s) or course(s) which shall not be less than 25 hours
15 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
16 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
17 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
18 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
19 completion of each course, the Board or its designee may administer an examination to test
20 Respondent's knowledge of the course. Respondent shall provide proof of attendance for the
21 required hours of CME of which 25 hours were in satisfaction of this condition.

22 2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective
23 date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to
24 the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education
25 Program, University of California, San Diego School of Medicine (Program), approved in
26 advance by the Board or its designee. Respondent shall provide the program with any information
27 and documents that the Program may deem pertinent. Respondent shall participate in and
28 successfully complete the classroom component of the course not later than six (6) months after

1 Respondent's initial enrollment. Respondent shall successfully complete any other component of
2 the course within one (1) year of enrollment. The medical record keeping course shall be at
3 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
4 requirements for renewal of licensure.

5 A medical record keeping course taken after the acts that gave rise to the charges in the
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
7 or its designee, be accepted towards the fulfillment of this condition if the course would have
8 been approved by the Board or its designee had the course been taken after the effective date of
9 this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its
11 designee not later than 15 calendar days after successfully completing the course, or not later than
12 15 calendar days after the effective date of the Decision, whichever is later.

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

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

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than 15 calendar days after successfully completing the program or not later
2 than 15 calendar days after the effective date of the Decision, whichever is later.

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

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

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

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

28 The monitor(s) shall submit a quarterly written report to the Board or its designee which

1 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
2 are within the standards of practice of medicine, and whether Respondent is practicing medicine
3 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
4 that the monitor submits the quarterly written reports to the Board or its designee within 10
5 calendar days after the end of the preceding quarter.

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

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

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

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

1 6. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is
2 prohibited from supervising physician assistants.

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

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

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

11 9. GENERAL PROBATION REQUIREMENTS.

12 Compliance with Probation Unit

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

15 Address Changes

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

21 Place of Practice

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

25 License Renewal

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

28 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.

10. 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.

11. 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 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. 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.

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

1 and conditions of probation: Obey All Laws; and General Probation Requirements.

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

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

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

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

28 ///

1 ACCEPTANCE


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

7
8 DATED: 11/1/14


BARRY LYNN FRIEDBERG, M.D.
Respondent

10 I have read and fully discussed with Respondent BARRY LYNN FRIEDBERG, M.D. the
11 terms and conditions and other matters contained in the above Stipulated Settlement and
12 Disciplinary Order. I approve its form and content.

13 DATED: 11/1/14


Steven A. Silverstein
Attorney for Respondent

15
16 ENDORSEMENT

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

19 Dated: 11/3/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

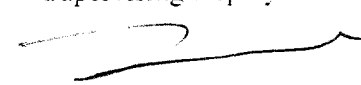

TAN N. TRAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 11-2012-225049

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 TAN N. TRAN
Deputy Attorney General
4 State Bar No. 197775
California Department of Justice
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO February 3 20 14
BY R. FIDDAUS ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 11-2012-225049

13 **BARRY LYNN FRIEDBERG, M.D.**
P.O. Box 8222
Newport Beach, CA 92658

A C C U S A T I O N

14 **Physician's & Surgeon's Certificate No.**
G29706

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Interim Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.

23 2. On or about July 1, 1975, the Medical Board of California issued Physician's &
24 Surgeon's Certificate Number G29706 to BARRY LYNN FRIEDBERG, M.D. (Respondent).
25 The Physician's & Surgeon's Certificate was in full force and effect at all times relevant to the
26 charges brought herein and will expire on December 31, 2014, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation 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.

4. 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."

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

6. Section 2234 of the Code states:

"The board 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:

///

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

3 "(b) Gross negligence.

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

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

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

14 "(d) Incompetence.

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

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

18 "(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of
21 the proposed registration program described in Section 2052.5.

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview scheduled by the mutual agreement of the certificate holder and the
24 board. This subdivision shall only apply to a certificate holder who is the subject of an
25 investigation by the board."

26 7. Section 2266 of the Code states:

27 "The failure of a physician and surgeon to maintain adequate and accurate records
28 relating to the provision of services to their patients constitutes unprofessional conduct."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
4 the Code in that he committed acts or omissions involving gross negligence in the care and
5 treatment of patient P.K.¹ The circumstances are as follows:

6 9. Patient P.K., a 57 year-old female, went to Smile Implant Center on or about January
7 19, 2010 for dental implant surgery. She was apparently healthy other than controlled
8 hypertension, although there was no written physician evaluation provided prior to her procedure.
9 To start the procedure, P.K. was given multiple medications including Diazepam² 5mg, Halcion³
10 0.25 mg, Lorazepam⁴ 2 mg, Hydroxyzine⁵ 50 mg, Keflex⁶ 500 mg 4 tablets, and Motrin 800 mg.
11 P.K. could not tolerate the procedure and at about 10:29, additional medications, Diazepam 10
12 mg and Lorazepam 2 mg, were given.

13 10. The initial intent was to perform P.K.'s surgery with oral sedation and local
14 anesthesia. However, after the procedure had begun, the patient awakened, despite substantial
15 oral medication, and per Respondent, the patient insisted upon being asleep for the remainder of
16 the procedure. The dental staff then asked Respondent to provide anesthesia services for the
17 patient. Respondent subsequently provided IV sedation to facilitate completion of the dental
18 implant procedure and used Propofol,⁷ totaling 450 mg, as an infusion and as boluses and a 50 mg
19 bolus of Ketamine.⁸

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21 ///

22 ¹ The patient is identified by initials for privacy protection.

23 ² Diazepam or Valium is a benzodiazepine is used as a premedication for sedation and is
used to treat anxiety.

24 ³ Halcion is a benzodiazepine used to treat insomnia.

24 ⁴ Lorazepam or Ativan is a benzodiazepine is used to treat anxiety.

25 ⁵ Hydroxyzine is an antihistamine, it is used as a premedication for sedation and used to
treat anxiety and allergic reactions.

26 ⁶ Keflex or Cephalexin is an antibiotic.

26 ⁷ Propofol is a short-acting intravenously administered amnesiac and hypnotic. It is used
for the induction and maintenance of general anesthesia.

27 ⁸ Ketamine is drug used primarily for the induction and maintenance of general
28 anesthesia.

1 11. At about 1400 hours on January 19, 2010, P.K.'s oxygen saturation fell to 85% per
2 the pulse oximeter. Respondent assessed P.K. and felt no pulse.⁹ Respondent diagnosed that P.K.
3 was in Pulseless Electrical Activity, and then attached the EKG monitor. Respondent failed at
4 resuscitation of P.K. Respondent unsuccessfully attempted a blind oral intubation to secure the
5 patient's airway, administered an injection of Epinephrine through the chest wall directly into the
6 heart, and administered an injection of Epinephrine through P.K.'s throat and into her windpipe.

7 12. An emergency call was placed to 911. Upon arrival, the paramedics successfully
8 intubated and resuscitated P.K. and accused Respondent of interfering with their efforts to
9 provide care. The patient was transported to Hoag Hospital in Newport Beach, CA, where she
10 was declared brain dead on January 23, 2010. Respondent provided the paramedics with
11 anesthesia records pertaining to P.K. that differ from the anesthesia records found in the patient's
12 chart at Smile Implant Center.

13 13. Respondent's care and treatment of P.K. as set forth above includes the following acts
14 and/or omissions which constitute extreme departures from the standard of practice:

- 15 A. Failing to adequately monitor and manage P.K.'s airway.
- 16 B. Failing to use a precordial stethoscope to monitor P.K.'s ventilation.
- 17 C. Failing to use End Tidal Carbon Dioxide (ETC02) Monitoring to assess both
18 ventilation and perfusion.
- 19 D. Failing to conduct an appropriate resuscitation.
- 20 E. Failing to employ EKG monitoring from the beginning of the administration of
21 IV sedation.
- 22 F. Failing to recognize that P.K. was predisposed to respiratory compromise,
23 respiratory distress, and respiratory obstruction, due to the synergistic effect of the drugs
24 that he administered to P.K.
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- 26

27 ⁹ There is evidence that during this time, Respondent was talking on his cell phone
28 instead of addressing potentially significant changes in P.K.'s status.

1 G. Failing to realize that the IV sedation anesthesia had turned into a general
2 anesthetic.

3 H. Failing to use a laryngoscope to intubate and secure P.K.'s airway.

4 I. Failing to respond appropriately to a medical emergency, his delay in calling
5 911 and continuing his cell phone conversation, instead of addressing significant changes
6 in P.K.'s status.

7 J. Failing to adequately document his care and treatment of P.K., namely
8 recordation of the patient's history, physical examination, physical status, and anesthetic
9 plan.

10 K. Failing to identify late entries made to the medical records of P.K.; the
11 anesthesia records given to the paramedics are different from those placed in Smile Implant
12 Center records.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Repeated Negligent Acts)**

15 14. Respondent is subject to disciplinary action under section 2234, subdivision (c), of
16 the Code in that Respondent committed repeated negligent acts in his care and treatment of
17 patient P.K. as listed above. The circumstances are as follows:

18 15. The facts and circumstances in paragraphs 9 through 13A-K are incorporated by
19 reference as if set forth in full herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Incompetence)**

22 16. Respondent is subject to disciplinary action under Code section 2234, subdivision (d),
23 in that he was incompetent in the care and treatment of patient P.K. The facts and circumstances
24 alleged in the First and Second Causes for Discipline are incorporated as if fully set forth.

25 **FOURTH CAUSE FOR DISCIPLINE**

26 **(Failure to Maintain Adequate and Accurate Records)**

27 17. Respondent is subject to disciplinary action under Code section 2266, in that he failed
28 to maintain adequate and accurate records relating to the provision of services to patient P.K. The

fact and circumstances alleged in the First and Second Causes for Discipline are incorporated as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Dishonest Acts)

18. Respondent is subject to disciplinary action under section 2234, subdivision (e), of the Code in that he committed dishonest acts by providing anesthesia records to the paramedics which are different from those contained in Smile Implant Center records.

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 Number G29706 issued to Barry Lynn Friedberg, M.D.;

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

3. Ordering him to pay the Board the costs of probation monitoring, if he is placed on probation; and

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

DATED: February 3, 2014


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

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