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7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke  
11 Probation Against,

Case No. 800-2016-028284

12 **WENDELL WARREN WENNEKER, M.D.**

**DEFAULT DECISION**  
**AND ORDER**

13 **3443 Villa Lane, Suite 3**  
14 **Napa, CA 94558**  
**Physician's and Surgeon's Certificate No.**  
15 **G37197**

[Gov. Code, §11520]

16 Respondent

17 On or about February 22, 2017, an employee of the Medical Board of California (Board),  
18 served by Certified Mail a copy of the Petition to Revoke Probation Case No. 800-2016-028284,  
19 Statement to Respondent, Notice of Defense, Request for Discovery, Government code sections  
20 11507.5, 11507.6 and 11507.7, and Accusation/Petition Packet to Wendell Warren Wenneker,  
21 M.D. (Respondent) at his address of record with the Board, which was and is 3443 Villa Lane,  
22 Suite 3, Napa, CA 94558. According to the U.S. Postal Service Tracking Information, on  
23 February 27, 2017, the Certified Mail was delivered and left with an individual at the address. A  
24 certified mail receipt was also returned showing the mail was delivered and received. (Exhibit  
25 Package, Exhibit 1<sup>1</sup>: Petition to Revoke Probation, the related documents, Declaration of Service,  
26 U.S. Postal Service Tracking Information, and Certified Mail Receipt.)

27 <sup>11</sup> The evidence in support of this Default Decision and Order is contained in the "Exhibit  
28 "Package."

1 Respondent has not responded to the Petition to Revoke Probation. On March 23, 2017, an  
2 employee of the Attorney General's Office sent by certified and regular mail addressed to  
3 Respondent at his address of record a Courtesy Notice of Default, advising Respondent of the  
4 Petition to Revoke Probation, and providing Respondent with an opportunity to request relief  
5 from default. According to the U.S. Postal Tracking Information, on March 27, 2017, the  
6 certified mail was delivered and left with an individual at the address. A certified mail receipt  
7 was also returned showing the mail was delivered and received. (Exhibit Package, Exhibit 2:  
8 Courtesy Notice of Default, Declaration of Service, U.S. Postal Service Tracking Information,  
9 and Certified Mail Receipt.)

#### 10 FINDINGS OF FACT

##### 11 I.

12 Complainant Kimberly Kirchmeyer is the Executive Director of the Medical Board of  
13 California, Department of Consumer Affairs. The charges and allegations in the Petition to  
14 Revoke Probation No. 800-2016-028284 were at all times brought and made solely in the official  
15 capacity of the Board's Executive Director.

##### 16 II.

17 On or about July 3, 1978, the Medical Board of California (Board) issued Physician's and  
18 Surgeon's Certificate No. G37197 to Respondent. The Physician's and Surgeon's Certificate  
19 expired on November 30, 2015 and has not been renewed and is in delinquent status. (Exhibit  
20 Package, Exhibit 3: Certificate of License.)

##### 21 III.

22 Business and Professions Code section 118 states, in pertinent part:

23 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
24 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
25 order of a court of law, or its surrender without the written consent of the board, shall not, during  
26 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
27 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
28

1 provided by law or to enter an order suspending or revoking the license or otherwise taking  
2 disciplinary action against the license on any such ground."

3 IV

4 On or about February 22, 2017, Respondent was served with the Petition to Revoke  
5 Probation, alleging causes for discipline against Respondent. The Petition to Revoke Probation  
6 and accompanying documents were duly served on Respondent. A Courtesy Notice of Default  
7 was thereafter served on Respondent. Respondent failed to file a Notice of Defense.

8 V.

9 The allegations of the Petition to Revoke Probation are true as follows:

10 On January 2, 2013, Accusation No. 12-2011-217080 was filed against Respondent alleging  
11 violations of section 2234(b) [gross negligence] and/or (c) [repeated acts of negligence] in  
12 reference to Respondent's surgical treatment of one patient for removal of a suspicious colon  
13 mass. In October of 2013, Respondent signed a stipulation agreeing to a disciplinary order  
14 revoking his Physician and Surgeon's Certificate, but staying the revocation and placing him on  
15 three (3) years' probation on certain terms and conditions. The Board adopted this stipulation as  
16 its final Decision in the matter, and the effective date of the Decision and Order was January 10,  
17 2014.

18 A copy of the January 10, 2014 Decision and Order is attached as Exhibit A to the Petition  
19 to Revoke Probation. (Exhibit Package, Exhibit A, Decision and Order attached to Exhibit 1:  
20 Accusation/Petition) The agency has jurisdiction to adjudicate this case by default. The Board is  
21 authorized to revoke Respondent's Physician's and Surgeon's Certificate based upon the  
22 following violations alleged in the Petition to Revoke Probation:

23 1. Non-Practice While On Probation

24 Condition 9 of the Decision (Exhibit A, p. 8) states:

25 "NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
26 its designee in writing within 15 calendar days of any periods of non-practice lasting  
27 more than 30 calendar days and within 15 calendar days of Respondent's return to  
28 practice ... Respondent's period of non-practice while on probation shall not exceed  
two (2) years..."

1 On July 7, 2014, Respondent stated in his Quarterly Report that he had worked less than 30  
2 hours in June 2014 and had ceased practice on June 30, 2014. In 2015, Respondent provided two  
3 Quarterly Report, in July and October 2015, confirming that he no longer practice medicine since  
4 he retired on July 1, 2014. In Respondent's last Quarterly Report in January 2016, he again stated  
5 he retired from practice on July 1, 2014 and did not renew his medical license on November 30,  
6 2015. (Exhibit Package, Exhibit 4: Declaration of Arlene Caballero)

7 Respondent's probation is subject to revocation because his period of non-practice has  
8 exceeded two (2) years in violation of Condition 9, as referenced above.

9 2. Failure to Submit Quarterly Declarations

10 Condition 6 of the Decision (Exhibit A, p. 7) states:

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

15 Respondent timely submitted the Quarterly Declaration forms due on April 10, 2014 and  
16 July 10, 2014, but he failed to submit the forms due on October 10, 2014, January 10, 2015, and  
17 April 10, 2015. Respondent submitted two quarterly declarations in July and October 2015. In  
18 January 2016, Respondent submitted his last quarterly declaration. (Exhibit Package, Exhibit 4:  
19 Declaration of Arlene Caballero)

20 Respondent's probation is subject to revocation for his failure to submit Quarterly  
21 Declarations, in violation of Condition 6, as referenced above.

22 3. Failure to Comply with the Probation Unit

23 Condition 7 of the Decision (Exhibit A, p. 7) lists General Probation Requirements,  
24 the first of which states:

25 "Compliance with Probation Unit Respondent shall comply with the Board's probation  
26 unit and all terms and conditions of this Decision."

27 Another requirement states:

28 "License Renewal Respondent shall maintain a current and renewed California physician's  
and surgeon's license."

1 Respondent has repeatedly failed to comply with requests from his probation officer to  
2 speak with his probation officer and has failed to submit quarterly reports, which are violations of  
3 Condition 7, as referenced above. (Exhibit Package, Exhibit 4: Declaration of Arlene Caballero)

4 Moreover, Respondent has failed to maintain a current and renewed California physician's  
5 and surgeon's license, in violation of Condition 7, as referenced above.

6  
7 DETERMINATION OF ISSUES

8 Based on the foregoing findings of fact, Respondent Wendell Warren Wenneker, M.D. has  
9 subjected his Physician's and Surgeon's Certificate No. G37197 to discipline. Respondent's  
10 violations of conditions of his probation constitute cause to revoke his certificate.

11 ORDER

12 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G37197, heretofore  
13 issued to Respondent Wendell Warren Wenneker, M.D., is revoked.

14 Respondent shall not be deprived of making a request for relief from default as set forth in  
15 Government Code section 11520, subdivision (c), for good cause shown. However, such showing  
16 must be made in writing by way of a motion to vacate the default decision and directed to the  
17 Medical Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within  
18 seven (7) days after service of the Decision on Respondent.

19 This Decision shall become effective on June 2, 2017.

20 It is so ORDERED May 5, 2017

21  
22  
23 MEDICAL BOARD OF CALIFORNIA  
24 DEPARTMENT OF CONSUMER AFFAIRS  
25 STATE OF CALIFORNIA

26 By   
27 KIMBERLY KIRCHMEYER  
28 EXECUTIVE DIRECTOR

1 XAVIER BECERRA  
Attorney General of California  
2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
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E-mail: Alice.Wong@doj.ca.gov  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Feb 22 20 17  
BY [Signature] ANALYST

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

11 In the Matter of the Petition to Revoke  
12 Probation Against,

Case No. 800-2016-028284

13 **WENDELL WARREN WENNEKER, M.D.**  
14 **3443 Villa Lane, Suite 3**  
**Napa, CA 94558**

**PETITION TO REVOKE PROBATION**

15 **Physician's and Surgeon's Certificate No.**  
16 **G37197**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about July 3, 1978, the Medical Board of California issued Physician's and  
25 Surgeon's Certificate Number G37197 to Wendell Warren Wenneker, M.D. (Respondent). The  
26 Physician's and Surgeon's Certificate expired on November 30, 2015 and is in delinquent status.

27 3. In a disciplinary action entitled "In the Matter of the Accusation Against Wendell  
28 Warren Wenneker, M.D.," Case No. 12-2011-217080, the Medical Board of California, issued a

1 decision, effective January 10, 2014, in which Respondent's Physician's and Surgeon's Certificate  
2 was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's  
3 Certificate was placed on probation for a period of three (3) years with certain terms and  
4 conditions. A copy of that decision ("2014 Decision") is attached as Exhibit A and is  
5 incorporated by reference.

#### 6 JURISDICTION

7 4. This Petition to Revoke Probation is brought before the Medical Board of California  
8 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All  
9 section references are to the Business and Professions Code unless otherwise indicated.

10 5. Section 2227 of the Code states:

11 "(a) A licensee whose matter has been heard by an administrative law  
12 judge of the Medical Quality Hearing Panel as designated in Section 11371 of the  
13 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:

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

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

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

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

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

22 "(b) Any matter heard pursuant to subdivision (a), except for warning  
23 letters, medical review or advisory conferences, professional competency  
24 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."

25 ///

26 ///

27 ///

1           6.     Section 2228 of the Code states, in pertinent part:

2                     “The authority of the board . . . to discipline a licensee by placing him or  
3                     her on probation includes, but is not limited to, the following:

4                     “(a) Requiring the licensee to obtain additional professional training and  
5                     to pass an examination upon the completion of the training. . . .

6                     “(b) Requiring the licensee to submit to a complete diagnostic  
7                     examination by one or more physicians and surgeons appointed by the board.

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

11                    “(d) Providing the option of community service in cases other than  
12                    violations relating to quality of care.”

13           7.     Section 2229 of the Code states, in pertinent part:

14                    “(a) Protection of the public shall be the highest priority of the Division  
15                    of Medical Quality<sup>1</sup> . . . and administrative law judges of the Medical Quality  
16                    Hearing Panel in exercising their disciplinary authority.

17                    “(b) In exercising his or her disciplinary authority, an administrative law  
18                    judge of the Medical Quality Hearing Panel, the division, . . . shall, whenever  
19                    possible, take action that is calculated to aid in the rehabilitation of the licensee, or  
20                    where, due to a lack of continuing education or other reasons, restriction on scope of  
21                    practice is indicated, to order restrictions as are indicated by the evidence.

22                    “(c) It is the intent of the Legislature that the division . . . and the  
23                    enforcement program, shall seek out those licensees who have exhibited deficiencies  
24                    in competency and then take those actions as are indicated, with priority given to  
25                    those measures, including further education, restrictions from practice, or other  
26                    means, that will remove those deficiencies. Where rehabilitation and protection are  
27                    inconsistent, protection shall be paramount.” paramount.”

28           8.     Paragraph 11 of the Board’s 2014 Decision (Exhibit A, p. 9) states:

“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.”

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<sup>1</sup> Section 2002 of the Code states that the term “Division of Medical Quality” shall be  
deemed to refer to the Medical Board of California.



1                    FACTS CONCERNING RESPONDENT'S CONDUCT ON PROBATION

2            9.        On January 2, 2013, Accusation No. 12-2011-217080 was filed against  
3 Respondent alleging violations of section 2234(b) [gross negligence] and/or (c) [repeated acts of  
4 negligence] in reference to Respondent's surgical treatment of one patient for removal of a  
5 suspicious colon mass. In October of 2013, Respondent signed a stipulation agreeing to a  
6 disciplinary order revoking his physician and surgeon's certificate, but staying the revocation and  
7 placing him on three (3) years' probation. Terms and conditions of the stipulation pertinent to  
8 this action include a provision that Respondent's period of non-practice while on probation shall  
9 not exceed two (2) years; that he submit timely quarterly declarations; and that he be available in  
10 person for interviews with or without notice. General Probation Requirements include that he  
11 comply with the Board's probation unit and that he shall maintain a current and renewed  
12 California physician's and surgeon's license. The Board adopted this stipulation as its final 2014  
13 Decision in the matter, and the effective date of the 2014 Decision was January 10, 2014.

14           10.      Respondent first met with probation inspector, Arlene Caballero, on January 16,  
15 2014, at the Board's investigative office in Pleasant Hill. Respondent signed an  
16 Acknowledgment of Decision. Ms. Caballero reviewed all the terms and conditions of probation  
17 with Respondent, and he signed a copy of a list of all of his personal Quarterly Declaration Due  
18 Dates. After reviewing the Decision in its entirety, Respondent indicated he understood and  
19 would comply with the terms and conditions.

20           11.      On July 7, 2014, Ms. Caballero received Respondent's Quarterly Report, which  
21 indicated that he had worked less than 30 hours in June 2014 and had ceased practice on June 30,  
22 2014.

23           12.      On August 4, 2014, Ms. Caballero interviewed Respondent at his empty office in  
24 Napa, California, and she was informed by Respondent that he is retired and will no longer  
25 practice medicine. Ms. Caballero provided Respondent with a Voluntary Request to Surrender  
26 License While on Probation form, and Respondent indicated he would think it over prior to  
27 signing.  
28

1           13. On August 6, 2014, Ms. Caballero received Respondent's signed Voluntary Request  
2 to Surrender License While on Probation form. Ms. Caballero provided the document to Medical  
3 Board Headquarters for processing. The Board approved Respondent's request to surrender, and  
4 on August 26, 2014, the Medical Board Probation Unit sent Respondent the surrender documents  
5 to sign and return within 30 days. He did not return the signed documents within 30 days or  
6 thereafter.

7           14. Ms. Caballero attempted to contact Respondent many times after he failed to return  
8 his signed surrender documents.

9           15. On October 16, 2014, Ms. Caballero received Respondent's letter to the Medical  
10 Board Probation Unit, which stated Respondent will not surrender his license as he had not been  
11 informed that he could not declare himself to be a doctor following the surrender of his license.  
12 Respondent indicated that he was resigned to not practice medicine in California ever again.

13           16. In Respondent's 2015 Quarterly Reports, he indicated he did not spend any hours in  
14 the practice of medicine and retired July 1, 2014. On or about April 16, 2015, Ms. Caballero  
15 received a facsimile of a letter she wrote to Respondent with a handwritten note from  
16 Respondent. The note stated Respondent retired from the practice of medicine on July 1, 2014  
17 when his malpractice insurance coverage lapsed and that he would not renew his license which  
18 was due to expire on November 30, 2015. Respondent did not submit any Quarterly Reports for  
19 2016 and did not renew his medical license.

20           17. Ms. Caballero attempted to schedule a meeting with Respondent in March and June  
21 of 2016. On June 22, 2016, Ms. Caballero received an e-mail from Respondent which stated that  
22 he would no longer meet with probation, acknowledged his medical license had expired, and  
23 informed he had no plans to practice medicine in the future.

24                           FIRST CAUSE TO REVOKE PROBATION

25                           (Non-Practice While on Probation)

26           18. The allegations of paragraphs 9 through 17, above, are incorporated herein by  
27 reference as if fully set forth.

28           19. Condition 9 of the Decision (Exhibit A, pp. 8-10) states, in pertinent part:

1       “NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
2       its designee in writing within 15 calendar days of any periods of non-practice lasting  
3       more than 30 calendar days and within 15 calendar days of Respondent’s return to  
4       practice. Non-practice is defined as any period of time Respondent is not practicing  
5       medicine in California as defined in Business and Professions Code sections 2051 and  
6       2052 for at least 40 hours in a calendar month in direct patient care, clinical activity  
7       or teaching, or other activity as approved by the Board. All time spent in an intensive  
8       training program which has been approved by the Board or its designee shall not be  
9       considered non-practice. Practicing medicine in another state of the United States or  
10       Federal jurisdiction while on probation with the medical licensing authority of that  
11       state or jurisdiction shall not be considered non-practice. A Board-ordered  
12       suspension of practice shall not be considered as a period of non-practice.”

13       “...”

14       “Respondent’s period of non-practice while on probation shall not exceed two (2)  
15       years.”

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

17  
18       20. Respondent stated in his 2015 quarterly declarations submitted and in his request for  
19       voluntary surrender of his license, which he later rescinded, that he retired on July 1, 2014 and  
20       that he has not practice medicine since that time.

21       21. Respondent’s probation is subject to revocation because his period of non-practice  
22       has exceeded two (2) years in violation of Probation Condition 9, as referenced above.

## 23       SECOND CAUSE TO REVOKE PROBATION

24       (Failure to Submit Quarterly Declarations)

25       22. The allegations of paragraphs 9 through 17, above, are incorporated herein by  
26       reference as if fully set forth.

27       23. Condition 6 of the Decision (Exhibit A, p. 7) states:

28       “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 conditions of probation. Respondent shall submit quarterly  
declarations not later than 10 days after the end of the preceding quarter.”

29       24. At his first meeting with Ms. Caballero, she provided Respondent with his personal  
30       quarterly declaration forms and a schedule of when the executed forms were due. Respondent  
31       submitted the forms in 2014 and 2015. Respondent failed to submit any 2016 quarterly  
32       declarations.

1           25. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition 6, referenced above.

3                                   THIRD CAUSE TO REVOKE PROBATION

4                                   (Failure to Comply with Probation Unit)

5           26. The allegations of paragraphs 9 through 17, above, are incorporated herein by  
6 reference as if fully set forth.

7           27. Condition 7 of the Decision (Exhibit A, pp. 7-8) lists General Probation  
8 Requirements, the first of which states:

9                   "Compliance with Probation Unit Respondent shall comply with the Board's probation  
10                   unit and all terms and conditions of this Decision."

11                   "..."

12                   "License Renewal Respondent shall maintain a current and renewed California physician's  
13                   and surgeon's license."

14           28. As set forth above, Respondent has repeatedly failed to comply with requests from his  
15 probation officer to speak and meet with her and has failed to submit quarterly reports in 2016.  
16 Moreover, he has failed to maintain a current and renewed California physician's and surgeon's  
17 license.

18                                   FOURTH CAUSE TO REVOKE PROBATION

19                                   (Failure to Interview with Probation Unit)

20           29. The allegations of paragraphs 9 through 17, above, are incorporated herein by  
21 reference as if fully set forth.

22           30. Condition 8 of the Decision (Exhibit A, p. 8) states:

23                   "INTERVIEW WITH THE BOARD OR ITS DESIGNEE: Respondent shall be available  
24                   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."

25           31. As set forth above, Respondent has repeatedly failed to comply with requests from his  
26 probation officer to speak and meet with her and has indicated that he will no longer meet with  
27 her.  
28

1 PRAYER

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

4 1. Revoking the probation that was granted by the Medical Board of California in Case  
5 No. 12-2011-217080 and imposing the disciplinary order that was stayed thereby revoking  
6 Physician's and Surgeon's Certificate No. G37197 issued to Wendell Warren Wenneker, M.D.;

7 2. Revoking, suspending or denying approval of Wendell Warren Wenneker, M.D.'s  
8 authority to supervise physician assistants, pursuant to section 3527 of the Code;

9 3. Ordering Wendell Warren Wenneker, M.D., if placed on probation, to pay the Board  
10 the costs of probation monitoring, and;

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

12  
13 DATED: February 22, 2017

  
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. 800-2016-028284**

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

In the Matter of the Accusation Against: )

WENDELL WARREN WENNEKER, M.D. )

MBC File # 12-2011-217080

Physician's & Surgeon's )  
Certificate No. G 37197 )

\_\_\_\_\_  
Respondent. )

**ORDER CORRECTING NUNC PRO TUNC**  
**CLERICAL ERROR IN "EFFECTIVE DECISION DATE" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the "Effective Decision Date" portion of the Decision in the above-entitled matter and that such clerical error should be corrected.

IT IS HEREBY ORDERED that the "Effective Decision Date" contained on the Decision Order Page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "This Decision shall become effective at 5:00 p.m. on January 10, 2014.

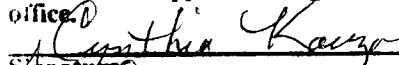
December 17, 2013



\_\_\_\_\_  
Dev Gnanadev, M.D., Chair  
Panel B

**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.

  
\_\_\_\_\_  
Cynthia Kaezo  
Signature  
\_\_\_\_\_  
For Custodian of records  
Title

\_\_\_\_\_  
11/8/2016  
Date

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

In the Matter of the Accusation Against: )

)

)

)

WENDELL WARREN WENNEKER, M.D. )

Case No. 12-2011-217080

)

Physician's and Surgeon's )

Certificate No. G 37197 )

)

Respondent. )

)

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on December 12, 2013

IT IS SO ORDERED January 10, 2014.

MEDICAL BOARD OF CALIFORNIA

By: Dev Gnanadev MD

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

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: Cynthia Kucya

Title: Ta Custodian of records

Date: 11/8/2016

Date



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

11 In the Matter of the Accusation Against:

Case No. 12-2011-217080

12 **WENDELL WARREN WENNEKER, M.D.**  
13 **SURGERY GROUP OF NAPA VALLEY**  
3443 Villa Lane, Suite 3  
14 Napa, CA 94558  
Physician and Surgeon's Certificate No. G  
15 37197

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 Respondent.

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

19 PARTIES

20 1. Linda K. Whitney (Complainant) was, at the time of filing of Accusation No. 12-2011-  
21 217080, the Executive Officer of the Medical Board of California. She brought this action solely  
22 in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of  
23 the State of California, by Vivien H. Hara, Deputy Attorney General.

24 2. Respondent Wendell Warren Wenneker, M.D. (Respondent) is represented in this  
25 proceeding by attorney John A. Etchevers, whose address is:

26 John A. Etchevers, Esq.  
27 Hassard Bonnington LLP  
Two Embarcadero Center, Suite 1800  
28 San Francisco, CA 94111-3993

1           3.     On or about July 3, 1978, the Medical Board of California issued Physician and  
2 Surgeon's Certificate No. G 37197 to Wendell Warren Wenneker, M.D. (Respondent). Unless  
3 renewed, this certificate will expire on November 30, 2013.

4                                   JURISDICTION

5           4.     Accusation No. 12-2011-217080 was filed before the Medical Board of California  
6 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The  
7 Accusation and all other statutorily required documents were properly served on Respondent on  
8 January 2, 2013. Respondent timely filed his Notice of Defense contesting the Accusation.

9           5.     A copy of Accusation No. 12-2011-217080 is attached as exhibit A and incorporated  
10 herein by reference.

11                                   ADVISEMENT AND WAIVERS

12           6.     Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in Accusation No. 12-2011-217080. Respondent has also carefully read,  
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
15 Disciplinary Order.

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

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

25                                   CULPABILITY

26           9.     Respondent understands and agrees that the charges and allegations in Accusation  
27 No. 12-2011-217080, if proven at a hearing, constitute cause for imposing discipline upon his  
28 Physician and Surgeon's Certificate.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician 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.

RESERVATION

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

## CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California 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.

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

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15. 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. G 37197, issued to Respondent Wendell Warren Wenneker, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years upon the following terms and conditions.

1. CLINICAL TRAINING PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which Respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with Program recommendations.

///

1 At the completion of any additional educational or clinical training, Respondent shall  
2 submit to and pass an examination. Determination as to whether Respondent successfully  
3 completed the examination or successfully completed the program is solely within the program's  
4 jurisdiction.

5 If Respondent fails to enroll, participate in, or successfully complete the clinical training  
6 program within the designated time period, Respondent shall receive a notification from the  
7 Board or its designee to cease the practice of medicine within three (3) calendar days after being  
8 so notified. The Respondent shall not resume the practice of medicine until enrollment or  
9 participation in the outstanding portions of the clinical training program have been completed. If  
10 the Respondent did not successfully complete the clinical training program, the Respondent shall  
11 not resume the practice of medicine until a final decision has been rendered on the accusation  
12 and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of  
13 the probationary time period.]

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

23 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
24 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
25 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
26 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
27 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees

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1 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
2 signed statement for approval by the Board or its designee.

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

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

12 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
13 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
14 are within the standards of practice of medicine and whether Respondent is practicing medicine  
15 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
16 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
17 preceding quarter.

18 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
19 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
20 name and qualifications of a replacement monitor who will be assuming that responsibility within  
21 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
22 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
23 notification from the Board or its designee to cease the practice of medicine within three (3)  
24 calendar days after being so notified Respondent shall cease the practice of medicine until a  
25 replacement monitor is approved and assumes monitoring responsibility.

26 In lieu of a monitor, Respondent may participate in a professional enhancement program  
27 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
28 University of California, San Diego School of Medicine, that includes, at minimum, quarterly

1 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
2 and education. Respondent shall participate in the professional enhancement program at  
3 Respondent's expense during the term of probation.

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

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

13 4. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent  
14 is prohibited from supervising physician assistants.

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

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

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

23 7. GENERAL PROBATION REQUIREMENTS.

24 Compliance with Probation Unit

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

27 Address Changes

28 Respondent shall, at all times, keep the Board informed of Respondent's business and

1 residence addresses, email address (if available), and telephone number. Changes of such  
2 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
3 circumstances shall a post office box serve as an address of record, except as allowed by Business  
4 and Professions Code section 2021(b).

5 Place of Practice

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

9 License Renewal

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

12 Travel or Residence Outside California

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

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

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

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



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

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

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

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

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

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

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

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

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.

13. 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.

#### ACCEPTANCE

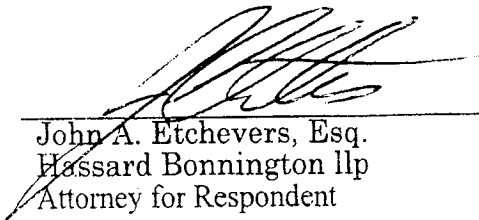
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John A. Etchevers. I understand the stipulation and the effect it will have on my Physician and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order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

DATED: 7-14-13

  
\_\_\_\_\_  
WENDELL WARREN WENNEKER, M.D.,  
Respondent

I have read and fully discussed with Respondent Wendell Warren Wenneker, M.D., Surgery Group of Napa Valley the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/15/13

  
\_\_\_\_\_  
John A. Etchevers, Esq.  
Hassard Bonnington llp  
Attorney for Respondent

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DATED: 11/20/2012

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

Oliver L. Hale

SF2012402741  
Stipulation.rtf

**Exhibit A**

**Accusation No. 12-2011-217080**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 VIVIEN H. HARA  
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E-mail: vivien.hara@doj.ca.gov  
7 Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 2, 2013  
BY: J. [Signature] ANALYST

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

In the Matter of the Accusation Against:

Case No. 12-2011-217080

**WENDELL WARREN WENNEKER, M.D.**

**Surgery Group of Napa Valley  
3443 Villa Lane, Suite 3  
Napa, CA 94558  
Physician and Surgeon's Certificate No. G  
37197**

**A C C U S A T I O N**

Respondent.

Complainant alleges:

**PARTIES**

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
2. On or about July 3, 1978, the Medical Board of California issued Physician and Surgeon's Certificate Number G 37197 to Wendell Warren Wenneker, M.D. (Respondent). Unless renewed, the license will expire on November 30, 2013.

**JURISDICTION**

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

1           4     Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
4 action taken in relation to discipline as the Board deems proper.

5           5.     Section 2234 of the Code, states:

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

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

10                    "(b) Gross negligence.

11                    "(c) Repeated negligent acts. To be repeated, there must be two or more  
12 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.

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

15                    "(2) When the standard of care requires a change in the diagnosis, act, or  
16 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  
17 licensee's conduct departs from the applicable standard of care, each departure  
constitutes a separate and distinct breach of the standard of care.

18                    "(d) Incompetence.

19                    "....."

## 20                                   CAUSES FOR DISCIPLINE

21                                   (Gross Negligence/Negligence)

22           6.     Respondent is subject to disciplinary action under section 2234(b) and/or (c) in that  
23 his care and treatment of Patient J.S.<sup>1</sup> was grossly negligent and/or repeatedly negligent. The  
24 circumstances are as follows:

25           7.     On or about June 7, 2010, Patient J.S., a 57 year old male prison inmate, underwent a  
26 colonoscopy at California Medical Facility (CMF) at Vacaville performed by Dr. M.S., a

27                    <sup>1</sup> Initials are used in this pleading to protect privacy. Respondent will be provided with  
28 the full names of patients or witnesses pursuant to any request for discovery.

1 gastroenterologist. Dr. S. reported that he found three polyps, one of which was described as a  
2 "polypoid mass lesion taking up about a third of the circumference at initially 40 cm, but this was  
3 on withdrawal and actually it was probably closer to the splenic flexure." Dr. S. reported that the  
4 lesion was "biopsied and then tattooed with 5 cc of Indian [sic] ink." A specimen was sent to  
5 pathology for analysis, and the pathology report indicated that the polyp was a villous adenoma  
6 with focally severe dysplasia and described the lesion as being at 40 cm from the anal verge.

7 8. A referral for surgery was made to Queen of the Valley Medical Center in Napa,  
8 California on July 20, 2010, and Respondent was consulted for that surgery. On admission, J.S.'  
9 condition was noted as "Colon mass prob malignant for colectomy tom." Respondent examined  
10 J.S. and noted that J.S. was a 57 [sic] year old man with a polyp at 40 cm showing severe  
11 dysplasia and that he needed a resection. Respondent noted informed consent was obtained, and  
12 he scheduled a laparoscopically-assisted left colectomy for the following day. Respondent relied  
13 on the CMF pathology report for his assessment. He did not have in his possession nor did he  
14 obtain the colonoscopy report of Dr. S from CMF.

15 9. On July 21, 2010, J.S. underwent a laparoscopically assisted sigmoid colectomy.  
16 Respondent stated in his operative report that "the gastroenterologist did not inject the lesion, so  
17 there was no marker." Respondent estimated 40 cm from the anal verge as being in the distal  
18 descending/proximal sigmoid colon and proceeded with a sigmoid colectomy. Respondent did  
19 not state in his operative report that he palpated or inspected the remaining parts of the colon for  
20 ink marks or a lesion, although he indicated he had done so at his physician conference with the  
21 Board on July 9, 2012. In order to perform a resection, Respondent converted to a mini-  
22 laparotomy, resected the mobilized portion of the colon and performed an anastomosis.  
23 Respondent did not open the specimen removed.

24 10. The specimen was sent to Queen of the Valley pathology and was examined on July  
25 22, 2010. The pathology report indicated that the gross and microscopic diagnosis of this portion  
26 of sigmoid colon was "NO POLYP OR OTHER NEOPLASM IDENTIFIED" and "NO  
27 NEOPLASM IDENTIFIED IN FIVE BENIGN MESENTERIC LYMPH NODES." The  
28 pathologist noted that there was no gross polyp or other lesion in the specimen and that these

1 results were discussed with Dr. Wenneker on July 23, 2010. Although Respondent indicated at  
2 his physician conference with the Board that he had discussed these results with the patient and a  
3 decision to wait and have a repeat colonoscopy in six months was made, there is no indication in  
4 the record that such a discussion took place.

5 11. On July 26, 2010, J.S. was discharged back to prison with appropriate medication.  
6 Respondent saw J.S. in follow up on October 12, 2010. J.S. had some abdominal pain, and  
7 Respondent noted that J.S. was doing well, but he might have an early hernia. Respondent saw  
8 J.S. in a second follow up appointment on March 1, 2011, where he found J.S. without complaints  
9 and with no pain or tenderness. Respondent recommended a colonoscopy in one (1) to one and  
10 one half (1½) years, then if negative, every five (5) years.

11 12. On July 25, 2011, J.S. had another colonoscopy done by Dr. S at CMF, which  
12 indicated a polyp, and a specimen was collected for biopsy. The pathology report on the  
13 specimen collected indicated, "LARGE INTESTINE, POLYPOID MASS AT 40 CM, BIOPSY:  
14 FRAGMENTS OF TUBULOVILLOUS/TUBULAR ADENOMA."

15 13. On August 15, 2011, J.S. was referred to Queen of the Valley for treatment. The  
16 admission history and physical noted in the history of present illness: "[J.S.] is a 59-year-old  
17 male with history of colonic polyp dictated in a colonoscopy from a year ago. The patient  
18 underwent surgery by Dr. Wenneker. Pathology at the time showed that there was no evidence of  
19 any polyp. The colon was entirely normal." On August 16, 2011, a repeat colonoscopy was  
20 performed and the tumor was marked for surgical excision. Queen of the Valley Pathology  
21 Department affirmed tissue specimens taken as: "FRAGMENTS OF ADENOMATOUS POLYP  
22 WITH FOCAL ARCHITECTURAL FEATURES APPROACHING SEVERE DYSPLASIA."  
23 J.S. was scheduled for surgery the following day with Respondent.

24 14. On August 17, 2011, Respondent performed a partial left colectomy on J.S. with  
25 takedown of the splenic flexure using laparoscopic assistance. The diagnosis preoperatively and  
26 postoperatively was "Polyp at 38 cm from the anal verge." J.S. had a slow return to gastric  
27 function postoperatively, and he was discharged to prison on August 22, 2011. The pathology  
28 report on the partial colectomy specimen indicated: "LARGE TUBULOVILLOUS ADENOMA



1 MEASURING 4.2 CM IN GREATEST DIMENSION, COMPLETELY EXCISED, WITH  
2 SURFACE CHANGES APPROACHING SEVERE DYSPLASIA. NO EVIDENCE OF  
3 INFILTRATING CARCINOMA.” Markings from the previous colonoscopy in June 2010 were  
4 found on the polyp removed. J.S. had an uneventful recovery after surgery.

5 15. Respondent’s treatment of patient J.S. constitutes gross negligence and/or repeated  
6 acts of negligence by reason of the following acts or omissions:

7 a. Respondent failed to obtain enough information preoperatively in June 2010 to plan  
8 the appropriate surgery for the patient. He failed to contact the gastroenterologist, Dr. S., or  
9 obtain the colonoscopy report. Absent this information, he failed to order a repeat colonoscopy to  
10 determine the exact location of the lesion and have it marked for surgery. Because of this,  
11 Respondent blindly performed a sigmoid colectomy, when a laparoscopic left hemicolectomy  
12 was indicated.

13 b. J.S. was diagnosed with a polyp with dysplasia, which should be treated as if it were a  
14 malignancy. When Respondent was unable to find the polyp intraoperatively, he guessed at its  
15 location and performed a sigmoid colectomy. He failed intraoperatively to thoroughly palpate the  
16 remainder of the colon to locate the lesion. Since Dr. S. had marked the location of the polyp, a  
17 thorough palpation would have revealed the markings or the polyp itself, which the colonoscopy  
18 report described as taking up one-third of the circumference of the colon. Even if the location  
19 had not been marked or could not be located, Respondent could have arranged for an  
20 intraoperative colonoscopy to determine its exact position before completing the surgery.

21 c. When the pathology report from the July 2010 colectomy indicated a normal bowel  
22 with no polyps or neoplasms, Respondent had concerns that he had missed the polyp, but he  
23 failed to convey this concern to the patient or to the referring physicians. Neither the CMF  
24 gastroenterologist nor the patient was aware the original polyp had not been removed until a  
25 second colonoscopy more than a year later.

26 d. In the second colectomy surgery on J.S. in August 2011, Respondent failed to perform  
27 an oncologically complete resection for a presumed cancer.  
28

1 16. Respondent's acts or omissions, as described above, whether singly, jointly, or in any  
2 combination thereof, constitute cause for discipline under sections 2234(b) (Gross Negligence)  
3 and/or (c) (Repeated Negligent Acts) of the Code.

4 **PRAYER**

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

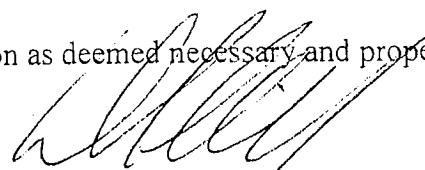
7 1. Revoking or suspending Physician and Surgeon's Certificate Number G 37197, issued  
8 to Wendell Warren Wenneker, M.D.;

9 2. Revoking, suspending or denying approval of Wendell Warren Wenneker, M.D.'s  
10 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

11 3 Ordering Wendell Warren Wenneker, M.D., if placed on probation, to pay to the  
12 Board the costs of probation monitoring;

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

14 DATED: January 2, 2013

  
15 LINDA K. WHITNEY  
16 Executive Director  
17 Medical Board of California  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

21 SF2012402741  
22 accusation  
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28