

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

In the Matter of the Accusation)
Against:)
)
)
JOSHUA B. GIBSON, M.D.)
)
Physician's and Surgeon's)
Certificate No. A69917)
)
Respondent)
_____)

Case No. 8002014010649

DECISION

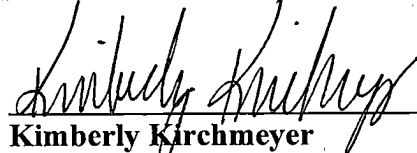
The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on SEPTEMBER 21, 2017

IT IS SO ORDERED AUGUST 22, 2017.

MEDICAL BOARD OF CALIFORNIA

By:



**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
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7 *Attorneys for Complainant*

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. 800-2014-010649

13 **JOSHUA B. GIBSON, M.D.**
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

14 **STIPULATED SURRENDER OF**
15 **LICENSE AND ORDER**

16 **Physician's and Surgeon's Certificate No. A**
69917

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. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Xavier Becerra, Attorney General of the State of California, by Emily L. Brinkman,
23 Deputy Attorney General.

24 2. Joshua B. Gibson, M.D. (Respondent) is represented in this proceeding by attorney
25 Mitchell J. Green, whose address is Nossaman LLP, 50 California Street, 34th Floor, San
26 Francisco, CA 94111.

27 3. On or about October 1, 1999, the Board issued Physician's and Surgeon's Certificate
28 No. A 69917 to Joshua B. Gibson, M.D. (Respondent). The Physician's and Surgeon's Certificate

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-
2 2014-010649 and will expire on October 31, 2017, unless renewed.

3 JURISDICTION

4 4. Accusation No. 800-2014-010649 was filed before the (Board), and is currently
5 pending against Respondent. The Accusation and all other statutorily required documents were
6 properly served on Respondent on June 22, 2017. Respondent timely filed his Notice of Defense
7 contesting the Accusation. A copy of Accusation No. 800-2014-010649 is attached as Exhibit A
8 and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in Accusation No. 800-2014-010649. Respondent also has carefully read,
12 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
13 and Order.

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

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

22 CULPABILITY

23 8. Respondent understands that the charges and allegations in Accusation No. 800-2014-
24 010649, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
25 Surgeon's Certificate.

26 9. For the purpose of resolving the Accusation without the expense and uncertainty of
27 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
28 basis for the charges in the Accusation and that those charges constitute cause for discipline.

1 Respondent hereby gives up his right to contest that cause for discipline exists based on those
2 charges.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue
4 an order accepting the surrender of his Physician's and Surgeon's Certificate without further
5 process.

6 CONTINGENCY

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

16 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
17 copies of this Stipulated Surrender of License and Order, including Portable Document Format
18 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Board may, without further notice or formal proceeding, issue and enter the following Order:

21 ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 69917, issued
23 to Respondent Joshua B. Gibson, M.D., is surrendered and accepted by the Medical Board of
24 California.

25 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
26 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
27 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
28 of Respondent's license history with the Medical Board of California.

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

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

5 4. If Respondent ever files an application for licensure or a petition for reinstatement in
6 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
7 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
8 effect at the time the petition is filed, and all of the charges and allegations contained in
9 Accusation No. 800-2014-010649 shall be deemed to be true, correct and admitted by Respondent
10 when the Board determines whether to grant or deny the petition.

11 5. If Respondent should ever apply or reapply for a new license or certification, or
12 petition for reinstatement of a license, by any other health care licensing agency in the State of
13 California, all of the charges and allegations contained in Accusation, No. 800-2014-010649 shall
14 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
15 Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

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

DATED: August 7, 2017

JOSHUA B. GIBSON, M.D.
Respondent

I have read and fully discussed with Respondent Joshua B. Gibson, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: August 7, 2017

MITCHELL J. GREEN
Attorney for Respondent

ENDORSEMENT

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

Dated: 8/7/2017

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General

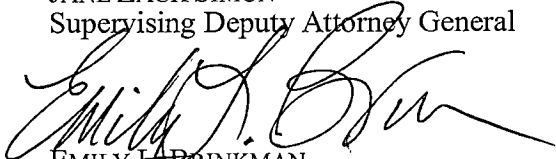

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2014-010649

1 XAVIER BECERRA
 Attorney General of California
 2 JANE ZACK SIMON
 Supervising Deputy Attorney General
 3 EMILY L. BRINKMAN
 Deputy Attorney General
 4 State Bar No. 219400
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 5 San Francisco, CA 94102-7004
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 E-mail: Emily.Brinkman@doj.ca.gov.
 7 *Attorneys for Complainant*

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

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. 800-2014-010649

12 **Joshua B. Gibson, M.D.**
 4 Embarcadero Center, Suite 1400
 13 San Francisco, CA 94111

 14 **Physician's and Surgeon's Certificate**
 No. A 69917,
 15
 16 Respondent.

A C C U S A T I O N

17
 18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 1, 1999, the Medical Board issued Physician's and Surgeon's
 24 Certificate Number A 69917 to Joshua B. Gibson, M.D. (Respondent). The Physician's and
 25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
 26 herein and will expire on October 31, 2017, unless renewed.

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JURISDICTION

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

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

8 5. Section 2234 of the Code provides in relevant part that the Board "shall take action
9 against any licensee who is charged with unprofessional conduct."

10 6. Section 726 of the Code states:

11 "(a) The commission of any act of sexual abuse, misconduct, or relations with a patient,
12 client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any
13 person licensed under this or under any initiative act referred to in this division.

14 "(b) This section shall not apply to consensual sexual contact between a licensee and his or
15 her spouse or person in an equivalent domestic relationship when that licensee provides medical
16 treatment, to his or her spouse or person in an equivalent domestic relationship."

17 7. Section 2220.7 of the Code states:

18 "(a) A physician and surgeon shall not include or permit to be included any of the following
19 provisions in an agreement to settle a civil dispute arising from his or her practice, whether the
20 agreement is made before or after filing the action:

21 "(1) A provision that prohibits another party to the dispute from contacting or cooperating
22 with the board.

23 "(2) A provision that prohibits another party to the dispute from filing a complaint with the
24 board.

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

27 "(b) A provision described in subdivision (a) is void as against public policy.
28

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

3 **ETHICAL PRINCIPLES**

4 8. The medical profession has long subscribed to a body of ethical statements, set forth
5 and adopted by the American Medical Association and known as The Principles of Medical
6 Ethics. The Principles of Medical Ethics represent standards of conduct which define the
7 essentials of honorable behavior for a physician. The American Psychiatric Association has
8 developed and adopted *Principles of Medical Ethics with Annotations Especially Applicable to*
9 *Psychiatry*, which state:

10 “All physicians should practice in accordance with the medical code of ethics set
11 forth in the Principles of Medical Ethics of the American Medical Association. An
12 up-to-date expression and elaboration of these statements is found in the Opinions
13 and Reports of the Council on Ethical and Judicial Affairs of the American Medical
14 Association. Psychiatrists are strongly advised to be familiar with these documents.
15 ...While psychiatrists have the same goals as all physicians, there are special ethical
16 problems in psychiatric practice that differ in coloring and degree from ethical
17 problems in other branches of medical practice, even though the basic principles are
18 the same.” (Foreword)

19 The following specific parts of the adopted *Principles of Medical Ethics with Annotations*
20 *Especially Applicable to Psychiatry* are applicable:

21 A. Section 2 states:

22 “A physician shall uphold the standards of professionalism, be honest in all
23 professional interactions, and strive to report physicians deficient in character or
24 competency, or engaging in fraud or deception, to appropriate entities.”

25 *The Principles of Medical Ethics with Annotations Especially Applicable to*
26 *Psychiatry* stated the following in 1993 and in all subsequent updates:

27 “The requirement that the physician conduct himself/herself with propriety in his or
28 her profession and in all the actions of his or her life is especially important in the
case of the psychiatrist because the patient tends to model his or her behavior after
that of his or her psychiatrist by identification. Further, the necessary intensity of the
treatment relationship may tend to activate sexual and other needs and fantasies on
the part of both patient and psychiatrist, while weakening the objectivity necessary
for control. Additionally, the inherent inequality in the doctor-patient relationship
may lead to exploitation of the patient. Sexual activity with a current or former
patient is unethical.”

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1 FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

2 9. Respondent is a psychiatrist and began providing psychiatric care to Patient A in
3 August of 2004 while she was a student at University of California, San Francisco and he was a
4 staff psychiatrist. Respondent opened his own private psychiatric practice in 2006 and Patient A
5 continued to receive psychiatric services from him through June of 2008. Respondent provided
6 psychiatric care that included talk therapy and prescribing of controlled substances related to
7 various psychiatric and pain conditions.

8 10. On or about December 19, 2014, the Board received a Report of Settlement indicating
9 that Respondent settled a civil lawsuit for \$850,000 brought by Patient A, alleging medical
10 malpractice, sexual battery, intentional infliction of emotional distress, sexual contact by a
11 psychiatrist with a patient, breach of fiduciary duty, sexual harassment, general negligence. As
12 part of the settlement agreement between Patient A and Respondent in the civil case, the parties
13 made an oral agreement that neither party would cooperate with the Medical Board in an
14 investigation connected to Respondent's medical care and sexual relationship with Patient A.

15 11. Respondent and Patient A engaged in a sexual relationship starting in approximately
16 2006 while she was a patient of Respondent. The two continued to engage in a sexual
17 relationship through approximately 2011.

18 12. Over the course of the personal and sexual relationship, Respondent continued to
19 advise Patient A about her psychotherapy treatment, he continued to advise and consult with her
20 current medical providers, and he continued to prescribe her controlled substances after he
21 stopped formally treating Patient A in approximately June 2008.

22 FIRST CAUSE FOR DISCIPLINE

23 **(Unprofessional Conduct, Sexual Misconduct, Violation of Ethical Standards)**

24 13. Respondent is subject to disciplinary action for unprofessional conduct and sexual
25 misconduct under Sections 2234 and/or 726 in that he engaged in a sexual relationship with his
26 psychiatric patient.

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1 14. Respondent's conduct in engaging in a sexual relationship with Patient A constitutes
2 unprofessional conduct and a violation of ethical standards, and is cause for discipline under
3 Section 2234.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Prohibited Provision in a Settlement Agreement)**


6 15. Respondent is subject to disciplinary action for unprofessional conduct under
7 Sections 2234 and 2220.7 in that Respondent entered into a settlement agreement which
8 contained an agreement that both parties would be prohibited from cooperating with the Medical
9 Board in its investigation into Respondent's sexual relationship and medical care of Patient A.

10 **PRAYER**

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

- 13 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 69917,
14 issued to Joshua B. Gibson, M.D.;
- 15 2. Revoking, suspending or denying approval of Joshua B. Gibson, M.D.'s authority to
16 supervise physician assistants and advanced practice nurses;
- 17 3. Ordering Joshua B. Gibson, M.D., if placed on probation, to pay the Board the costs
18 of probation monitoring; and
- 19 4. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: June 22, 2017


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

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