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

In the Matter of the Accusation )
Against: )
 )
 )
ROBERT MACARTHUR, M.D. ) Case No. 09-2009-201617 )
Physician's and Surgeon's )
Certificate No. G-76912 )
 )
Respondent )

_______________________________

DECISION

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

This Decision shall become effective at 5:00 p.m. on August 9, 2013.

IT IS SO ORDERED: July 12, 2013.

MEDICAL BOARD OF CALIFORNIA

Reginald Low, M.D., Chair
Panel B
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT MACARTHUR, M.D.
4702 Roxbury Drive
Irvine, CA 92604

Physician’s and Surgeon’s Certificate No. G76912,

Respondent.

Case No. 09-2009-201617
OAH No.
STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

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

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Michael S. Cochrane, Deputy Attorney General.

2. Respondent ROBERT MACARTHUR, M.D. (Respondent) is represented in this proceeding by attorney Joseph P. Furman Esq., of Furman Healthcare Law, whose address is 9701 Wilshire Boulevard, 10th Floor, Los Angeles, California 90212.
3. On or about June 21, 1993, the Medical Board of California issued Physician's and Surgeon's Certificate Number G76912 to ROBERT MACARTHUR, M.D. (hereinafter "Respondent"). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 09-2009-201617 and will expire on October 31, 2012, unless renewed.

JURISDICTION

4. On March 28, 2012, Accusation No. 09-2009-201617 was filed against Respondent before the Medical Board of California (Board), Department of Consumer Affairs. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on March 28, 2012. Respondent timely filed his Notice of Defense contesting the allegations contained in Accusation No. 09-2009-201617.

5. A true and correct copy of Accusation No. 09-2009-201617 is attached hereto as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 09-2009-201617. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

///
///

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER (Case No. 09-2009-201617)
CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 09-2009-201617 and that he has thereby subjected his Physician’s and Surgeon’s Certificate No. G76912 to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 09-2009-201617 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

11. Respondent agrees that his Physician’s and Surgeon’s Certificate No. G76912 is subject to discipline and he agrees to be bound by the Board’s imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it.

13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General’s office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall
not be relied upon or introduced in any disciplinary action by either party hereto. Respondent
further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for
any reason, respondent will assert no claim that the Board, or any member thereof, was
prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
Disciplinary Order or of any matter or matters related hereto.

**ADDITIONAL PROVISIONS**

14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
to be an integrated writing representing the complete, final and exclusive embodiment of the
agreements of the parties in the above-entitled matter.

15. The parties agree that facsimile copies of this Stipulated Settlement and
Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original
documents and signatures and, further, that facsimile copies shall have the same force and effect
as originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree the
Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician’s and Surgeon’s Certificate No. G76912 issued
to Respondent Robert MacArthur M.D. (Respondent) is revoked. However, the revocation is
stayed and Respondent is placed on probation for three (3) years from the effective date of this
Decision and on the following terms and conditions.

1. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the
effective date of this Decision, respondent shall enroll in a course in medical record keeping
equivalent to the Medical Record Keeping Course offered by the Physician Assessment and
Clinical Education Program, University of California, San Diego School of Medicine (Program),
approved in advance by the Board or its designee. Respondent shall provide the program with any
information and documents that the Program may deem pertinent. Respondent shall participate in
and successfully complete the classroom component of the course not later than six (6) months
after respondent's initial enrollment. Respondent shall successfully complete any other
component of the course within one (1) year of enrollment. The medical record keeping course
shall be at respondent's expense and shall be in addition to the Continuing Medical Education
(CME) requirements for renewal of licensure.

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

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

2. 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.

At the completion of any additional educational or clinical training, respondent shall
submit to and pass an examination. Determination as to whether respondent successfully
completed the examination or successfully completed the program is solely within the program’s
jurisdiction.

3. **CLINICAL TRAINING PROGRAM: WRONG-SITE SURGERY COURSE**

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in the
Wrong-Site Surgery Course offered by the Physician Assessment and Clinical Education Program
at the University of California-San Diego School of Medicine ("PACE"). Respondent shall
complete the Course not later than six months after respondent's initial enrollment unless the
Board or its designee agrees in writing to a later time for completion. Failure to successfully
complete the course within the specified period shall constitute a violation of probation.

4. **NOTIFICATION** Prior to engaging in the practice of medicine, the Respondent
shall provide a true copy of the Decision(s) and First Amended Accusation(s) to the Chief of Staff
or the Chief Executive Officer at every hospital where privileges or membership are extended to
Respondent, at any other facility where Respondent engages in the practice of medicine,
including all physician and locum tenens registries or other similar agencies, and to the Chief
Executive Officer at every insurance carrier which extends malpractice insurance coverage to
Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
calendar days.

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

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

6. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, all
rules governing the practice of medicine in California, and remain in full compliance with any
court ordered criminal probation, payments and other orders.
7. **QUARTERLY DECLARATIONS**  Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

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

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

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

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

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

   All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or
permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

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

11. **FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT**

In the event Respondent resides in the State of California and for any reason Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

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

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

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

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

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Joseph P. Furman, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate G76912. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/30/13

ROBERT MACARTHUR, M.D.
Respondent

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

DATED: April 3, 2013

JOSEPH P. FURMAN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 04/04/2013

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

MICHAEL S. COCHRANE
Deputy Attorney General
Attorneys for Complainant
Exhibit A
Accusation No. 09-2009-201617
In the Matter of the Accusation Against:

ROBERT MACARTHUR, M.D.
4702 Roxbury Drive
Irvine, CA 92604

Physician’s and Surgeon’s Certificate No.
G76912

Respondent.

Case No. 09-2009-201617

ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (hereinafter “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 June 21, 1993, the Medical Board of California issued Physician’s and Surgeon’s Certificate Number G76912 to ROBERT MACARTHUR, M.D. (hereinafter “Respondent”). The Physician’s and Surgeon’s Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2012, unless renewed.

///
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 (Code) unless otherwise indicated.

4. 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, be publicly reprimanded, or have such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states:

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

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

(b) Gross negligence.

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

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

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs

\(^1\) California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et. seq.) means the “Medical Board of California,” and references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.
from the applicable standard of care, each departure constitutes a separate and distinct
breach of the standard of care.

"..."

6. Section 2266 of the Code states: "The failure of a physician and surgeon to
maintain adequate and accurate records relating to the provision of services to their patients
constitutes unprofessional conduct."

**FIRST CAUSE FOR DISCIPLINE**

(Gross Negligence)

7. Respondent is subject to disciplinary action under sections 2227 and 2234, as
defined by section 2234, subdivision (b), of the Code, in that respondent committed gross
negligence in his care and treatment of patient R.M., as more particularly alleged hereinafter:

**Patient R.M.**

8. Patient R.M., who was an athlete/boxer, then 20-years old, was initially seen by
Respondent on September 17, 2007. Patient R.M. was referred to Respondent by his primary
treating physician for complaints of left knee pain associated with lateral pain and intermittent
swelling but no locking.

9. An MRI study was performed on September 6, 2007 and interpreted as within
normal limits. Upon examination, Respondent identified negative patellar grind test and negative
medial joint line tenderness as well as lateral joint line tenderness and negative effusion. At
patient R.M.'s return appointment on September 19, 2007, Respondent reviewed the MRI
himself. His personal impression of the MRI was lateral compression stress fracture of the lateral
tibial plateau.

10. Respondent recommended that the patient undergo physical therapy and return
to the office in two months. On January 9, 2008, patient R.M. returned, complaining of persistent
left knee pain which was anteromedial. On examination, Respondent confirmed that patient R.M.
continued to have medial joint line tenderness.

11. A repeat MRI of the left knee was undertaken on January 12, 2008. The
radiologist's interpretation was that there were no interval changes and no evidence of a meniscal
or ligamentous tear. When Respondent re-evaluated the patient on January 14, 2008, he
determined on the same MRI that was read by the radiologist as normal, that there was a
"complex medial meniscus tear."

12. On or about this January 14, 2008, Respondent requested authorization for
surgery for debridement\(^2\) of the medial meniscus tear as well as for steroid injection in order to
treat patient R.M.’s “left knee complex medial meniscus tear.”

13. Patient R.M. was seen by Respondent again on January 24, 2008, at which time
Respondent indicated "MRI essentially within normal limits" but noted patient R.M.’s significant
symptomatology.” At the same time, Respondent expressed concern that patient R.M. suffered
from symptomatic medial plica. Upon examination, Respondent noted that there was moderate
effusion with negative patellar grinding test and negative for medial and lateral joint line
tenderness.

Center for diagnostic left knee arthroscopy and debridement. Respondent prepared a handwritten
history and physical exam, indicating the patient's chief complaint was left knee and the plan was
to perform left knee arthroscopic surgery.

indicates that the procedure to be performed on patient R.M. was an “arthroscopic debridement”
of patient R.M.’s “left knee.”

16. However, in a preoperation assessment form dated January 31, 2008 from St.
Joseph Hospital the procedure to be performed on patient R.M. was identified as “Right Knee
Surgery.” Patient R.M. did not complain of right knee pain.

17. On February 15, 2008, Respondent performed a debridement of patient R.M.’s
right knee.

18. In a post-operative note dated February 15, 2008, Respondent acknowledged
that he had performed a wrong site surgery on patient R.M.

\(^2\) A surgical procedure to remove dead or infected tissue.
19. Respondent committed gross negligence in his care and treatment of patient
R.M. which included, but was not limited to, the following:

(a) Respondent failed to properly identify the correct surgery site for the procedure
he performed on patient R.M. and he failed to supervise adequately operating room staff in the
identification of the surgical site.

SECOND CAUSE FOR DISCIPLINE

(Repeater Negligent Acts)

20. Respondent has further subjected his Physician’s and Surgeon’s Certificate
No. G76912 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
subdivision (c), of the Code, in that he committed repeated negligent acts in his care and
treatment of patients R.M., B.W. and G.D., as more particularly alleged hereinafter:

21. Paragraphs 7 through 19, above, are hereby incorporated by reference and
realleged as if fully set forth herein.

Patient B.W.

22. B.W., who was 16 years old at the time, was initially seen by Respondent on
June 6, 2005 after injuring his left ankle while skateboarding on May 29, 2005.

23. According to Respondent’s report from June 6, 2005, x-rays from May 29,
2005 revealed that patient B.W. suffered a fracture to the left medial malleolus with minimal
articular weight bearing surface involvement and a 2 mm of vertical displacement of large
malleolus fragment. On the same date, Respondent discussed and recorded treatment options
including casting versus open reduction/internal fixation for anatomical alignment of the articular
surface.

24. B.W.’s family opted for open reduction/internal fixation as per Respondent’s
June 6, 2005 orthopedic physician referral report. On the same date, Respondent submitted a
request for authorization for open reduction/internal fixation of the left ankle malleolus fracture.

25. On June 14, 2005, patient B.W. was taken to the operating room with a
diagnosis of left ankle superior axis deviation fracture medial malleolus, displaced. Respondent
performed a percutaneous pinning, left ankle SAD fracture, on patient B.W. Indications were
gross displacement and expected instability of fracture pattern and development of articular joint space. King Tong clamps were utilized and according to Respondent, anatomic alignment was seen on large fluoroscopic view and two screws were placed across the fracture site.

26. Respondent indicated in his operative report there were no complications notwithstanding that patient B.W. suffered a burn on his right leg during the surgery from a hot King Tong clamp that was placed against his leg.

27. However, in an authorization request dated June 14, 2005, Respondent noted that patient B.W. suffered a “1st degree burn from hot instrument in surgery” and requested a consult “asap.”

28. Post-surgery on June 19, 2005, patient B.W. went to the emergency room due to a second degree burn to his leg incurred during the surgery on June 14, 2005.

29. Respondent in a report dated June 20, 2005 noted that “patient (B.W.) presents now with what appears to be a full thickness burn, meaning second or third degree.” His treatment plan was for ointment to be applied to the scar, follow up with Dr. S. and to return to the clinic in one or two weeks for discontinuation of suture.

30. In a follow-up examination on July 6, 2005, Respondent noted that patient B.W. “has a scar from the injury which unfortunately developed from an operative instrument falling against his leg.” Respondent’s treatment plan was for weight bearing in a walker boot.

31. On August 8, 2005, patient B.W. was seen by Doctors K. who recommended Silvadene ointment applications. On examination Dr. K. noted that patient B.W. had a triangular wound in the lower shin which had partially epithelialized leaving a granulating surface measuring 3 cm x 1.5 cm. His impression was granulating wound of right anterior leg, status-post third degree burn of right leg.

Patient G.D.

32. Patient G.D. was a 36-year old female at the time of her surgery. She was referred to Respondent by her primary care physician for orthopedic consultation after injury to the right knee on July 7, 2007.

33. Patient G.D. was playing softball and sustained hyperextension injury when she
stepped into a pothole. Three days later, an MRI of the right knee was obtained and revealed an anterior cruciate ligament (ACL) tear, osteochondral impaction injury, cartilage thinning in the patellofemoral joint and posterior cruciate ligament (PCL) sprain.

34. After initial evaluation and subsequently diagnosing the patient with anterior cruciate ligament tear, Respondent recommended that the patient undergo arthroscopic ACL reconstruction utilizing patellar tendon autograft. Respondent performed surgery on patient G.D. on July 20, 2007.

35. In his operative report, Respondent inaccurately indicated that there were no complications during the surgery. During the surgery Respondent misplaced the femoral screw, which was placed incorrectly posterior to the femoral condyle. During the surgery Respondent used a fluoroscope to identify the malposition and malplacement of the femoral screw. Respondent did not indicate that he used a fluoroscope to identify the malposition of the femoral screw.

36. Respondent, in a follow-up visit February 5, 2008 with patient G.D., indicated the presence of a "posterior femoral screw." This was the first indication in Respondent's records where Respondent explained to patient G.D. about the position of the femoral screw and options of treating that condition.

37. On March 17, 2008, due to persistent symptoms, patient G.D. saw E. L., M.D., an orthopedic surgeon with fellowship in sports medicine. Dr. Lee obtained a CT angiogram of the patient G.D.'s right knee to assess location of the screw in soft tissues and evaluation of vascular structures. Dr. L. also diagnosed malposition of the ACL graft after documented discussion about the options of revision surgery. Dr. L. recommended that patient G.D. undergo right knee evaluation under anesthesia, diagnostic arthroscopy, hardware removal of the tibial screw, possible femoral screw removal, intra-articular debridement and possible gentle manipulation under anesthesia.

38. Eventually, on March 24, 2008, patient G.D. underwent right knee arthroscopic surgery performed by Dr. L. Dr. L. found that there was anterior malplacement of anterior tibial tunnel and secondary to that, impingement of the graft anteriorly and severe stretch on flexion
limiting her range of motion. There was also some chondromalacia. Following diagnostic
arthroscopy, the tibial screw was removed, articular debridement was performed, the ACL graft
was removed and new graft was placed in the tibial tunnel. Patient G.D. was followed by Dr. L.
for subsequent treatment of her right knee.

39. Respondent committed repeated negligent acts in his care and treatment of
patients R.M., B.W. and G.D., which included, but was not limited to, the following:

(a) Respondent failed to properly identify the correct surgery site for the procedure
he performed on patient R.M. and he failed to adequately supervise operating room staff in the
identification of the surgical site.

(b) Respondent failed to recognize that a hot King Tong clamp had been placed on
patient B.W.’s leg during surgery with the result that B.W.’s leg suffered a second to third degree
burn;

(c) Respondent failed to assess the vascularity of patient G.D.’s right lower leg
when he identified the femoral screw being posterior to the femoral condyle in the apparent
vicinity of the neurovascular bundle;

(d) Paragraph 40, below, is hereby incorporated by reference and realleged as if
fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

40. Respondent has further subjected his Physician’s and Surgeon’s Certificate No.
G76912 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
Code, in that respondent failed to maintain adequate and accurate records in regards to his care
and treatment of patients G.D. and B.W., as more particularly alleged hereinafter.

41. Paragraphs 22 and 38, above, are hereby incorporated by reference and
realleged as if fully set forth herein.

///

3 Chondromalacia is a general term indicating damage to the cartilage under the kneecap.
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 G76912, heretofore issued to respondent ROBERT MACARTHUR, M.D.;

2. Revoking, suspending or denying approval of respondent ROBERT MACARTHUR, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent ROBERT MACARTHUR, M.D. to pay the Board, if placed on probation, the costs of probation monitoring; and

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

DATED: March 28, 2012

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

Complainant