

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

**In the Matter of the Accusation
Against:**

Jonathan Cornelius Bourne M.D.

File No. 800-2015-017777

**Physician's and Surgeon's
Certificate No. G 48548**

Respondent

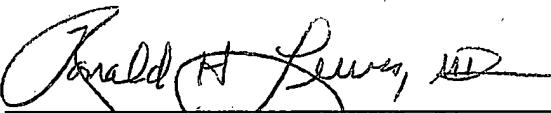
DECISION

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 June 15, 2018.

IT IS SO ORDERED May 18, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 

Ronald H. Lewis, Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 GIOVANNI F. MEJIA
Deputy Attorney General
4 State Bar No. 309951
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5 San Diego, CA 92101
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8 *Attorneys for Complainant*

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

12
13 In the Matter of the Accusation Against:

Case No. 800-2015-017777

14 **JONATHAN CORNELIUS BOURNE, M.D.**
PO BOX 2489
15 **Mammoth Lakes, CA 93546**

OAH No. 2017081244

16 **Physician's and Surgeon's Certificate**
17 **No. G 48548,**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 Respondent.

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

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Giovanni F. Mejia,
25 Deputy Attorney General.

26 2. Respondent Jonathan Cornelius Bourne, M.D. (Respondent) is represented in this
27 proceeding by attorney Robert B. Zaro, Esq., whose address is: 1315 "I" Street, Suite 200,
28 Sacramento, CA 95814-2915.

3. On or about August 9, 1982, the Board issued Physician's and Surgeon's Certificate No. G 48548 to Jonathan Cornelius Bourne, M.D. (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. 800-2015-017777, and will expire on July 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-017777 was filed before the Board, and is currently pending against Respondent. On August 3, 2017 a true and correct copy of the Accusation No. 800-2015-017777 and all other statutorily required documents were properly served on Respondent. Respondent filed a Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2015-017777 is attached as exhibit "A" and incorporated by reference, as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands fully the charges and allegations contained in Accusation No. 800-2015-017777, and the effects of this Stipulated Settlement and Disciplinary Order on his Physician's and Surgeon's Certificate No. G 48548 and has fully reviewed and discussed same with his attorney, Robert B. Zaro, Esq.

6. Respondent is fully aware of his legal rights in this matter, including his right to a hearing on the charges and allegations in Accusation No. 800-2015-017777, his right to present witnesses and evidence and to testify on his own behalf, his right to confront and cross-examine the witnesses against him, his right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, his right to reconsideration and court review of an adverse decision; and all other rights accorded him pursuant to the California Administrative Procedure Act, the California Code of Civil Procedure, and other applicable laws, having been fully advised of same by his attorney of record, Robert B. Zaro, Esq.

7. Respondent, having the benefit of counsel, hereby voluntarily, knowingly, and intelligently waives and gives up each and every one the rights set forth and/or referenced above.

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/ / / /

1 **CULPABILITY**

2 8. Respondent understands that the charges and allegations in Accusation
3 No. 800-2015-017777, if proven at hearing, constitute cause for imposing discipline upon his
4 Physician's and Surgeon's Certificate No. G 48548.

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

9 10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 48548 is
10 subject to discipline and he agrees to be bound by the Board's terms as set forth in the
11 Disciplinary Order below. Respondent further understands and acknowledges that failure to
12 complete the Board's terms as set forth below may lead to additional charges alleging
13 unprofessional conduct and the imposition of additional discipline.

14 **CONTINGENCY**

15 11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
16 submitted to the Board for its consideration in the above-entitled matter, and, further that the
17 Board shall have the reasonable period of time in which to consider and act on this Stipulated
18 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
19 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
20 prior to the time the Board considers and acts upon it.

21 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
22 and void and not binding upon the parties unless approved and adopted by the Board, except for
23 this paragraph, which shall remain in full force and effect. Respondent fully understands and
24 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
25 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
26 the Attorney General's office. Communications pursuant to this paragraph shall not disqualify
27 the Board, any member thereof, and/or any other person from future participation in this or any
28 other matter affecting or involving respondent. In the event that the Board, in its discretion, does

1 not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of
2 this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and
3 shall not be relied upon or introduced in any disciplinary action by either party hereto.
4 Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary
5 Order for any reason, respondent will assert no claim that the Board, or any member thereof, was
6 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
7 Disciplinary Order or of any matter or matters related hereto.

8 **ADDITIONAL PROVISIONS**

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

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

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

18 **DISCIPLINARY ORDER**

19 1. **PUBLIC REPRIMAND.** IT IS HEREBY ORDERED that Physician's and
20 Surgeon's Certificate No. G 48548 issued to Respondent Jonathan Cornelius Bourne, M.D. is
21 hereby Publicly Reprimanded pursuant to Business and Professions Code section 2227,
22 subdivision (a)(4). This Public Reprimand, which is issued in connection with Accusation
23 No. 800-2015-017777, is as follows:

24 You engaged in unprofessional conduct in that, on or about August 15, 2016, you
25 entered into a plea agreement with the United States Attorney's Office for the Eastern
26 District of California whereby you pled guilty to counts Four and Twelve of a federal
27 Indictment.

28 / / / /

Count Four alleged violation of 16 U.S.C. § 470ee(a), (b), and (d) - Unauthorized Transportation of Archaeological Resources, occurring on October 14, 2010, involving the "Alteration and damage of small prehistoric site, cremation site and burial cairns (Whiskey flat 7) in the Humbolt-Toiyabe National Forest; removed and transported Glass Trade Bead."

Count Twelve alleged violation of 16 U.S.C. § 470ee(a), and (d) - Unauthorized Excavation Removal Damage or Defacement of Archaeological Resources, occurring on January 10, 2011, involving the "Alteration and damage of a large prehistoric site (Vine 1) in Death Valley National Park; removed Big Horn Sheep Horn Percussor and three Incised Stone Tablets."

2. **PROFESSIONALISM PROGRAM (ETHICS COURSE).** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program 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 program would have been approved by the Board or its designee had the program 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 program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

1 **ACCEPTANCE**

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

7
8 DATED: 4-6-18


9 JONATHAN CORNELIUS BOURNE, M.D.
Respondent

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

13 DATED: 4/6/18


14 ROBERT B. ZARO, ESQ.
Attorney for Respondent

15
16 **ENDORSEMENT**

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

19 Dated: 4/6/18

Respectfully submitted,

20 XAVIER BECERRA
21 Attorney General of California
22 MATTHEW M. DAVIS
Supervising Deputy Attorney General

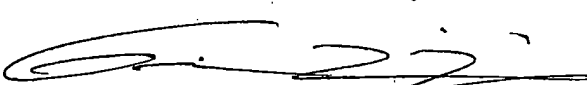
23 
24 GIOVANNI F. MEJIA
25 Deputy Attorney General
26 Attorneys for Complainant
27
28

Exhibit A

Accusation No. 800-2015-017777

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Supervising Deputy Attorney General
3 MIA PEREZ-ARROYO
Deputy Attorney General
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P.O. Box 944255
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7 Facsimile: (916) 327-2247
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 800-2015-017777

13 **Jonathan Cornelius Bourne, M.D.**
14 **PO BOX 2489**
Mammoth Lakes, CA 93546

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate No.**
16 **No. G 48548,**

17 **Respondent.**

18
19 **Complainant alleges:**

20 **PARTIES**

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

24 2. On or about August 9, 1982, the Medical Board issued Physician's and Surgeon's
25 Certificate No. Number G 48548 to Jonathan Cornelius Bourne, M.D. (Respondent). The
26 Physician's and Surgeon's Certificate No. G48548 was in full force and effect at all times relevant
27 to the charges brought herein and will expire on July 31, 2018, unless renewed.

28 **///**

JURISDICTION

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

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

5. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality¹ of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

“(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

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 (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.

1 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
2 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
3 shall be conclusive evidence of the fact that the conviction occurred.”

4 6. Section 490 of the Code states:

5 “(a) In addition to any other action that a board is permitted to take against a licensee, a
6 board may suspend or revoke a license on the ground that the licensee has been convicted of a
7 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
8 or profession for which the license was issued.

9 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
10 discipline a licensee for conviction of a crime that is independent of the authority granted under
11 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the licensee's license was issued.

13 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. An action that a board is permitted to take
15 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
16 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a subsequent order under Section
18 1203.4 of the Penal Code.

19 “(d) The Legislature hereby finds and declares that the application of this section has been
20 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
21 554, and that the holding in that case has placed a significant number of statutes and regulations
22 in question, resulting in potential harm to the consumers of California from licensees who have
23 been convicted of crimes. Therefore, the Legislature finds and declares that this section
24 establishes an independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
26 to, but rather are declaratory of, existing law.”

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28 ///

1 CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 7. Respondent Jonathan Cornelius Bourne, M.D. is subject to disciplinary action under
4 Code sections 2236 and 490 in that he was convicted of a crime substantially related to the
5 qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

6 8. On or about October 14, 2010, Respondent altered a small prehistoric site, cremation
7 site, and burial cairns designated as Whiskey Flat 7 located in the Humboldt-Toiyabe National
8 Forest in Nevada. Respondent removed Glass Trade Beads from the Whiskey Flat 7 site and
9 transported them to his residence in Mammoth Lakes, California, knowing the Glass Trade Beads
10 were more than one-hundred years old and they were archaeological resources. These Glass
11 Trade Beads were found in Respondent's residence on or about December 13, 2015. He admitted
12 that the Glass Trade Beads were archaeological resources, were more than one-hundred years old,
13 and the cost of restoration and repair of the disturbed prehistoric site would exceed \$500.00.

14 9. The area designated as Whiskey Flat 7 in the Humboldt-Toiyabe National Forest is
15 public land administered by the United States Forest Service. Respondent did not have a permit
16 issued by the United States Forest Service to remove and/or transport the Glass Trade Beads.

17 10. On or about January 10, 2011, Respondent altered a large prehistoric site designated
18 as Vine 1 located in Death Valley National Park. Respondent removed a Big Horn Sheep
19 Percussor and three Incised Stone Tablets that were more than one-hundred years old and were
20 archaeological resources. A Big Horn Sheep Percussor is a short section of horn sheath from a
21 big horn sheep that was shaped into an implement for use in stone tool production. The horn tool
22 was used in the controlled removal of stone flakes from an unfinished tool or blank. The Big
23 Horn Sheep Percussor and three Incised Stone Tablets were found in Respondent's residence on
24 or about December 13, 2015. Respondent admitted that the Big Horn Sheep Percussor and three
25 Incised Stone Tablets were archeological resources, were more than one-hundred years old, and
26 the archaeological value and cost of restoration and repair of the disturbed historic site would
27 exceed \$500.00.

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11. The Vine 1 prehistoric area in Death Valley National Park is public land administered by the National Park Service. Respondent did not have a permit issued by the National Park Service to remove and/or transport the Big Horn Sheep Percussor and three Incised Stone Tablets.

12. Respondent had been collecting artifacts and archaeological resources since 1994. He was not collecting the items for profit or commercial purposes. Respondent kept meticulous records documenting what all the items were and where they were found. Respondent voluntarily turned over to the government an estimated 20,000 archaeological resources he had collected from public lands over the years.

13. On or about September 17, 2015, in a case entitled *United States of America v. Jonathan Cornelius Bourne*, Case No. 1:15-CR-00253-LJO-SKO, Respondent was charged with:

- Eight counts of 16 U.S.C. Section 470ee, subdivisions (a), (b), and (d), Unauthorized Transportation of Archaeological Resources;
 - Six counts of 16 U.S.C. Section 470ee, subdivisions (a) and (d), Unauthorized Excavation, Removal, Damage or Defacement of Archaeological Resources Removed From Public Lands;
 - Six counts of 18 U.S.C. Section 1361, Injury or Depredation to Government Property; and
 - Six counts of 18 U.S.C. Section 641, Possession of Stolen Government Property, all felonies.
- (Amended by interlineation:
GM 4/2/18)

14. On or about August 15, ²⁰¹⁶~~2015~~, Respondent pled guilty to Count Four of the Indictment alleging a violation of 16 U.S.C. Section 470ee, subdivisions (a), (b), and (d) – Unauthorized Transportation of Archaeological Resources, and Count Twelve of the Indictment alleging a violation of 16 U.S.C. Section 470ee, subdivisions (a) and (d) – Unauthorized Excavation, Removal, Damage, or Defacement of Archaeological Resources. He was fined \$40,000 and was ordered to pay restitution totaling \$249,872.31. Respondent was placed on twenty-four (24) months probation and was barred from public lands.

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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 or suspending Physician's and Surgeon's Certificate No. G 48548, issued to
5 Jonathan Cornelius Bourne, M.D.;

6 2. Revoking, suspending or denying approval of Jonathan Cornelius Bourne, M.D.'s
7 authority to supervise physician assistants and advanced practice nurses;

8 3. Ordering Jonathan Cornelius Bourne, M.D., if placed on probation, to pay the Board
9 the costs of probation monitoring; and

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

11
12 DATED: August 3, 2017


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

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