

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

In the Matter of the Accusation)
Against:)
)
)
)
Roger Gerard Annabel, M.D.) Case No. D1 2004160454
)
)
Physician's and Surgeon's)
Certificate No. A 53036)
)
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Respondent)
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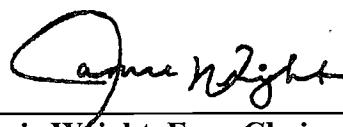
DECISION

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

This Decision shall become effective at 5:00 p.m. on February 10, 2016.

IT IS SO ORDERED January 11, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 
Jamie Wright, Esq., Chair
Panel A

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

In the Matter of the First Amended Petition
to Revoke Probation and Accusation
Against:

ROGER GERARD ANNABEL, M.D.

Physician's and Surgeon's Certificate
No. A 53036,

Respondent.

Case No. D1-2004-160454

OAH No. 2014050784

PROPOSED DECISION

This matter came on regularly for hearing on November 12, 2015, in San Bernardino, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Randall R. Murphy, Deputy Attorney General, represented Kimberly Kirchmeyer (Complainant), Executive Director of the Medical Board of California (Board).

Roger Gerard Annabel (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Petitioner is the holder of Physician's and Surgeon's Certificate number A 53036. The certificate was issued on May 4, 1994. It is scheduled to expire on May 31, 2016.

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2. By Decision effective July 9, 2009, made pursuant to a Stipulated Settlement and Disciplinary Order, the Board revoked Respondent's certificate, stayed the revocation, and placed Respondent on probation for a period of three years on specified terms and conditions, including but not limited to the following:

a. Probation Condition 1 read:

CONTROLLED SUBSTANCES – ABSTAIN FROM USE

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act [Health & Saf. Code, §§ 11000-11651], dangerous drugs as defined by Business and Professions Code section 4022, and any drug requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number, medication name and strength; and issuing pharmacy name, address, and telephone number.

b. Probation Condition 2 read:

ALCOHOL – ABSTAIN FROM USE

Respondent shall abstain completely from the use of products or beverages containing alcohol.

c. Probation Condition 3 read:

BIOLOGICAL FLUID TESTING

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Board or its designee. A certified copy of any laboratory test results may be received in evidence in any proceedings between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

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d. Probation Condition 5 read:

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.

e. Probation Condition 6 read:

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.

f. Probation Condition 12 read:

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.

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g. Probation Condition 13 read:

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.

3. Respondent did not practice medicine for 700 days during his three-year probationary period, and the probationary period was extended commensurately. (See Probationary Condition 6, below.)

4. On May 2, 2014, a Petition to Revoke Probation was filed against Respondent. On August 20, 2014, the instant First Amended Petition to Revoke Probation and Accusation was filed against him. Pursuant to Probation Condition 12, the Board maintained jurisdiction beyond the original termination date of Respondent's probation, and Respondent remained on probation pending a final disposition of the First Amended Petition to Revoke Probation and Accusation.

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5. Complainant established the truth of the following charging allegations in the First Amended Petition to Revoke Probation and Accusation (Exhibit 1) which are incorporated herein as factual findings:

13. On or about February 15, 2011, and continuing to and including August 24, 2011, two individuals ("business owners"), at a business that they owned called "420 Wellness Today," employed respondent to evaluate complaints of illness of persons who wished to obtain recommendations to use marijuana. Respondent signed a recommendation to use marijuana if he decided the person could benefit from it. Neither of the business owners had a Physician's and Surgeon's certificate. The business owners provided office space, all the equipment and documentation used in the evaluation process and hired the staff. They paid respondent a fixed sum for each patient he evaluated.

14. The facts alleged in the previous paragraph constitute the practice of medicine by the business owners, the unlawful aiding and abetting thereof by respondent in violation of section 2052, subdivision (b), of the [Business and Professions] Code and unprofessional conduct under section 2234, subdivision (a), of the [Business and Professions] Code.

15. On or about April 6, 2011, and July 8, 2011, respondent signed, under penalty of perjury and submitted to the Board, his first and second quarter, 2011 Quarterly Declarations in accordance with [probation term 12]. He made these declarations on Quarterly Declaration forms promulgated by the Board that contain blanks for "Primary Place of Practice," "number of hours worked at your primary place of practice" and "List the name, address and work schedule . . . of any other locations where you practice medicine." Respondent listed "Riverwalk Medical Associates" and a schedule in response to the primary place of practice questions but failed to list "420 Wellness Today" in the blank that asked him to "List the name, address and work schedule . . . of any other locations where you practice medicine." Respondent did so willfully and in full knowledge of the truth, i.e., that he was practicing medicine at another location.

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16. The facts alleged in the previous paragraph constitute perjury in violation of Penal Code section 118 and acts involving dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician and surgeon, and unprofessional conduct under section 2234, subdivision (e), of the [Business and Professions] Code.

6. The facts set forth in Factual Finding 4, above, constitute violations of Probation Conditions 5 and 6. They also constitute the aiding and abetting of the unlicensed practice of medicine (Bus. & Prof. Code, § 2234, subd. (a)), and dishonest and corrupt acts (Bus. & Prof. Code, § 2234, subd. (e)).

7. On January 11, 2012, Respondent sent a letter to Carl Thomas, one of the owners of 420 Wellness Today informing him that Respondent had learned Mr. Thomas was operating the clinic in violation of law and that Respondent was terminating his affiliation with the clinic.

8. Respondent failed to check in with the laboratory for biological fluid testing on October 27, November 9, November 27, December 8, and December 14, 2013. He stopped submitting quarterly declarations after the fourth quarter of 2014. Those violations occurred after Respondent retired due to what he termed “personal reasons” that precluded him from working. His retirement rendered him unable to pay for biological fluid testing.

9. On May 6, 2015, Respondent’s probation monitor, Natalie Altamirano, telephoned Respondent. When he informed her that he was not working, Ms. Altamirano asked him if he wanted to surrender his license. (Probation Condition 13.) Respondent declined that suggestion. He informed Ms. Altamirano that he would not be complying with his probationary terms pending a hearing on the merits. He believed his probation had been wrongfully continued indefinitely after the Petitioner to Revoke Probation was filed.

10. Respondent was aware that Carl Thomas was not a physician during the time he worked at 420 Wellness Today, but he thought Mr. Thomas’s wife, who was a registered nurse, could operate the clinic. He also claimed that Natalie Altamirano told him he could work there legally. Ms. Altamirano denied making that statement and explained that such a statement would be beyond her job capacity. Regardless of which statement is true, Respondent worked at 420 Wellness Today for a period of time without disclosing that employment on his quarterly declarations. Therefore, Ms. Altamirano could not have learned of it through Respondent’s quarterly declarations. As is set forth in Legal Conclusions 5 and 6, below, Respondent was responsible for knowing whether he was aiding and abetting the unlicensed practice of medicine the entire time he worked at 420 Wellness Today.

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11. Complainant's attorney submitted a cost declaration pursuant to Business and Professions Code section 125.3 reflecting investigation and prosecution costs of \$22,574.50. As is more fully set forth below, Complainant is not entitled to costs. The prayer for costs is denied. Because Complainant is not entitled to recover costs, no determination is made of the reasonableness of the requested costs.

LEGAL CONCLUSIONS

1. Cause exists to revoke Respondent's probation and impose the license revocation previously stayed, for failure to comply with Probation Conditions 5 and 6, as set forth in Findings 2 through 10.

2. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), and 2264, for aiding and abetting the unlicensed practice of medicine, as set forth in Findings 5, 6, and 10.

3. Cause exists to discipline Respondent's certificate, pursuant to Business and Professions Code sections 2234, subdivision (e), and 2264, for dishonest or corrupt acts, as set forth in Findings 5, 6, and 10.

4. Cause does not exist to order Respondent to pay the costs claimed under Business and Professions Code section 125.3, as set forth in Finding 10. Business and Professions Code section 125.3, subdivision (f) states: "Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435 [of the Business and Professions Code]."

5. In *Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1845, the court stated:

This interpretation of the words of the statute is supported by its purpose, which is protection of the public. . . . It is the responsibility of the medical practitioner to contact the licensing agency and ensure the existence of the license of those in his or her employ. That is the apparent and reasonable intent of the Legislature. Otherwise, practitioners could protect themselves from discipline by the Medical Board by remaining ignorant of the true facts.

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6. The same is true for a physician hired to work in a clinic, especially when the physician knows that at least one of the business owners is not a licensed physician and surgeon.

7. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, 176, the court stated:

The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice.

8. In *Brown v. State Department of Health* (1978) 86 Cal.App.3d 548, 555-556, the court stated:

[W]e hold that "knowingly" to make or sign a certificate which "falsely represents" a state of facts, a person need only have knowledge of the falsity of the facts certified when making or signing the certificate. Our interpretation is not only in accord with statutory and decisional definitions, but will best protect the public. Factual certifications by medical doctors are used extensively throughout society for many and varied purposes. A false medical certification, regardless of the doctor's intent, may be put to great mischief. The evil therefore is not in the intent to do harm, but in falsely certifying facts which are not true. . . .

Nor do we find appellant's argument to be persuasive that the use of the words "falsely represents" requires a finding of intent to deceive. In the absence of express language, intent must be gathered from the terms of the statute construed as a whole, from the nature and character of the act to be done, and from the consequences which would follow the doing or failure to do the particular act at the required time. (Citation.) The revocation or suspension of a license is not penal, the Legislature has provided for suspension to protect the life, health and welfare of the people at large and to set up a plan whereby those who practice medicine will have the qualifications which will prevent, as far as possible, the evils which could result from ignorance or incompetency or a lack of honesty or integrity. (Citations.) The potential of harm from the existence of a false medical certificate, regardless of the intent of the doctor signing the certificate, requires that doctors refrain from signing false certificates.

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9. Respondent knowingly committed several violations of his probationary terms, going so far as to inform his probation monitor that he would no longer comply with them pending the outcome of an administrative hearing. In addition, Respondent knowingly aided and abetted the unlicensed practice of medicine and engaged in dishonest or corrupt acts. Accordingly, both revocation of probation and further license discipline are warranted.

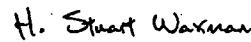
10. In closing argument, Respondent claimed that the only equitable result to this action is termination of probation and placement of his physician's and surgeon's certificate into retired status. That option is neither within the administrative law judge's authority nor supported by the evidence.

ORDER

Physician's and Surgeon's Certificate No. A 53036 issued to Respondent, Roger Gerard Annabel, M.D., is revoked.

Dated: November 25, 2015

DocuSigned by:

H. Stuart Waxman

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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
2 Attorney General of California
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4 Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 20, 2014
BY: McCloud ANALYST

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

11 In the Matter of the First Amended Petition to
12 Revoke Probation and Accusation Against,

Case No. D1-2004-160454

13 **ROGER GERARD ANNABEL, M.D.**
14 **4653 Torrey Pines Drive**
Chino Hills, CA 91709
15 **Physician's and Surgeon's Certificate No. A**
53036

FIRST AMENDED PETITION TO
REVOKE PROBATION AND
ACCUSATION

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this First Amended Petition to Revoke
20 Probation and Accusation solely in her official capacity as the Executive Director of the Medical
21 Board of California, Department of Consumer Affairs (Board).

22 2. On or about May 4, 1994, the Board issued Physician's and Surgeon's Certificate
23 Number A 53036 to Roger Gerard Annabel, M.D. (respondent). The Physician's and Surgeon's
24 Certificate was in effect at all times relevant to the charges brought herein and will expire on May
25 31, 2016, unless renewed.

26 3. In a disciplinary action titled "*In the Matter of Accusation Against Roger Gerard*
27 *Annabel, M.D.*," Case No. 04-2004-160454, the Medical Board of California issued a decision,
28 effective July 9, 2009, in which respondent's Physician's and Surgeon's Certificate was revoked.

1 However, the revocation was stayed and respondent's Physician's and Surgeon's Certificate was
2 placed on probation for a period of three (3) years with certain terms and conditions. A copy of
3 that decision is attached as Exhibit A and is incorporated by reference. Respondent did not
4 practice medicine for 700 days during his three-year probation. Paragraph 10 on page 6 of
5 Exhibit A ("failure to practice medicine") therefore extends the probation for the same number of
6 days.

JURISDICTION

8 4. This First Amended Petition to Revoke Probation and Accusation is brought before
9 the Board under the authority of the following laws. All section references are to the Business
10 and Professions Code unless otherwise indicated.

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

15 || 6. Section 2051 of the Code states:

16 "The physician=s and surgeon=s certificate authorizes the holder to use drugs or devices in
17 or upon human beings and to sever or penetrate the tissue of human beings and to use any and all
18 other methods in the treatment of diseases, injuries, deformities, and other physical and mental
19 conditions."

20 || 7. Section 2052 of the Code states:

21 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
22 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
23 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
24 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
25 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
26 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
27 authorized to perform the act pursuant to a certificate obtained in accordance with some other
28 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand

1 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not
2 exceeding one year, or by both the fine and either imprisonment.

3 "(b) Any person who conspires with or aids or abets another to commit any act described in
4 subdivision (a) is guilty of a public offense, subject to the punishment described in that
5 subdivision.

6 "(c) The remedy provided in this section shall not preclude any other remedy provided by
7 law."

8 8. Section 2234 of the Code, states:

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

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

14 "...

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

17 ..."

18 9. Section 2264 of the Code states:

19 "The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person
20 or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any
21 other mode of treating the sick or afflicted which requires a license to practice constitutes
22 unprofessional conduct."

23 10. Penal Code section 118 in part provides that:

24 "(a) Every person who, having taken an oath that he or she will testify, declare, depose, or
25 certify truly before any competent tribunal, officer, or person, in any of the cases in which the
26 oath may by law of the State of California be administered, willfully and contrary to the oath,
27 states as true any material matter which he or she knows to be false, and every person who
28 testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the

testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.”

“ ”

FIRST CAUSE TO REVOKE PROBATION

(OBEY ALL LAWS)

11. At all times after the effective date of respondent's probation, Condition 5 stated: "Respondent shall obey all ...laws [and] all rules governing the practice of medicine in California."

12. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 5, referenced above. The facts and circumstances regarding this violation are as follows:

13. On or about February 15, 2011, and continuing to and including August 24, 2011, two individuals (“business owners”), at a business that they owned called “420 Wellness Today,” employed respondent to evaluate complaints of illness of persons who wished to obtain recommendations to use marijuana. Respondent signed a recommendation to use marijuana if he decided the person could benefit from it. Neither of the business owners had a Physician’s and Surgeon’s certificate. The business owners provided office space, all the equipment and documentation used in the evaluation process and hired the staff. They paid respondent a fixed sum for each patient he evaluated.

14. The facts alleged in the previous paragraph constitute the practice of medicine by the business owners, the unlawful aiding and abetting thereof by respondent in violation of section 2052, subdivision (b), of the Code and unprofessional conduct under section 2234, subdivision (a), of the Code.

15. On or about April 6, 2011, and July 8, 2011, respondent signed, under penalty of perjury and submitted to the Board, his first and second quarter, 2011 Quarterly Declarations in accordance with the probation term alleged in paragraph 17 below. He made these declarations on Quarterly Declaration forms promulgated by the Board that contain blanks for "Primary Place

1 of Practice," "number of hours worked at your primary place of practice" and "List the name,
2 address and work schedule. . .of any other locations where you practice medicine." Respondent
3 listed "Riverwalk Medical Associates" and a schedule in response to the primary place of practice
4 questions but failed to list "420 Wellness Today" in the blank that asked him to "List the name,
5 address and work schedule. . .of any other locations where you practice medicine." Respondent
6 did so willfully and in full knowledge of the truth, i.e., that he was practicing medicine at another
7 location.

8 16. The facts alleged in the previous paragraph constitute perjury in violation of Penal
9 Code section 118 and acts involving dishonesty or corruption substantially related to the
10 qualifications, functions, or duties of a physician and surgeon, and unprofessional conduct under
11 section 2234, subdivision (e), of the Code.

SECOND CAUSE TO REVOKE PROBATION

(QUARTERLY DECLARATIONS)

14 17. At all times after the effective date of respondent's probation, Condition 6 stated:
15 "Respondent shall submit quarterly declarations under penalty of perjury...stating whether there
16 has been compliance with all the conditions of probation."

17 18. Respondent's probation is subject to revocation because he failed to comply with
18 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
19 are as follows:

20 19. Complainant incorporates the allegations of paragraphs 15 and 16 as if set forth in
21 full.

FIRST CAUSE FOR DISCIPLINE

(AIDING AND ABETTING THE UNLICENSED PRACTICE OF MEDICINE)

24 20. Respondent is subject to disciplinary action under sections 2234, subdivision (a), and
25 2264 in that he aided and abetted others to practice medicine without having Physician's and
26 Surgeon's Certificates. The circumstances are as follows

27 21. Complainant incorporates the allegations of paragraphs 13 and 14 as if set forth in
28 full

SECOND CAUSE FOR DISCIPLINE

(DISHONEST OR CORRUPT ACTS)

22. Respondent is subject to disciplinary action under sections 2234, subdivision (e), in that he committed acts involving dishonesty or corruption substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows

23. Complainant incorporates the allegations of paragraph 15 as if set forth in full.

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 the probation that was granted by the Medical Board of California in Case No. 04-2004-160454 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 53036 issued to Roger Gerard Annabel, M.D.

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 53036, issued to Roger Gerard Annabel, M.D.;

3. Revoking, suspending or denying approval of Roger Gerard Annabel, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

4. Ordering Roger Gerard Annabel, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring, and

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

DATED: August 20, 2014

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. D1-2004-160454

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

In the Matter of the Accusation)
Against:)

ROGER GERARD ANNABEL, M.D.)

File No. 04-2004-160454

Physician's and Surgeon's)
Certificate No. A 53036)

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 July 9, 2009.

IT IS SO ORDERED June 9, 2009.

MEDICAL BOARD OF CALIFORNIA

Shelton Duruisseau
By: _____
Shelton Duruisseau, Chair
Panel A

1 EDMUND G. BROWN JR., Attorney General
2 of the State of California
3 STEVEN V. ADLER
4 Supervising Deputy Attorney General
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14
15 Attorneys for Complainant

Partially III Compliant

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

12 In the Matter of the Accusation Against:

Case No. 04-2004-160454

13 ROGER GERARD ANNABEL, M.D.
4653 Torrey Pines Drive
14 Chino Hills, CA 91709

OAH No.

15 Physician's and Surgeon's Certificate
No. A53036

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

Respondent.

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

PARTIES

1. Barbara Johnston (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 Edmund G. Brown Jr., Attorney General of the State of California, by Douglas
Lee, Deputy Attorney General.

25 2. Roger Gerard Annabel, M.D. (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 | //

28 | //

1 3. On or about May 4, 1994, the Medical Board of California issued
2 Physician's and Surgeon's Certificate No. A 53036 to Respondent. The Physician's and Surgeon's
3 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
4 No. 04-2004-160454 and will expire on May 31, 2010, unless renewed.

JURISDICTION

6 4. Accusation No. 04-2004-160454 was filed before the Medical Board of
7 California (Board), Department of Consumer Affairs, and is currently pending against
8 Respondent. The Accusation and all other statutorily required documents were properly served
9 on Respondent on or about March 25, 2009. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. 04-2004-160454 is attached as Exhibit A
11 and incorporated herein by reference.

ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read, and understands the charges and allegations
14 in Accusation No. 04-2004-160454. Respondent has also carefully read, and understands the
15 effects of this Stipulated Settlement and Disciplinary Order.

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

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

25 || //

26 | //

27 |||

28 //

1

CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in
3 Accusation No. 04-2004-160454, if proven at a hearing, constitute cause for imposing discipline
4 upon his Physician's and Surgeon's Certificate.

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

9 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject
10 to discipline and he agrees to be bound by the Medical Board of California (Board)'s imposition
11 of discipline as set forth in the Disciplinary Order below.

12

CONTINGENCY

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate
No. A 53036 issued to ROGER GERARD ANNABEL, M.D. (Respondent) is revoked.

4 However, the revocation is stayed and Respondent is placed on probation for three (3) years on
5 the following terms and conditions.

6 1. CONTROLLED SUBSTANCES - ABSTAIN FROM USE Respondent
7 shall abstain completely from the personal use or possession of controlled substances as defined
8 in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business
9 and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does
10 not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide
11 illness or condition.

12 Within 15 calendar days of receiving any lawful prescription medications,
13 respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and
14 telephone number; medication name and strength; and issuing pharmacy name, address, and
15 telephone number.

16 2. ALCOHOL - ABSTAIN FROM USE Respondent shall abstain
17 completely from the use of products or beverages containing alcohol.

18. 3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit
19. to biological fluid testing, at respondent's expense, upon the request of the Board or its designee.
20. A certified copy of any laboratory test results may be received in evidence in any proceedings
21. between the Board and the respondent. Failure to submit to, or failure to complete the required
22. biological fluid testing, is a violation of probation.

23 4. **NOTIFICATION** Prior to engaging in the practice of medicine, the
24 respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or
25 the Chief Executive Officer at every hospital where privileges or membership are extended to
26 respondent, at any other facility where respondent engages in the practice of medicine, including
27 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
28 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.

1 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
2 days.

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

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

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

12 7. PROBATION UNIT COMPLIANCE Respondent shall comply with the
13 Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's
14 business and residence addresses. Changes of such addresses shall be immediately
15 communicated in writing to the Board or its designee. Under no circumstances shall a post office
16 box serve as an address of record, except as allowed by Business and Professions Code section
17 2021(b).

18 Respondent shall not engage in the practice of medicine in respondent's place of
19 residence. Respondent shall maintain a current and renewed California physician's and
20 surgeon's license.

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

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

28 ///

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

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

21 10. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

22 In the event respondent resides in the State of California and for any reason
23 respondent stops practicing medicine in California, respondent shall notify the Board or its
24 designee in writing within 30 calendar days prior to the dates of non-practice and return to
25 practice. Any period of non-practice within California, as defined in this condition, will not
26 apply to the reduction of the probationary term and does not relieve respondent of the
27 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
28 any period of time exceeding 30 calendar days in which respondent is not engaging in any

1 activities defined in sections 2051 and 2052 of the Business and Professions Code.

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

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

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

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

20 13. **LICENSE SURRENDER** Following the effective date of this Decision, if
21 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
22 the terms and conditions of probation, respondent may request the voluntary surrender of
23 respondent's license. The Board reserves the right to evaluate respondent's request and to
24 exercise its discretion whether or not to grant the request, or to take any other action deemed
25 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
26 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
27 Board or its designee and respondent shall no longer practice medicine. Respondent will no
28 longer be subject to the terms and conditions of probation and the surrender of respondent's

1 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the
2 application shall be treated as a petition for reinstatement of a revoked certificate.

3 14. PROBATION MONITORING COSTS Respondent shall pay the costs
4 associated with probation monitoring each and every year of probation, as designated by the
5 Board. Such costs shall be payable to the Medical Board of California and delivered to the Board
6 or its designee no later than January 31 of each calendar year. Failure to pay costs within 30
7 calendar days of the due date is a violation of probation.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's 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.

7 DATED: Oct 23, 2009

Roger J. Annabel
ROGER GERARD ANNABEL, M.D.
Respondent

ENDORSEMENT

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

18 DATED: 12/23/00

EDMUND G. BROWN JR., Attorney General
of the State of California

STEVEN V. ADLER
Supervising Deputy Attorney General

Douglas Lee
DOUGLAS LEE
Deputy Attorney General

Attorneys for Complainant

Exhibit A

Accusation No. 04-2001160454

1 EDMUND G. BROWN JR., Attorney General
2 of the State of California
3 STEVEN V. ADLER
4 Supervising Deputy Attorney General
5 DOUGLAS LEE, State Bar No. 222806
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13 Attorneys for Complainant

14 FILED
15 STATE OF CALIFORNIA
16 MEDICAL BOARD OF CALIFORNIA
17 SACRAMENTO MARCH 25, 2009
18 BY: J. MELCHAK ANALYST

19 BEFORE THE
20 MEDICAL BOARD OF CALIFORNIA
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 In the Matter of the Accusation Against:

24 Case No. 04-2004-160454

25 ROGER GERARD ANNABEL, M.D.
26 4653 Torrey Pines Drive
27 Chino Hills, CA 91709

28 OAH No.

29 ACCUSATION

30 Physician's and Surgeon's Certificate
31 No. A53036

32 Respondent.

33 Complainant alleges:

34 PARTIES

35 1. Barbara Johnston (Complainant) brings this Accusation solely in her
36 official capacity as the Executive Director of the Medical Board of California, Department of
37 Consumer Affairs:

38 2. On or about May 4, 1994, the Medical Board of California issued
39 Physician's and Surgeon's Certificate No. A53036 to ROGER GERARD ANNABEL, M.D.
40 (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
41 relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.

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JURISDICTION

5 4. Section 2227 of the Code provides that a licensee who is found guilty
6 under the Medical Practice Act may have his or her license revoked, suspended for a period not
7 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
8 such other action taken in relation to discipline as the Division¹ deems proper.

5. Section 2234 of the Code states:

13 11 22

¹⁸ Section 2239, subdivision (a), of the Code provides in pertinent part:

19 "The use or prescribing for or administering to himself or herself, of any
20 controlled substance constitutes unprofessional conduct...."

23 1. California Business and Professions Code section 2002, as amended and effective
24 January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in
25 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.

26 2. Unprofessional conduct under Code section 2234 is conduct which breaches the rules or
27 ethical code of the medical profession, or conduct which is unbecoming to a member in good
28 standing of the medical profession, and which demonstrates an unfitness to practice medicine.
Shea v. Board of Medical Quality Assurance (1978) 81 Cal.App.3d 564, 575.

1 7. Section 480 of the Code states:

2 "(a) A board may deny a license regulated by this code on the grounds that the
3 applicant has one of the following:

4 "..."
5 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
6 substantially benefit himself or another, or substantially injure another; or

7 "..."
8 CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

9 This Accusation is also made in reference to the following controlled substances
10 and dangerous drugs:

11 8. "Fentanyl," is a narcotic (opioid) pain medication. It is a Schedule II
12 controlled substance under California Health and Safety Code section 11055, subdivision (c)(8),
13 and a dangerous drug within the meaning of section 4022 of the Code.

14 FIRST CAUSE FOR DISCIPLINE

15 (Use of a Controlled Substance)

16 9. Respondent has subjected his Physician's and Surgeon's Certificate
17 No. A53036 to disciplinary action under sections 2227 and 2234, as defined by section 2239,
18 subdivision (a), of the Code, in that he used, prescribed or administered to himself, a controlled
19 substance, as more particularly alleged hereinafter:

20 (a) In 1998 respondent came to California and began practicing medicine. He
21 was self-referred to the California Medical Board's Diversion Program. On or about 2000
22 respondent was terminated from the Diversion program for non-compliance.

23 (b) In 2004, respondent was suspended from Pacific Hospital in Long Beach
24 due to allegations that he had been under the influence of narcotics. Respondent was told to
25 enter the Medical Board of California's Diversion Program.

26 (c) On or about January 6, 2005, respondent signed a Statement of
27 Understanding to enter the California Medical Board's Diversion Program.

28 ///

(d) On or about January of 2006, respondent signed an amendment to his Statement of Understanding stating that he would agree to take Naltrexone.³

3 (e) On or about October 30, 2007, respondent tested positive for Fentanyl.
4 That same day, respondent tested negative for Naltrexone.

5 (f) On or about June 30, 2008, the Medical Board of California's Diversion
6 Program ceased.

(8) On or about June 30, 2008, respondent stopped taking Naltrexone.

8 Respondent was told by the Director of the Medical Board of California's Diversion Program
9 that he needed to enroll in the Pacific Assistance Group, the only approved program for drug
10 monitoring. Respondent did not, and has not, enrolled in the Pacific Assistance Group.

SECOND CAUSE FOR DISCIPLINE

(Acts of Dishonesty and/or Corruption)

13 10. Respondent has further subjected his Physician's and Surgeon's Certificate
14 No. A53036 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
15 subdivision (e), in that he committed an act involving dishonesty which is substantially related to
16 the qualifications, functions, or duties of a physician and surgeon, as more particularly alleged
17 hereinafter:

18 (a) Paragraph 9, above, is hereby incorporated by reference and realleged as if
19 set forth hereinafter.

20 (b) On or about December 16, 2008, respondent was interviewed by
21 Supervising Investigator II KN.

22 (c) During the interview, respondent stated that he had successfully completed
23 the Medical Board of California's Diversion Program in 2000. Respondent further stated that he
24 did not receive a certificate, that he was told "Good Luck," and that he did not need the program
25 anymore.

3. "Naltrexone," is a special narcotic drug that blocks the effects of other narcotic medications and alcohol.

(d) Respondent was actually terminated from the Medical Board of California's Diversion Program in 2000 for non-compliance.

THIRD CAUSE OF DISCIPLINE

(Conduct Warranting the Denial of a Certificate)

5 11. Respondent has further subjected his Physician's and Surgeon's Certificate
6 No. A53036 to disciplinary action under sections 2227 and 2234, as defined by sections 2234,
7 subdivision (f), and 480, of the Code, in that he committed an act involving dishonesty, fraud or
8 deceit with the intent to substantially benefit himself or another, as more particularly described in
9 paragraph 10, above, which is hereby incorporated by reference and realleged as if fully set forth
10 hereinafter.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

13 12. Respondent has further subjected his Physician's and Surgeon's Certificate
14 No. A53036 to disciplinary action under sections 2227 and 2234 of the Code in that he has
15 engaged in conduct which breaches the rules of ethical code of the medical profession, and which
16 demonstrates an unfitness to practice medicine, as more particularly described hereinafter.

17 (a) Paragraphs 9 and 10, above, are hereby incorporated by reference and
18 realleged as if fully set forth herein;

19 (b) Respondent refused to enroll in Pacific Assistance Group following the
20 termination of the Medical Board of California's Diversion Program;

21 (c) Respondent knowingly made a false statement during his interview on or
22 about December 16, 2008; and,

23 (d) Respondent stopped taking Naltrexone on or about June 30, 2008
24 [respondent previously tested negative for Naltrexone on or about October 30, 2007].

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PRAYER

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

4 1. Revoking or suspending Physician's and Surgeon's Certificate

5 No. A53036, issued to Roger Gerard Annabel, M.D.;

6 2. Revoking, suspending, or denying approval of respondent's authority to

7 supervise physician assistants pursuant to section 3527 of the Code;

8 3. Ordering respondent, if placed on probation, to pay the Board the costs of

9 probation monitoring; and,

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

12 DATED: March 25, 2009.

BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant