

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

**In the Matter of the Accusation)
Against:)
)
)
Massimo Arcerito, M.D.)
)
Physician's and Surgeon's)
Certificate No. A 111450)
)
Respondent)
_____)**

Case No. 800-2017-039156


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 January 2, 2020.

IT IS SO ORDERED December 3, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
Deputy Attorney General
4 State Bar No. 179733
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6475
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 MASSIMO ARCERITO, M.D.
14 3660 Park Sierra Drive, Suite 105
Riverside, CA 92505

15 Physician's and Surgeon's Certificate
16 No. A 111450,

17 Respondent.

Case No. 800-2017-039156

OAH No. 2019020316

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 **PARTIES**

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

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1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a prima facie case with respect to the charges and allegations contained in Accusation
4 No. 800-2017-039156 and that he has thereby subjected his license to disciplinary action.

5 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
6 discipline and he agrees to be bound by the imposition of discipline by the Board as set forth in
7 the Disciplinary Order below.

8 CONTINGENCY

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

19 12. The parties understand and agree that Portable Document Format ("PDF") and
20 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
21 facsimile signatures thereto, shall have the same force and effect as the originals.

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

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1 DISCIPLINARY ORDER

2 **A. PUBLIC REPRIMAND.**

3 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate A 111450 issued to
4 Respondent Massimo Arcerito, M.D. is publicly reprimanded pursuant to California Business and
5 Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in
6 connection with Respondent's care and treatment of Patient 1 as set forth in Accusation No. 800-
7 2017-039156, is as follows:

8 You committed acts constituting negligence in violation of Business and
9 Professions Code section 2234, subdivision (b), with respect to your
10 intraoperative surgical care and treatment of Patient 1 on February 5, 2015,
11 as set forth in Accusation No. 800-2017-039156.

12 **B. EDUCATION COURSE.** Within sixty (60) calendar days of the effective date of
13 this Decision, Respondent shall submit to the Board or its designee for its prior approval
14 educational program(s) or course(s) which shall not be less than twenty (20) hours. The
15 educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or
16 knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at
17 Respondent's expense and shall be in addition to the Continuing Medical Education ("CME")
18 requirements for renewal of licensure. Following the completion of each course, the Board or its
19 designee may administer an examination to test Respondent's knowledge of the course.
20 Respondent shall provide proof of attendance for twenty (20) hours of CME in satisfaction of this
21 condition.

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than fifteen (15) calendar days after successfully completing the educational
24 program(s) or course(s), or not later than fifteen (15) calendar days after the effective date of the
25 Decision, whichever is later.

26 If Respondent fails to enroll, participate in, or successfully complete the educational
27 program(s) or course(s) within the designated time period, Respondent shall receive a notification

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1 from the Board or its designee to cease the practice of medicine within three (3) calendar days
2 after being so notified. Respondent shall not resume the practice of medicine until enrollment or
3 participation in the educational program(s) or course(s) has been completed. Failure to
4 successfully complete the educational program(s) or course(s) outlined above shall constitute
5 unprofessional conduct and is grounds for further disciplinary action.

6 ACCEPTANCE


7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorneys, Alexander F. Giovannello and Karen A. Bocker. I understand the
9 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this
10 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
11 to be bound by the Decision and Order of the Medical Board of California.

12
13 DATED: 8/21/2019


14 MASSIMO ARCERITO, M.D.
15 Respondent

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

19
20 DATED: 8/2/19


21 ALEXANDER F. GIOVANNELLO
22 KAREN A. BOCKER
23 Attorney for Respondent

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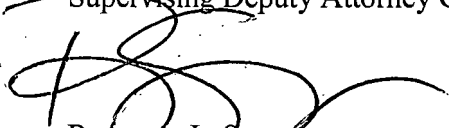
ENDORSEMENT

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

DATED: Aug 2, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039156

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 REBECCA L. SMITH
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO JANUARY 15 2019
BY *[Signature]* ANALYST

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

11 In the Matter of the Accusation Against:

Case No. 800-2017-039156

12 Massimo Arcerito, M.D.
13 3660 Park Sierra Drive, Suite 105
14 Riverside, California 92505

ACCUSATION

15 Physician's and Surgeon's Certificate
No. A 111450,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On March 10, 2010, the Medical Board issued Physician's and Surgeon's Certificate
24 Number A 111450 to Massimo Arcerito, M.D. ("Respondent"). That license was in full force and
25 effect at all times relevant to the charges brought herein and will expire on May 31, 2019, unless
26 renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board under the authority of the following
3 provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4 4. Section 2004 of the Code states:

5 "The board shall have the responsibility for the following:

6 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
7 Act.

8 "(b) The administration and hearing of disciplinary actions.

9 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
10 administrative law judge.

11 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
12 disciplinary actions.

13 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
14 certificate holders under the jurisdiction of the board.

15 "...".

16 5. Section 2227 of the Code states:

17 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
18 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
19 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
20 action with the board, may, in accordance with the provisions of this chapter:

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

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

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

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

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

3 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
4 review or advisory conferences, professional competency examinations, continuing education
5 activities, and cost reimbursement associated therewith that are agreed to with the board and
6 successfully completed by the licensee, or other matters made confidential or privileged by
7 existing law, is deemed public, and shall be made available to the public by the board pursuant to
8 Section 803.1.”

9 6. Section 2234 of the Code, states:

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

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

15 “(b) Gross negligence.

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

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

21 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
22 constitutes the negligent act described in paragraph (1), including, but not limited to; a
23 reevaluation of the diagnosis or a change in treatment, and the licensee’s conduct departs from the
24 applicable standard of care, each departure constitutes a separate and distinct breach of the
25 standard of care.

26 “(d) Incompetence.

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

1 “(f) Any action or conduct which would have warranted the denial of a certificate.

2 “(g) The practice of medicine from this state into another state or country without meeting
3 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
4 apply to this subdivision. This subdivision shall become operative upon the implementation of
5 the proposed registration program described in Section 2052.5.

6 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
7 participate in an interview by the board. This subdivision shall only apply to a certificate holder
8 who is the subject of an investigation by the board.”

9 **FACTUAL ALLEGATIONS**

10 7. In 2014, Patient 1¹ complained of ongoing right shoulder pain to his primary care
11 physician, Dr. C.W. An MRI of the shoulder revealed acromioclavicular disease and an
12 incidental finding of a 5.1 cm axillary mass beneath the right shoulder highly suspicious for
13 malignancy. On ultrasound, the mass was estimated to be 5.7 cm in its greatest dimension.
14 Pathology from an ultrasound guided core needle biopsy initially revealed a spindle cell lesion of
15 low cellularity, positive for S-100, and consistent with a neural lesion, possibly a neurofibroma.
16 Two addenda were subsequently issued. The first addendum suggested that the tumor may be a
17 schwannoma² or other neural tumor, and the second excluded a melanocytic lesion. Dr. C.W.
18 referred Patient 1 to Mission Surgical Clinic.

19 8. On January 5, 2015, the patient was seen by Dr. E.C., a general surgeon at Mission
20 Surgical Clinic in consultation for the right axillary mass. Following evaluation and examination,
21 Dr. E.C. gave the patient the options of observation with serial ultrasounds versus excision of the
22 mass and explained some risks and benefits of both. The patient chose to proceed with excision.
23 Dr. E.C. instructed his office to schedule the patient for surgery and to schedule an assistant
24 surgeon for the surgery.

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26 _____
27 ¹ For privacy purposes, the patient in this Accusation is referred to as Patient 1, with the identity of
the patient disclosed to Respondent in discovery.

28 ² A schwannoma is a benign peripheral nerve sheath tumor that only rarely becomes malignant.

1 9. On February 5, 2015, Dr. E.C. performed the scheduled right axillary mass surgery at
2 Parkview Community Hospital. The patient underwent pre-operative needle localization of the
3 mass by radiologist Dr. J.R. Dr. R.S., another surgeon at Mission Surgical Clinic, initially
4 assisted Dr. E.C. with the surgery at which time the patient's right axilla was explored.

5 10. One hour and five minutes into the three hour and eleven-minute surgery and prior to
6 the removal of the tumor, Dr. R.S., who had a 12:00 p.m. meeting at Mission Surgical Clinic,
7 scrubbed out and Respondent, another surgeon at Mission Surgical Clinic, scrubbed in to assist
8 Dr. E.C.

9 11. After Respondent joined in the surgery as Dr. E.C.'s assistant surgeon, the large mass
10 was identified. There was a vein running along the mass which was isolated with vessel loops.
11 Dissection was initially carried out with monopolar electrocautery, but elicited a vigorous flexion
12 response from the right upper extremity. Dissection then proceeded with bipolar electrocautery.
13 A nerve stimulator was not used during the surgery. A nerve exiting the mass was ligated and
14 tagged with a silk tie prior to transection and further dissection of the mass. A second nerve
15 entering the mass was identified after further dissection and similarly ligated and tagged prior to
16 division. The tumor was removed and an intra-operative frozen section of the completely excised
17 mass identified the tumor as likely a schwannoma. The wound was closed and the operation
18 completed. Respondent was present during the dissection of the mass as well as the ligation and
19 division of the nerves and removal of the tumor.

20 12. Following the completion of surgery, Respondent had no further involvement in the
21 patient's care and treatment.

22 13. In the recovery room, the patient immediately complained of right upper extremity
23 weakness and Dr. E.C. initiated a work up for neurologic injury. He ordered an urgent neurology
24 consult, high dose steroids were given and multiple imaging studies were obtained. With no
25 neurosurgeons on staff at Parkview Community Hospital, Dr. E.C. contacted neurosurgeons at
26 other medical centers for advice and it was recommended that the patient undergo aggressive
27 physical therapy prior to any consideration of operative repair. The patient was eventually
28 discharged from the hospital on February 10, 2015 with plans to follow up with Dr. E.C. in his

1 office as well as undergo outpatient physical and occupational therapy. The patient underwent
2 outpatient occupational therapy following his discharge from the hospital with only marginal
3 improvement in his right upper extremity extensor function. He was referred to the neurosurgery
4 department at UCLA where his brachial plexus injury was evaluated and a nerve grafting
5 procedure was attempted; however, the amount of scarring in the brachial plexus region due to
6 the initial surgery prevented the identification of the proximal stump of the transected radial
7 nerve. Thereafter, the patient underwent a nerve transfer surgery which failed to provide
8 meaningful improvement in the motor function of Patient 1's right upper extremity. On
9 December 3, 2015, in another attempt to restore function in the patient's right upper extremity,
10 Patient 1 underwent a tendon transfer surgery. While the patient has had significant improvement
11 in the use of his right upper extremity, as of July 7, 2017, he continues to have significant deficits.

12 STANDARD OF CARE

13 14. The standard of care requires that an assistant surgeon not only assist the primary
14 surgeon from a technical standpoint but also discuss the ongoing surgery, interject when the
15 surgery is proceeding in such a way that may be a danger to the patient, and, when necessary,
16 formally object and even insist on terminating the procedure.

17 15. When a surgeon considers performing a surgical intervention, such as an axillary
18 mass removal procedure, the standard of care requires that the surgeon recognize his surgical
19 limitations and avoid performing a procedure that is outside of his scope of practice or beyond his
20 expertise.

21 16. Tumors of neurologic origin in cutaneous locations all over the body, such as
22 neurofibromas are occasionally within the scope of a general surgeon's practice; however,
23 surgery of deep neurologic tumors is not within a general surgeon's scope of practice.

24 17. General surgeons frequently operate in the axilla, in the region below the level of the
25 axillary vein; however, the risk of major neurologic or vascular injury above the level of the
26 axillary vein when performing surgical dissection is generally outside the scope of practice of
27 general surgeons. The brachial plexus, a complex cluster of major motor and sensory nerves to
28 the upper extremity, is located above the level of the axillary vein. Surgery in the region of the

1 brachial plexus has the potential to be disabling to the patient and should only be undertaken by
2 surgeons with expertise in the treatment of the brachial plexus.

3 18. Through normal dissection in the axilla below the level of the axillary vein, surgeons
4 should actively attempt to identify the thoracodorsal and long thoracic nerves, which are
5 descending branches off of the brachial plexus descending below the axillary vein. The
6 thoracodorsal nerve innervates the latissimus dorsi muscle and can be confirmed with a twitch of
7 the latissimus muscle with stimulation by a forceps or nerve stimulator. The long thoracic nerve
8 innervates the serratus anterior muscle and can be confirmed with a twitch of the serratus muscle
9 with similar stimulation. Division of these nerves significantly impairs shoulder function and
10 great effort should be made to preserve them. The radial nerve in the axilla is a major branch of
11 the brachial plexus that lies above the axillary vein and provides motor function to numerous
12 muscles of the upper extremity. The radial nerve is an essential nerve for any meaningful upper
13 extremity function and preservation of this nerve is absolutely vital to maintain meaningful upper
14 extremity function. A nerve stimulator can be used to locate and identify nerves intro-
15 operatively.

16 CAUSE FOR DISCIPLINE

17 (Gross Negligence – Intra-Operative Care and Treatment)

18 19. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
19 the Code, in that he engaged in gross negligence in his intraoperative care and treatment of
20 Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 8 through
21 18, above, as though fully set forth herein. The circumstances are as follows:

22 A. Intraoperatively, Respondent acted as Dr. E.C.'s assistant surgeon and was
23 obligated to assist Dr. E.C. not only from a technical standpoint but also discuss the ongoing
24 surgery and interject when the surgery proceeded in a way that was a danger to the patient.
25 Respondent failed to recognize that he was working inside the brachial plexus rather than below
26 the axillary vein. He failed to identify the general anatomic landmarks, including the axillary
27 vein, to be sure of the anatomic space where the dissection was taking place; he failed to
28 recognize that the patient's right axillary anatomy was significantly distorted as normal anatomic

1 relations were displaced by the tumor; he failed to utilize formal intraoperative nerve monitoring;
2 he acknowledged that nerve reconstruction may be necessary in the future when silk tagging
3 sutures was placed on the two ends of the nerves and then the nerve was transected in two places
4 to remove the tumor; and though the exact nerve was not identified intraoperatively, stimulation
5 clearly elicited upper extremity motion, thus indicating that the nerve was a functional motor
6 nerve to the upper extremity and it was still sacrificed it to remove the tumor.

7 20. Respondent's acts and/or omissions as set forth in paragraphs 8 through 19, above,
8 whether proven individually, jointly, or in any combination thereof, constitute gross negligence
9 pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

10 **PRAYER**

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


13 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 111450,
14 issued to Massimo Arcerito, M.D.;

15 2. Revoking, suspending or denying approval of his authority to supervise physician
16 assistants and advanced practice nurses;

17 3. If placed on probation, ordering him to pay the Board the costs of probation
18 monitoring; and

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

20
21 DATED: January 15, 2019


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

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