

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

In the Matter of the Accusation Against

Bret Robert Gerber, M.D.

**Physician's and Surgeon's
Certificate No. G 79213**

Case No. 800-2016-028644

Respondent.

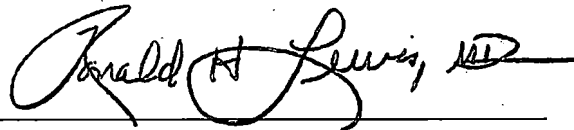
DECISION

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 May 22, 2020.

IT IS SO ORDERED: April 22, 2020.

MEDICAL BOARD OF CALIFORNIA



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

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
4 State Bar No. 231195
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5 San Diego, California 92101
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6 San Diego, California 92186-5266
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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 In the Matter of the Accusation Against:

13 **BRET ROBERT GERBER, M.D.**
14 **5150 Roxbury Road**
San Diego, California 92116-2142

15 **Physician's and Surgeon's Certificate No.**
16 **G 79213,**

17 Respondent.

Case No. 800-2016-028644

OAH No. 2019071052

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

20 **PARTIES**

21 1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board
22 of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer,¹
23 solely in her official capacity. Complainant is represented in this matter by Xavier Becerra,
24 Attorney General of the State of California, and Joseph F. McKenna III, Deputy Attorney General.

25 2. Respondent Bret Robert Gerber, M.D. (Respondent) is represented in this proceeding
26 by attorney Robert W. Frank, Esq., whose address is: 110 West A Street, Suite 1200, San Diego,
27 California, 92101.

28 ¹ Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

1 3. On or about June 22, 1994, the Board issued Physician's and Surgeon's Certificate
2 No. G79213 to Bret Robert Gerber, M.D. (Respondent). Respondent's Physician's and Surgeon's
3 Certificate was in full force and effect at all times relevant to the allegations and charges brought
4 in Accusation No. 800-2016-028644, and will expire on January 31, 2022, unless renewed.

5 **JURISDICTION**

6 4. On June 4, 2019, Accusation No. 800-2016-028644 was filed before the Board,
7 and is currently pending against Respondent. The Accusation and all other statutorily required
8 documents were properly served on Respondent on June 4, 2019. Respondent timely filed his
9 Notice of Defense contesting the Accusation. A true and correct copy of the Accusation is
10 attached hereto as Exhibit A and hereby incorporated by reference as if fully set forth herein.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, discussed with counsel, and fully understands the
13 charges and allegations in the Accusation. Respondent has also carefully read, discussed with
14 counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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

22 7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
23 waives and gives up each and every right set forth above.

24 **CULPABILITY**

25 8. Respondent does not contest that, at an administrative hearing, Complainant could
26 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
27 No. 800-2016-028644, and that he has thereby subjected his Physician's and Surgeon's
28 Certificate No. G 79213 to disciplinary action.

1 9. Respondent agrees that if he ever petitions for early termination or modification of
2 probation, or if an accusation and/or petition to revoke probation is filed against him before the
3 Board, all of the charges and allegations contained in Accusation No. 800-2016-028644 shall be
4 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding.

5 **CONTINGENCY**

6 10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the
7 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
8 submitted to the Board for its consideration in the above-entitled matter and, further, that the
9 Board shall have a reasonable period of time in which to consider and act on this Stipulated
10 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
11 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
12 prior to the time the Board considers and acts upon it.

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

28 ////

1 **ADDITIONAL PROVISION**

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

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

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

11 **DISCIPLINARY ORDER**

12 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 79213
13 issued to Respondent Bret Robert Gerber, M.D., is revoked. However, the revocation is stayed
14 and Respondent is placed on probation for four (4) years from the effective date of the Decision
15 on the following terms and conditions:

16 1. **EDUCATION COURSE.**

17 Within sixty (60) calendar days of the effective date of this Decision, and on an annual
18 basis thereafter, Respondent shall submit to the Board or its designee for its prior approval
19 educational program(s) or course(s) which shall not be less than SIXTY (60) hours in the first year
20 of probation, and then FORTY (40) hours for each subsequent year of probation thereafter. The
21 educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or
22 knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at
23 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
24 requirements for renewal of licensure. Following the completion of each course, the Board or its
25 designee may administer an examination to test Respondent's knowledge of the course.
26 Respondent shall provide proof of attendance for sixty-five (65) hours of CME of which SIXTY
27 (60) hours were in satisfaction of this condition in the first year of probation, and then FORTY (40)
28 hours in satisfaction of this condition for each subsequent year of probation thereafter.

1 2. MEDICAL RECORD KEEPING COURSE.

2 Within sixty (60) calendar days of the effective date of this Decision, Respondent shall
3 enroll in a course in medical record keeping approved in advance by the Board or its
4 designee. Respondent shall provide the approved course provider with any information and
5 documents that the approved course provider may deem pertinent. Respondent shall participate
6 in and successfully complete the classroom component of the course not later than six (6) months
7 after Respondent's initial enrollment. Respondent shall successfully complete any other
8 component of the course within one (1) year of enrollment. The medical record keeping course
9 shall be at Respondent's expense and shall be in addition to the CME requirements for renewal
10 of licensure.

11 A medical record keeping course taken after the acts that gave rise to the charges
12 contained in Accusation No. 800-2016-028644, but prior to the effective date of the Decision
13 may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of
14 this condition if the course would have been approved by the Board or its designee had the
15 course been taken after the effective date of this Decision.

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

19 3. PROFESSIONALISM PROGRAM (ETHICS COURSE).

20 Within sixty (60) calendar days of the effective date of this Decision, Respondent shall
21 enroll in a professionalism program, that meets the requirements of Title 16, California Code of
22 Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete
23 that program. Respondent shall provide any information and documents that the program may
24 deem pertinent. Respondent shall successfully complete the classroom component of the program
25 not later than twelve (12) months after Respondent's initial enrollment, and the longitudinal
26 component of the program not later than the time specified by the program, but no later than one
27 (1) year after attending the classroom component. The professionalism program shall be at
28 Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

1 A professionalism program taken after the acts that gave rise to the charges contained in
2 Accusation No. 800-2016-028644, but prior to the effective date of the Decision may, in the sole
3 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
4 program would have been approved by the Board or its designee had the program been taken after
5 the effective date of this Decision.

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

9 4. MONITORING – PRACTICE.

10 Within thirty (30) calendar days of the effective date of this Decision, Respondent shall
11 submit to the Board or its designee for prior approval as a practice monitor, the name and
12 qualifications of one or more licensed physicians and surgeons whose licenses are valid and
13 in good standing, and who are preferably American Board of Medical Specialties (ABMS)
14 certified. A monitor shall have no prior or current business or personal relationship with
15 Respondent, or other relationship that could reasonably be expected to compromise the ability
16 of the monitor to render fair and unbiased reports to the Board, including but not limited to any
17 form of bartering. Unless prior approval is granted by the Board or its designee, the monitor shall
18 be in Respondent's field of practice, and must agree to serve as Respondent's monitor.
19 Respondent shall pay all monitoring costs.

20 The Board or its designee shall provide the approved monitor with copies of the Decision
21 and Disciplinary Order and Accusation No. 800-2016-028644, and a proposed monitoring plan.
22 Within fifteen (15) calendar days of receipt of the Decision and Disciplinary Order and the
23 Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the
24 monitor has read the Decision and Disciplinary Order and the Accusation, fully understands the
25 role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor
26 disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan
27 with the signed statement for approval by the Board or its designee.

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1 Within sixty (60) calendar days of the effective date of this Decision, and continuing
2 throughout probation, Respondent's practice shall be monitored by the approved monitor.
3 Respondent shall make all records available for immediate inspection and copying on
4 the premises by the monitor at all times during business hours and shall retain the records for the
5 entire term of probation.

6 If Respondent fails to obtain approval of a monitor within sixty (60) calendar days of the
7 effective date of this Decision, Respondent shall receive a notification from the Board or
8 its designee to cease the practice of medicine within three (3) calendar days after being so
9 notified. Respondent shall cease the practice of medicine until a monitor is approved to provide
10 monitoring responsibility.

11 The monitor shall submit a quarterly written report to the Board or its designee which
12 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
13 are within the standards of practice of medicine and whether Respondent is practicing medicine
14 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
15 quarterly written reports to the Board or its designee within ten (10) calendar days after the end
16 of the preceding quarter.

17 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar
18 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,
19 the name and qualifications of a replacement monitor who will be assuming that responsibility
20 within fifteen (15) calendar days. If Respondent fails to obtain approval of a replacement
21 monitor within sixty (60) calendar days of the resignation or unavailability of the monitor,
22 Respondent shall receive a notification from the Board or its designee to cease the practice of
23 medicine within three (3) calendar days after being so notified. Respondent shall cease the
24 practice of medicine until a replacement monitor is approved and assumes monitoring
25 responsibility.

26 In lieu of a monitor, Respondent may participate in a professional enhancement program
27 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
28 review, semi-annual practice assessment, and semi-annual review of professional growth and

1 education. Respondent shall participate in the professional enhancement program at
2 Respondent's expense during the term of probation.

3 5. NOTIFICATION.

4 Within seven (7) days of the effective date of this Decision, the Respondent shall provide
5 a true copy of this Decision and Disciplinary Order and Accusation to the Chief of Staff or
6 the Chief Executive Officer at every hospital where privileges or membership are extended to
7 Respondent, at any other facility where Respondent engages in the practice of medicine, including
8 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
9 Officer at every insurance carrier which extends malpractice insurance coverage to Respondent.
10 Respondent shall submit proof of compliance to the Board or its designee within fifteen (15)
11 calendar days.

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

14 6. OBEY ALL LAWS.

15 Respondent shall obey all federal, state and local laws, all rules governing the practice of
16 medicine in California and remain in full compliance with any court ordered criminal probation,
17 payments, and other orders.

18 7. QUARTERLY DECLARATIONS.

19 Respondent shall submit quarterly declarations under penalty of perjury on forms
20 provided by the Board, stating whether there has been compliance with all the conditions of
21 probation.

22 Respondent shall submit quarterly declarations not later than ten (10) calendar days after
23 the end of the preceding quarter.

24 8. GENERAL PROBATION REQUIREMENTS.

25 Compliance with Probation Unit

26 Respondent shall comply with the Board's probation unit.

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1 Address Changes

2 Respondent shall, at all times, keep the Board informed of Respondent's business and
3 residence addresses, email address (if available), and telephone number. Changes of such
4 addresses shall be immediately communicated in writing to the Board or its designee. Under no
5 circumstances shall a post office box serve as an address of record, except as allowed by Business
6 and Professions Code section 2021(b).

7 Place of Practice

8 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
9 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
10 facility.

11 License Renewal

12 Respondent shall maintain a current and renewed California physician's and surgeon's
13 license.

14 Travel or Residence Outside California

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

18 In the event Respondent should leave the State of California to reside or to practice,
19 Respondent shall notify the Board or its designee in writing thirty (30) calendar days prior to the
20 dates of departure and return.

21 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE.

22 Respondent shall be available in person upon request for interviews either at Respondent's
23 place of business or at the probation unit office, with or without prior notice throughout the term
24 of probation.

25 10. NON-PRACTICE WHILE ON PROBATION.

26 Respondent shall notify the Board or its designee in writing within fifteen (15) calendar
27 days of any periods of non-practice lasting more than thirty (30) calendar days and within fifteen
28 (15) calendar days of Respondent's return to practice. Non-practice is defined as any period of

1 time Respondent is not practicing medicine as defined in Business and Professions
2 Code sections 2051 and 2052 for at least forty (40) hours in a calendar month in direct patient
3 care, clinical activity or teaching, or other activity as approved by the Board. If Respondent
4 resides in California and is considered to be in non-practice, Respondent shall comply with all
5 terms and conditions of probation. All time spent in an intensive training program which has
6 been approved by the Board or its designee shall not be considered non-practice and does not
7 relieve Respondent from complying with all the terms and conditions of probation. Practicing
8 medicine in another state of the United States or Federal jurisdiction while on probation
9 with the medical licensing authority of that state or jurisdiction shall not be considered non-
10 practice. A Board-ordered suspension of practice shall not be considered as a period of non-
11 practice.

12 In the event Respondent's period of non-practice while on probation exceeds eighteen
13 (18) calendar months, Respondent shall successfully complete the Federation of State Medical
14 Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence
15 assessment program that meets the criteria of Condition 18 of the current version of the Board's
16 "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the
17 practice of medicine.

18 Respondent's period of non-practice while on probation shall not exceed two (2) years.

19 Periods of non-practice will not apply to the reduction of the probationary term.

20 Periods of non-practice for a Respondent residing outside of California will relieve
21 Respondent of the responsibility to comply with the probationary terms and conditions with the
22 exception of this condition and the following terms and conditions of probation: Obey All Laws;
23 General Probation Requirements; and Quarterly Declarations.

24 11. COMPLETION OF PROBATION.

25 Respondent shall comply with all financial obligations (e.g., probation costs) not later than
26 one hundred twenty (120) calendar days prior to the completion of probation. Upon successful
27 completion of probation, Respondent's certificate shall be fully restored.

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1 12. VIOLATION OF PROBATION.

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

8 13. LICENSE SURRENDER.

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

19 14. PROBATION MONITORING COSTS.

20 Respondent shall pay the costs associated with probation monitoring each and every year
21 of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs
22 shall be payable to the Board of California and delivered to the Board or its designee no later than
23 January 31 of each calendar year.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert W. Frank, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 79213. 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.

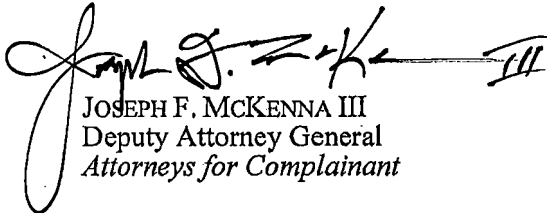
DATED: 03/27/2020 
BRET ROBERT GERBER, M.D.
Respondent

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

DATED: 3-27-20 
ROBERT W. FRANK, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: MARCH 27, 2020 Respectfully submitted,
XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

SD2019700600
Doc.No.14552763

Exhibit A

Accusation No.-800-2016-028644

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO, JUNE 4 20 19
BY ANDREA CERONIA ANALYST

1 XAVIER BECERRA
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8 *Attorneys for Complainant*

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

14 In the Matter of the Accusation Against:

Case No. 800-2016-028644

15 **BRET ROBERT GERBER, M.D.**
16 **5150 Roxbury Road**
San Diego, California 92116-2142

A C C U S A T I O N

17 **Physician's and Surgeon's Certificate**
18 **No. G79213,**

Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs, and not otherwise.

25 2. On or about June 22, 1994, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G79213 to Bret Robert Gerber, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on January 31, 2020, unless renewed.

1 JURISDICTION

2 3. This Accusation is brought before the Medical Board of California (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

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

10 5. Section 2234 of the Code states, in relevant part:

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

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

16 "(b) Gross negligence.

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

21 "..."

22 6. Unprofessional conduct under section 2234 of the Code is conduct which breaches
23 the rules or ethical code of the medical profession, or conduct which is unbecoming to a member
24 in good standing of the medical profession, and which demonstrates an unfitness to practice
25 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.).

26 7. Section 2266 of the Code states:

27 "The failure of a physician and surgeon to maintain adequate and accurate records relating
28 to the provision of services to their patients constitutes unprofessional conduct."

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Gross Negligence)**

3 8. Respondent has subjected his Physician's and Surgeon's Certificate No. G79213 to
4 disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b),
5 of the Code, in that Respondent committed gross negligence in his care and treatment of Patients
6 A and B,¹ as more particularly alleged hereinafter:

7 9. On or about July 13, 2016, Respondent brought two boxes of syringes with attached
8 needles into Scripps Coastal Medical Center's (SCMC) Hillcrest Pediatrics office where he
9 worked as a pediatrician. Prior to bringing them into the office, Respondent had stored the boxes
10 of syringes at his private residence. The syringes and needles themselves were originally
11 prescribed for an individual other than Respondent, and they had an expiration date of 2008.

12 10. The two boxes of syringes were not purchased by or on behalf of SCMC and,
13 therefore, were unauthorized and unsanctioned by SCMC for any use or purpose at the Hillcrest
14 Pediatrics office. One box contained 10 ml syringes, and the other box contained yellow-banded
15 syringes with 23 gauge needles attached to the syringe. SCMC did not stock or use 23-gauge
16 needles at the Hillcrest Pediatrics office location.

17 11. On or about July 13, 2016, Medical Assistant N.Z. was working at SCMC's Hillcrest
18 Pediatrics office and had worked there with Respondent for approximately ten years. She saw
19 Respondent bring two boxes into the office that same day. He told her that he had been storing
20 the enclosed syringes and needles at his home and that he intended to take the needles off and use
21 the syringes for patient care. After noticing that one of the boxes contained 23-gauge needles,
22 Medical Assistant N.Z. told Respondent that he could not use 23-gauge needles for patient care
23 because they were not safety needles.

24 12. On that same day, Medical Assistant N.Z. observed Respondent retrieve a needle
25 from one of the two boxes and take it into an examination room where he was seeing a patient.

26 _____
27 ¹ To protect the privacy of all patients involved, patient names have not been included in
28 this pleading. Respondent is aware of the identity of the patients referred to herein.

1 She later reported her observations to a supervisor at SCMC, who told her to retrieve the sharps
2 container² from the examination room. Upon examination of the contents of the sharps container,
3 she identified a single yellow-banded syringe with an attached 23-gauge needle among the other
4 discarded syringes. Medical Assistant N.Z. located the two boxes of syringes and needles in the
5 office and examined their contents, which contained dead insects and what appeared as insect or
6 rodent droppings. The boxes also contained syringe packages that appeared chewed on.

7 **13. Patient A**

8 (a) On or about July 13, 2016, the same day that he brought the
9 unauthorized 23-gauge needles to SCMC's Hillcrest Pediatrics office, Respondent
10 saw Patient A, a then-2-year-old female, for an unknown viral infection. Patient A
11 had developed a rash with multiple lesions and it had spread to different areas of
12 her body. Respondent documented in Patient A's chart note for this visit that he
13 had "cultured" one of the lesions to identify the virus. Under the procedure section
14 of the chart note, Respondent wrote, "I wiped the toe vesicles with alcohol pad and
15 deroofed with a 23 g needle to reveal a small amount of clear fluid. This was sent
16 for viral culture." Respondent electronically signed the chart note for this visit on
17 July 13, 2016.

18 14. Respondent committed gross negligence in his care and treatment of Patient A
19 including, but not limited to, the following:

20 (a) Respondent used a 23-gauge needle that was unauthorized for use at SCMC's
21 Hillcrest Pediatrics office to perform a medical procedure on Patient A.

22 **15. Patient B**

23 (a) On or about July 13, 2016, the same day that he brought the unauthorized
24 23-gauge needles to SCMC's Hillcrest Pediatrics office, Respondent saw Patient B,
25 a then-10-year-old female, for an infection due to a bee sting. Patient B had

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27 ² A sharps container is a hard plastic container that is used to safely dispose of
28 hypodermic needles and other sharp medical instruments. Needles are dropped into the container
through an opening in the top.

1 developed redness and swelling on her arm at the site of the bee sting. Respondent
2 documented in Patient B's chart note for this visit that the redness and swelling had
3 increased over the last twenty-four hours, and that he removed the remaining pieces
4 of stinger from Patient B's arm. Under the procedure section of the chart note,
5 Respondent wrote, "Stinger area prepped with H2O2 and 23 gauge sterile needle
6 used to lift off the eschar and remove two small pieces of particulate matter, most
7 likely stinger, from a small wound that is moist on the inside without frank d/c. No
8 bleeding. Area dressed with triple abx and bandage without complication."
9 Respondent electronically signed the chart note for this visit on July 13, 2016.

10 16. Respondent committed gross negligence in his care and treatment of Patient B
11 including, but not limited to, the following:

12 (a) Respondent used a 23-gauge needle that was unauthorized for use at SCMC's
13 Hillcrest Pediatrics office to perform a medical procedure on Patient B.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Repeated Negligent Acts)**

16 17. Respondent has further subjected his Physician's and Surgeon's Certificate
17 No. G79213 to disciplinary action under sections 2227 and 2234, as defined in section 2234,
18 subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care
19 and treatment of Patients A, B, and C, as more particularly alleged hereinafter:

20 18. **Patient A**

21 (a) Paragraphs 8, 9, 10, 11, 12, 13, and 14, above, are hereby incorporated
22 by reference and realleged as if fully set forth herein.

23 19. **Patient B**

24 (a) Paragraphs 8, 9, 10, 11, 12, 15, and 16, above, are hereby incorporated
25 by reference and realleged as if fully set forth herein.

26 20. **Patient C**

27 (a) Respondent began seeing Patient C as his pediatrician since his birth in
28 December 2012. Patient C had had a complicated medical history involving

1 hypotonia, and he had been seen by multiple medical experts due to the condition
2 since he was six months old.

3 (b) On or about March 3, 2015, Respondent saw Patient C for a recurrent
4 cough and fever lasting for two days. A medical assistant took Patient C's vital
5 signs and documented the following values in the chart note for this visit: oxygen
6 saturation was 92%; respiratory rate was 38; and heart rate was 160.

7 (c) During the visit, Respondent examined Patient C and documented that
8 he did not appear to have pneumonia or an ear infection. Respondent further
9 documented that Patient C had been febrile, and that he appeared hoarse and
10 struggling with a painful cough. Respondent prescribed a steroid (prednisolone) to
11 be taken by Patient C for next three days.

12 (d) Respondent did not document anywhere in the March 3, 2015, chart
13 note that he had evaluated and assessed Patient C's abnormal vital signs including,
14 low oxygen saturation (92%); high respiratory rate (38); and high heart rate (160).
15 Furthermore, Respondent did not clearly document an evaluation and assessment
16 for croup as a possible diagnosis, even though he prescribed a steroid to this
17 patient as if he was treating him for croup.

18 21. Respondent committed repeated negligent acts in his care and treatment of Patient C
19 including, but not limited to, the following:

- 20 (a) Respondent failed to document any assessment of Patient C's low
21 oxygen saturation in the chart note for the March 3, 2015 visit;
- 22 (b) Respondent failed to document any assessment of Patient C's high
23 respiratory rate in the chart note for the March 3, 2015 visit;
- 24 (c) Respondent failed to document any assessment of Patient C's high heart
25 rate in the chart note for the March 3, 2015 visit; and
- 26 (d) Respondent failed to fully document an evaluation and assessment of
27 Patient C's presenting condition for the March 3, 2015 visit.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

22. Respondent has further subjected his Physician’s and Surgeon’s Certificate No. G79213 to disciplinary action under sections 2227 and 2234, as defined in section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records in connection with his care and treatment of Patient C, as more particularly alleged hereinafter:

23. **Patient C**

(a) Paragraphs 20 and 21, above, are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

24. Respondent has further subjected his Physician’s and Surgeon’s Certificate No. G79213 to disciplinary action under sections 2227 and 2234 of the Code, in that Respondent has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 8 through 23, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 28, 2015, in a prior disciplinary action entitled “In the Matter of the Accusation Against: Bret Robert Gerber, M.D.,” Case Number 10-2013-235201, the Medical Board of California issued a decision revoking Respondent’s Physician’s and Surgeon’s Certificate No. G79213, staying that revocation, and placing Respondent on probation for two (2) years on various terms and conditions. The Medical Board of California imposed discipline on Respondent in this matter based on findings that he had violated a state statute regulating dangerous drugs or controlled substances; he had admitted to a history of recreational drug use; and he had committed general unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth herein.


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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate No. G79213, issued to Respondent Bret Robert Gerber, M.D.;
2. Revoking, suspending or denying approval of Respondent Bret Robert Gerber, M.D.'s, authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced practice nurses;
3. Ordering Respondent Bret Robert Gerber, M.D., to pay the Medical Board the costs of probation monitoring, if placed on probation; and
4. Taking such other and further action as deemed necessary and proper.

DATED: June 4, 2019


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

SD2019700600
Doc.No.82178088