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

In the Matter of the Accusation
Against:

MUKEH MISRA, M.D.                          File No. 08-2007-186068

Physician's and Surgeon's
Certificate No. A-95774

Respondent

DECISION

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

This Decision shall become effective at 5:00 p.m. on June 28, 2012.

IT IS SO ORDERED May 29, 2012.

MEDICAL BOARD OF CALIFORNIA

By: ______________________________

Hedy Chang, Chair
Panel B
BEFORE THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MUKEISH MISRA, M.D.
P.O. Box 6711
Lancaster, California 93539-6711

Physician’s & Surgeon’s Certificate
No A 95774,

Respondent

Case No. 08-2007-186068
OAH No. 2010101167

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Medical Board of California of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

PARTIES

1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Klint James McKay, Deputy Attorney General.
2. Respondent Mukesh Misra, M.D., ("Respondent") is represented in this proceeding by attorney George Strasser, whose address is Baker, Manock & Jensen, 5260 N Palm Avenue, Suite 421, Fresno, CA 93704.

3. On or about June 1, 2006, the Board issued Physician’s and Surgeon’s Certificate number A 95774 to Respondent. Respondent’s Certificate was in full force and effect at all times relevant to the charges brought herein. It will expire on January 31, 2014, unless renewed.

JURISDICTION

4. Accusation No. 08-2007-186068 was filed before the Medical Board of California, Department of Consumer Affairs ("Board"), on August 19, 2010, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent that date. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 08-2007-186068 is attached as Exhibit A and incorporated herein by reference.

ADVICEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 08-2007-186068. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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CULPABILITY

8. a) Respondent admits all allegations in the Fourth Cause for Discipline.
Respondent agrees that all other allegations in the Accusation, if proven by Complainant at a
hearing, would constitute cause for imposing discipline upon his Physician’s and Surgeon’s
Certificate, but Respondent does not admit same.

b) If Respondent ever petitions to modify or terminate any term or condition set
forth herein, or should the Board or any other regulatory agency in California or elsewhere
hereinafter institute any other action against Respondent, including but not limited to an
Accusation and/or Petition to Revoke Probation, the allegations and facts set forth in the Fourth
Cause of Action in the Accusation shall be deemed admitted for all purposes.

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

CONTINGENCY

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

11. The parties understand and agree that facsimile copies of this Stipulated Settlement
and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
effect as the originals.
12. In consideration of the foregoing admissions and Stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that upon completion of the Record Keeping Course and the Professionalism Program set forth hereinbelow, a Public Letter of Reprimand containing the language set forth in Exhibit B shall be issued by the Board to Respondent, subject to the following terms and conditions.

A. EDUCATION COURSE

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter for five calendar years, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

B. MEDICAL RECORDS KEEPING COURSE

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of
the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

C. PROFESSIONALISM PROGRAM

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.
D. NOTIFICATION

Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

E. 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.

F. FAILURE TO COMPLY WITH TERM OR CONDITION

Failure to comply with any term or condition hereof shall constitute a basis for disciplinary action.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, George Strasser. I understand the Stipulation and the effect it will have on my Physician 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.

DATED: 3-29-12

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

DATED: 3/29/2012

GEORGE STRASSER,
Attorney for Respondent

ENDORSEMENT

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

DATED: 4/10/12

KAMALA D. HARRIS,
Attorney General
of the State of California

By:

KLINT JAMES-MCKAY
Deputy Attorney General,
Attorneys for Complainant
EXHIBIT A
Accusation No. 08-2007-186068
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MUKESH MISRA, M.D.
P.O. Box 6711
Lancaster, California 93539-6711
Physician’s & Surgeon’s Certificate
No A 95774,

Respondent

Case No. 08-2007-186068

ACCUSATION

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (“Board”).

2. On or about June 1, 2006, the Board issued Physician’s and Surgeon’s Certificate number A 95774 to Mukesh Misra, M.D. (“Respondent”). Respondent’s Certificate was in full force and effect at all times relevant to the charges brought herein. It will expire on January 31, 2012, unless renewed.

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

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division ¹, may, in accordance with the provisions of this chapter:

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

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

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

"(4) Be publicly reprimanded by the division.

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

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

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, §§2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.
5. Section 2228 of the Code states:

"The authority of the board or a division of the board or the California Board of Podiatric Medicine to discipline a licensee by placing him or her on probation includes, but is not limited to the following:

"(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or division or the administrative law judge.

"(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the division. If an examination is ordered, the board or division shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee’s choice.

"(c) Restricting or limiting the extent, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.

"(d) Providing the option of alternative community service in cases other than violations relating to quality of care, as defined by the Division of Medical Quality.

6. Section 2234 of the Code states:

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

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

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

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

“(d) Incompetence.

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

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

7. Section 2226 of the Code states: “The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.”

FIRST CAUSE FOR DISCIPLINE
(Gross Negligence as to Patient R. J.²)

7. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code sections 2234(b) based on his performing surgery on the wrong side of the patient’s brain. The facts and circumstances are as follows:

A. R. J. was a 45 year-old female with a presentation consistent “with multiple intracerebral and diffuse subdural abscesses” as per an MRI (magnetic resonance imaging test) performed on July 7, 2007.

B. The MRI depicts changes to the left frontal and parietal lobe, along with evidence of an associated collection adjacent the superior sagittal sinus and falx, leptomeningeal enhancement, and possible restriction of flow in the sagittal sinus. There are very minor changes seen in the anterior medial right frontal lobe as well. These changes are all consistent with

² Each patient is referenced by his or her initials for privacy reasons
multiple intra cerebral abscesses and an associated subdural empyema primarily involving the left anterior hemispheric tissue, falk and frontal lobe. The largest and most appropriate surgical lesion noted was a 2.0 cm mass in the left anterior medial frontal lobe.

C. The patient was taken to surgery and a bifrontal craniotomy was performed as the main procedure. Respondent's note describes a right temporal burr hole followed by a right bifrontal craniotomy and opening of the frontal sinus: However, the operative note fails to detail the exact nature of the intracranial procedure and it is not possible to determine the fundamental intraoperative findings, that is, whether the dura was opened, and if so what "lesion" was encountered and what, if any, intra-dural procedure was conducted.

D. The operative note describes frontal-sinus disease and sinus osteoma, but does not report finding evidence of purulence within the sinus, nor does it clearly indicate whether both frontal sinuses were explored. There is a similar lack of detail provided in the operative notes regarding the intra-operative pathology encountered.

E. Following the above surgery, the patient underwent a follow-up CT (computerized tomography scan) on the same day (July 7, 2007). This demonstrated a right frontal craniotomy that extended slightly across the midline towards the left. The CT showed the persistent left anterior frontal and subdural collection consistent with the abscess/empyema.

F. The patient was returned to the operating room the same day because of the evidence of residual abscess on the post-operative CT scan. It is noted that a signed informed consent form was not obtained for this second procedure, but it does indicate that Respondent spoke with the patient's family regarding the need for the operation.

G. The procedure note described extending the prior craniotomy toward the left frontal region in posterior, inferior, and medial directions. The note then reflected that the dura was open, but does not detail the nature of this opening and neglected to state the precise nature of the intra-dural procedure. The note does describe the finding of cerebritis with evacuation of "pus," but not the exact location of the pus (intracerebral or subdural).
H. A CT following the second procedure indicated decompression of the left frontal abscess cavity. The patient was placed on broad-spectrum antibiotics for a presumed infection, and eventually transferred to another facility on August 10, 2007 for further management.

8. The failure to perform surgery on the correct side of the patient’s brain, requiring a second surgery, constitutes an extreme departure from the standard of care and gross negligence within the meaning of Code section 2234(b).

SECOND CAUSE FOR DISCIPLINE
(Incompetence as to Patient R.J.)

9. Respondent is subject to disciplinary action for unprofessional conduct due to incompetence pursuant to Business and Professions Code section 2234(d) based on the facts set forth above.

THIRD CAUSE FOR DISCIPLINE
(Repeated Acts of Negligence as to Patient R.J.)

10. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code section 2234(c) for repeated acts of negligence based on the facts set forth in the First Cause for Discipline.

FOURTH CAUSE FOR DISCIPLINE
(Inadequate Records as to Patient R.J.)

11. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code section 2266 for failing to maintain adequate records regarding the treatment of R.J., including but not limited to the conduct of her surgeries, as more fully set forth above in the First Cause for Discipline.

FIFTH CAUSE FOR DISCIPLINE
(Repeated Acts of Negligence as to Patient J.C.)

12. Respondent is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code sections 2234(c) based on his failure to adequately perform surgery on the patient’s spine. The facts and circumstances are as follows:
A. J.C. is a 34 year old male who sustained a C6-C7 bilateral facet dislocation and subluxation, C7 body-fracture and right pedicle fracture from a motor vehicle accident on July 7, 2010.

B. Respondent's records indicate that an MRI (magnetic resonance imaging test) showed a disc herniation at C6-C7. The patient had an incomplete spinal cord injury corresponding to the level of injury manifested by motor loss involving the upper extremities (distal worse than proximal: 3-4/5 overall), 4/5 lower extremity weakness, paresthesias in all extremities and a sensory level below C5-C6 bilaterally.

C. He was evaluated by Respondent and was initially treated with Gardner-Wells traction that failed to reduce the subluxation at a total traction weight of 35-40 pounds. Traction failed to reduce the subluxation and the patient underwent anterior C6-C7 cervical disectomy, interbody cage placement and C6-C7 plate fusion with intraoperative fluoroscopic imaging on July 10, 2007. This operation was performed by Respondent and another physician.

D. The operative note reflects that there was proper placement of the instrumentation and "improvement in the subluxation" presumably determined by the intraoperative fluoroscopy, although how the improvement was determined is not clearly stated. The operative note also describes a cerebrospinal fluid leak that was not associated with further complications in the patient's course.

E. The patient was placed in an Aspen collar post operatively and the GW traction was removed. The medical record indicates the patient was stable in terms of neurological function following the procedure and may have showed some signs of improvement. The notes from July 11, 2007 reflect hand strength at 3/5 and possible improvement of the paresthesias. The medical record describes a C-spine x-ray on July 11, 2007 that apparently showed the C6-C7 level through the soft tissue with evidence of a slight posterior offset. The patient was placed in a halo vest and ring on the morning of July 11, 2007.

F. Notes from July 12, 2007 reflect some incremental improvement in hand strength (4/5), but other notes in the medical record continue to show the same degree of distal upper extremity weakness, paresthesias and sensory loss in the upper extremities. The patient
underwent a post operative CT scan on July 12, 2007 which showed persistence of the C6-C7 subluxation (>6mm) with narrowing of the spinal canal at this level, as well as a C6 spinous process fracture. Respondent’s notes also indicate a failure of the anterior instrumentation evident on this post-op CT scan.

G. The patient returned to the OR on July 13, 2007, for a complex procedure involving removal of the anterior instrumentation, reduction of the facet dislocation with posterior instrumentation from a posterior approach, followed by a C7 carpectomy and C6-T1 cervical fusion and instrumentation with allo- and autografts (from an anterior approach).

H. The operative note from that day states that the intraoperative “imaging was limited” and as a result it was “difficult to visualize a significant reduction at this level”. The post-op CT on July 14, 2007 is reported to show reduction of the facet dislocation, but in fact, it was not clear that the facets had been reduced to their normal position and the C6-C7 subluxation, while improved, appeared to persist.

I. The patient was discharged from the hospital on July 20, 2007, Respondent indicated in his notes that J.C. had intact strength and no sensory symptoms upon out-patient follow-up examination.

J. The anterior method chosen by Respondent to treat the cervical injury was inferior to a posterior approach and constitutes a simple departure from the standard of care. The degree of subluxation and facet dislocation from the initial CT is significant and should the anterior approach be selected as the first method to address the trauma, it would have preferable to immediately image the patient with a CT scan to confirm reduction of the dislocation, restoration of the spinal alignment and decompression of the spinal cord, which Respondent did not do.

K. Respondent’s failure to obtain timely definitive imaging of the cervical alignment on the day following surgery, despite the neurological stability of the patient was an additional simple departure from the standard of care. The C-spine scan obtained on July 11, 2007 was not adequate to image the alignment at C6-C7 and the CT should have been performed immediately thereafter. The scan was obtained instead on the following day and demonstrated the persistent subluxation.
L. The patient did not return to the OR until the following day, most likely because it
was felt that he was neurologically stable, and urgent restoration of spinal alignment was not
considered necessary.

13. The events set forth in subparagraphs J and K constitute simple departures from the
standard of care pursuant to Business and Professions Code sections 2234(c).

SIXTH CAUSE FOR DISCIPLINE
(Incompetence as to Patient J.C.)

14. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
Business and Professions Code section 2234(d) based on the facts set forth above.

PRAYER

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

1. Revoking or suspending Physician’s & Surgeon’s Certificate No A 95774 issued to
Mukesh Misra, M.D.,

2. Revoking, suspending or denying approval of his authority to supervise physician
assistants, pursuant to Section 3527 of the Code;

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

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

DATED: August 19, 2010

LINDA K. WHITNEY,
Executive Director,
Medical Board of California,
EXHIBIT B
Public Letter of Reprimand
Dear Dr. Misra:

In a surgery performed on July 29, 2007 on a patient’s brain, you failed to adequately document the surgical procedure and the post operative condition and care of the patient. Adequate documentation is critical to patient care and the ability of other medical providers to determine future treatment of the patient.

You are therefore issued this letter of reprimand.