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

In the Matter of the Accusation Against:	)	
Nagesh Shetty, M.D.	)	**Case No. 800-2016-027711**
Physician's and Surgeon's Certificate No. A 33495	)	
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 April 26, 2019.

IT IS SO ORDERED March 28, 2019.

MEDICAL BOARD OF CALIFORNIA

By: Kristina Lawson

Kristina D. Lawson, J.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: NAGESH SHETTY, M.D. 9932 Gateshead Drive Huntington Beach, California 92646 Physician's and Surgeon's Certificate No. A 33495, Respondent.	Case No. 800-2016-027711 OAH No. 2018110767 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Chris Leong, Deputy Attorney General.

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2. Respondent Nagesh Shetty, M.D. (Respondent) is represented in this proceeding by attorney David M. Balfour of Nossaman LLP, 1925 Palomar Oaks Way, Suite 220, Carlsbad, California 92008.

3. On February 26, 1979, the Board issued Physician's and Surgeon's Certificate No. A 33495 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-027711, and will expire on July 31, 2020, unless renewed. On June 19, 2000, in a prior disciplinary action entitled, *In the Matter of the Accusation Against Nagesh Shetty, M.D.* before the Board, in Case Number 18-1998-86655, Respondent's license was revoked for violation of Business and Professions Code section 2236, subdivision (a) in that he was convicted of a crime that was substantially related to the qualifications, functions or duties of a physician and surgeon. That decision is now final and is incorporated by reference as if fully set forth herein.

JURISDICTION

4. Accusation No. 800-2016-027711 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 30, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-027711 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-027711. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-027711, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

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

11. Respondent agrees that his Physician's 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.

12. Respondent agrees that if the Board ever takes action pursuant to the Order below, all of the charges and allegations contained in Accusation No. 800-2016-027711, shall be deemed true, and correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California 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.

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

15. 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 Physician's and Surgeon's Certificate No. A 33495 issued to Respondent Nagesh Shetty, M.D. is publicly reprimanded pursuant to Business ad professions Code section 2227. This Public Reprimand is issued in connection with Respondent's actions as set forth in Accusation No. 800-2016-027711.

IT IS FURTHER ORDERED THAT Respondent comply with the following:

1. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider 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.

VIOLATION OF THIS AGREEMENT

Failure to fully comply with any terms or conditions of this agreement is unprofessional conduct.

ACCEPTANCE

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

DATED: 1/22/19

NAGESH SHETTY, M.D.
Respondent

I have read and fully discussed with Respondent Nagesh Shetty, 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: 2/4/2019

DAVID M. BALFOUR
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: 2/5/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-027711

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 30, 2018
BY Sara Pacion ANALYST

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

In the Matter of the Accusation Against: NAGESH SHETTY, M.D. 9332 Gateshead Drive Huntington Beach, California 92646 Physician's and Surgeon's Certificate A 33495, Respondent.	Case No. 800-2016-027711 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On February 26, 1979, the Board issued Physician's and Surgeon's Certificate Number A 33495 to Nagesh Shetty M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2020, unless renewed.

JURISDICTION

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

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

5. Section 2234 of the Code states:

"The board 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.

"(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.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the

proposed registration program described in Section 2052.5.

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

6. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

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

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

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

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

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

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

7. Section 2266 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."

BACKGROUND

8. On November 5, 2016, the Patient[1] a 42 year-old male, was seen by Respondent in his office West Hills, California. The Patient indicated that, one day prior, while attempting to clean

[1] "The Patient" is used in order to protect the patient's privacy.

his ear to remove debris, wax, or another cotton tip from the ear canal, he had lost the tip of a q-tip in his ear. The Patient stated he had "tried everything" to remove the cotton. According to his medical records, Respondent performed an otoscopic[2] exam of the Patient's ear as did his licensed vocational nurse (LVN). The ear was irrigated twice; however, the cotton piece was not removed. The Patient complained of a discharge from his ear and pressure in his ear. The exam of the ear noted erythema[3] of the ear canal, a discharge, and the presence of a cotton tip. Though the exam stated a normal left tympanic membrane, the discharge diagnosis stated cerumen impaction, i.e, wax. The Patient was referred to an Ear, Nose, and Throat (ENT) doctor.

9. The following day, November 6, 2016, the Patient was seen by an ear, nose and throat physician, Dr. L.S., who removed the cotton, irrigated the ear and gave the patient antibiotic ear drops and oral antibiotics. Dr. L.S. noted in his chart that the tympanic membrane, the middle ear, and the patient's hearing were normal. His diagnosis was an "infected canal." The oral antibiotic prescription that Dr. L.S. gave was a sub therapeutic dose. Dr. L.S.' records show that he spent "2 hours with the patient" and did a complete history and physical. Dr. L.S. changed the Patient's oral antibiotics to another one at a sub therapeutic dose. After several visits to Dr. L.S., the Patient healed well.

10. The standard of care in California for any medical practitioner, clinic, or urgent care facility is to keep accurate and truthful records of patient encounters. The charting and record keeping of this patient's visit was embellished. A focal problem should have a focal evaluation and treatment. A complete history and physical was not done for this ear problem. The history of the chief complaint does relate to the problem, however, the charting was excessive, and untrue. The diagnosis and the physical exam are incongruent i.e., they do not correlate. For example, the Respondent claimed that he removed the cotton; however, the subsequent treating ear, nose and throat doctor claimed that he removed it. Even if this charting was computer generated, it must be modified for each and every patient.

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[2] An otoscope is a handheld device which allows a doctor to look into the outer and middle ear.

[3] Erythema refers to redness of the skin that results from inflammation.

11. It is the standard of care to provide care for an infectious process when indicated. No antibiotic prescription was given by the Respondent; however, the Patient did see an ENT physician the next day and thus there was no harm done to the patient from the lack of a prescription. The patient's problem began at least 1-2 days prior to his visit with Respondent. However, Respondent should have either offered or written antibiotics for the Patient.

FIRST CAUSE FOR DISCIPLINE

(Repeated Acts of Negligence)

12. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he was repeatedly negligent in the care and treatment of the Patient as follows:

a. Respondent failed to provide or offer antibiotics for infectious problems;

b. Respondent failed to maintain adequate accurate records including truthful charting.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

13. Respondent is subject to disciplinary action under section 2266 in that he failed to maintain adequate and accurate records regarding his treatment and care of the Patient. The facts and circumstances set forth above in Paragraphs 8 to 12 are incorporated herein as if fully set forth.

DISCIPLINARY CONSIDERATIONS

14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that:

a. On June 19, 2000, in a prior disciplinary action entitled *In the Matter of the Accusation Against Nagesh Shetty, M.D.* before the Board, in Case Number 18-1998-86655, Respondent's license was revoked for violation of Code section 2236(a) in that he was convicted of a crime that was substantially related to the qualifications, functions or duties of a physician and surgeon. That decision is now final and is incorporated by reference as if fully set forth herein.

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b. On November 7, 2005, in a prior disciplinary action entitled *In the Matter of the Petition for Reinstatement of Revoked Certificate of Nagesh Shetty, M.D.* before the Board, in Case Number 20-2005-165608, Respondent's license was reinstated under terms and conditions including seven years probation. That decision is now final and is incorporated by reference as if fully set forth herein.

c. On May 8, 2009, in a prior disciplinary action entitled *In the Matter of the Petition for Reduction of Penalty of Nagesh Shetty, M.D.* before the Board, in Case Number 20-2008-189945, Respondent's certificate was fully restored without terms and conditions. That decision is now final and is incorporated by reference as if fully set forth herein.

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 Number A 33495, issued to Nagesh Shetty M.D.;

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

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

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

DATED: May 30, 2018

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

Complainant

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