

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

In the Matter of the Accusation)
Against:)
)
)
Richard C. Agnew, M.D.)
)
Physician's and Surgeon's)
Certificate No. C28577)
)
Respondent)
_____)

Case No. 800-2016-025764

DECISION

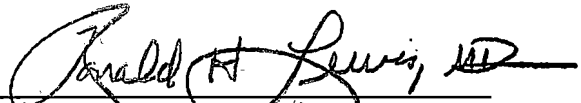
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 4, 2020.

IT IS SO ORDERED February 3, 2020.

MEDICAL BOARD OF CALIFORNIA

By:



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

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
Deputy Attorney General
4 State Bar No. 239872
600 West Broadway, Suite 1800
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8 *Attorneys for Complainant*

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

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In the Matter of the Accusation Against:

Case No. 800-2016-025764

14

RICHARD C. AGNEW, M.D.
351 Hospital Road, Suite 306
Newport Beach, CA 92663

OAH No. 2019100034

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16

Physician's and Surgeon's Certificate No.
C 28577,

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17

Respondent.

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

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PARTIES

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1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer solely in her official capacity.¹ Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields, Deputy Attorney General.

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

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in paragraphs 1 through 6, 8 through 15, 17, 19 and 20, in Accusation No. 800-2016-025764, and that he has thereby subjected his Physician's and Surgeon's Certificate No. C 28577 to disciplinary action.

9. Respondent agrees that his Physician's and Surgeon's Certificate No. C 28577 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 Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

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

1 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
2 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

3 **ADDITIONAL PROVISIONS**

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

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

10 14. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Board may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 28577 issued
15 to Respondent Richard C. Agnew, M.D. shall be and is hereby Publicly Reprimanded pursuant to
16 California Business and Professions Code section 2227, subdivision (a)(4). This Public
17 Reprimand, which is issued in connection with Accusation No. 800-2016-025764, is as follows:

18 From on or about June 26, 2013, through on or about March 10, 2014, Respondent
19 committed negligence and failed to maintain adequate and accurate medical records in his care
20 and treatment of Patient A.

21 1. **MEDICAL RECORD KEEPING COURSE.** Within 60 calendar days of the effective
22 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in
23 advance by the Board or its designee. Respondent shall provide the approved course provider
24 with any information and documents that the approved course provider may deem pertinent.
25 Respondent shall participate in and successfully complete the classroom component of the course
26 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully
27 complete any other component of the course within one (1) year of enrollment. The medical

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1 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing
2 Medical Education (CME) requirements for renewal of licensure.

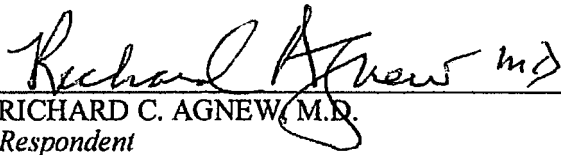
3 A medical record keeping course taken after the acts that gave rise to the charges in the
4 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
5 or its designee, be accepted towards the fulfillment of this condition if the course would have
6 been approved by the Board or its designee had the course been taken after the effective date of
7 this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its
9 designee not later than 15 calendar days after successfully completing the course, or not later than
10 15 calendar days after the effective date of the Decision, whichever is later.

11 **ACCEPTANCE**


12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorneys, Dennis K. Ames, Esq., and Poge Henderson, Esq. I fully
14 understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate
15 No. C 28577. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
16 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical
17 Board of California.

18
19 DATED: 12-19-19


RICHARD C. AGNEW, M.D.
Respondent

21 I have read and fully discussed with Respondent Richard C. Agnew, M.D., the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
23 I approve its form and content.

24
25 DATED: 12/19/19


DENNIS K. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

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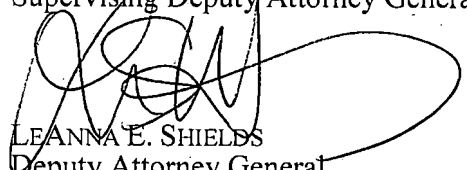
ENDORSEMENT

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

DATED: 12/20/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 21 20 19
BY W. L. [Signature] ANALYST

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9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:
14 **Richard C. Agnew, M.D.**
351 Hospital Road, Suite 306
15 Newport Beach, CA 92663
16 **Physician's and Surgeon's Certificate**
No. C 28577,
17
18 Respondent.

Case No. 800-2016-025764

ACCUSATION

19
20 **PARTIES**

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

24 2. On or about October 19, 1966, the Medical Board issued Physician's and Surgeon's
25 Certificate No. C 28577 to Richard C. Agnew, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on July 31, 2021, unless renewed.

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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 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 board, may, in accordance with the provisions of this chapter:

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

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

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

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

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board 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 board 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.

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

1 appropriate for that negligent diagnosis of the patient shall constitute a single
2 negligent act.

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

8 ...
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10 6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
11 adequate and accurate records relating to the provision of services to their patients constitutes
12 unprofessional conduct.

13 FIRST CAUSE FOR DISCIPLINE

14 (Gross Negligence)

15 7. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
16 by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care
17 and treatment of Patient A,¹ The circumstances are as follows:

18 8. On or about June 26, 2013, Patient A, a then 36 year-old female, began seeing
19 respondent for prenatal care related to her second pregnancy. Patient A's genetic history was
20 significant for advanced maternal age, a daughter with urinary reflux and a cousin with autism.
21 Patient A's general history was significant for prior Cesarean section delivery (C-section).

22 9. On or about June 26, 2013, Patient A underwent an ultrasound exam that detected an
23 intrauterine pregnancy with positive cardiac motion, along with a subchorionic hematoma.

24 10. On or about July 10, 2013, Patient A underwent a follow up ultrasound that
25 demonstrated that the hematoma had resolved.

26 11. On or about September 23, 2013, Patient A underwent a first trimester ultrasound that
27 demonstrated a viable fetus of 17.4 weeks gestation with a small peri-cardial effusion.

28 12. On October 21, 2013, Patient A underwent a follow up ultrasound that showed a 22.3
week fetus with growth below the 10th percentile.

13. Subsequent to this ultrasound Patient A underwent Triple Screening, the use of AFP
blood tests along with ultrasound examinations with nuchal translucency testing, which were

¹ "Patient A" is used to protect the patient's privacy.

1 negative for chromosomal abnormalities. There is no documented discussion in Patient A's
2 medical records regarding Patient A's risk factors or an offer of further genetic testing, including
3 an amniocentesis and serial ultrasound examinations, given risk factors including maternal age,
4 scarring in the uterus, and evidence of intrauterine growth below 10%.

5 14. Respondent's medical records for Patient A are devoid of a diagnosis of Intrauterine
6 Growth Retardation (IUGR), a discussion with the patient regarding IUGR, or a plan to manage
7 the risks of IUGR.

8 15. On or about February 14, 2014, Patient A gave birth by C-section to a baby boy with
9 a significant chromosomal defect that resulted in developmental delay, deafness, and blindness.

10 16. Respondent committed gross negligence in his care and treatment of Patient A, which
11 includes, but is not limited to the following:

12 a. Respondent failed to inform and/or document informing Patient A about
13 available prenatal screening, including an amniocentesis, given Patient A's know risk
14 factors;

15 b. Respondent failed to perform and/or document an evaluation of Patient A's
16 genetic risk factors, and

17 c. Respondent failed to recognize, evaluate, or properly treat IUGR.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Repeated Negligent Acts)**

20 17. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined
21 by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his
22 care and treatment of Patient A, The circumstances are as follows:

23 18. Paragraphs 8 through 16, above, are hereby incorporated by reference and realleged
24 as if fully set forth herein.

25 19. Respondent committed repeated negligent acts in his care and treatment of Patient A,
26 which includes, but is not limited to the following:

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1 a. Respondent failed to inform and/or document informing Patient A about
2 available prenatal screening, including an amniocentesis, given Patient A's know risk
3 factors;

4 b. Respondent failed to perform an evaluation of Patient A's genetic risk factors;

5 c. Respondent failed to recognize, evaluate, or properly treat IUGR; and

6 d. Respondent failed to adequately document Patient A's risk factors.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Maintain Adequate and Accurate Medical Records)**

9 20. Respondent is further subject to disciplinary action under sections 2227 and 2234, as
10 defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records
11 relating to the provision of services to Patient A. The circumstances are set forth in paragraphs 8
12 through 19, above, which are hereby incorporated by reference and realleged as if fully set forth
13 herein.

14 **PRAYER**

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


17 1. Revoking or suspending Physician's and Surgeon's Certificate No. C 28577, issued to
18 Richard C. Agnew, M.D.;

19 2. Revoking, suspending or denying approval of Richard C. Agnew, M.D.'s authority to
20 supervise physician assistants and advanced practice nurses;

21 3. Ordering Richard C. Agnew, M.D., if placed on probation, to pay the Board the costs
22 of probation monitoring; and

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

24
25 DATED: August 21, 2019

26 
27 KIMBERLY KIRCHMEYER
28 Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant