

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

In the Matter of the First Amended Accusation)	
Against:)	
)	
)	
Jerry Mitchell, M.D.)	MBC File # 800-2015-012241
)	
)	
Physician's & Surgeon's)	
Certificate No. G 55977)	
)	
_____ Respondent.)	

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN "SIGNATURE BLOCK" PORTION OF DECISION**

On its own motion, the Medical Board of California (hereafter "Board") finds that there is a clerical error in the "signature block" portion of the Decision in the above-entitled matter and that such clerical error should be corrected so that the title will conform to the Board's issued Decision.

IT IS HEREBY ORDERED that the signature block contained on the Decision Order page in the above-entitled matter be and hereby is amended and corrected nunc pro tunc as of the date of entry of the decision to read as "Kristina D. Lawson, J.D."

February 11, 2020



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

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

**In the Matter of the First Amended
Accusation Against:**)
)
)
)
JERRY MITCHELL, M.D.)
)
**Physician's and Surgeon's
Certificate No. G55977**)
)
Respondent)
_____)

Case No. 800-2015-012241

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 December 13, 2019.

IT IS SO ORDERED: November 13, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, M.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 BENETH A. BROWNE
Deputy Attorney General
4 State Bar No. 202679
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6501
Facsimile: (916) 731-2117
7 *Attorneys for Complainant*

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

12 In the Matter of the First Amended Accusation
Against:

13 **JERRY MITCHELL, M.D.**
14 **3847 Deervale Drive**
15 **Sherman Oaks, CA 91403**

16 **Physician's and Surgeon's Certificate No. G**
55977

17 Respondent.

Case No. 800-2015-012241

OAH No. 2019030553

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

21 **PARTIES**

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

26 2. Respondent Jerry Mitchell, M.D. is represented in this proceeding by attorney Peter
27 Osinoff, Esq., whose address is: 355 South Grand Avenue, Suite 1750, Los Angeles, CA 90071.
28

1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in First
4 Amended Accusation No. 800-2015-012241 and that he has thereby subjected his license to
5 disciplinary action.

6 10. Respondent agrees that if he ever petitions for early termination or modification of
7 probation, or if the Board ever petitions for revocation of probation, all of the charges and
8 allegations contained in Accusation No. 800-2015-012241 shall be deemed true, correct and fully
9 admitted by respondent for purposes of that proceeding or any other licensing proceeding
10 involving respondent in the State of California.

11 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
12 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
13 Disciplinary Order below.

14 CONTINGENCY

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

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

28 14. In consideration of the foregoing admissions and stipulations, the parties agree that

1 the Board may, without further notice or formal proceeding, issue and enter the following
2 Disciplinary Order:

3 **DISCIPLINARY ORDER**

4 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 55977 issued
5 to Respondent JERRY MITCHELL, M.D. is revoked. However, the revocation is stayed and
6 Respondent is placed on probation for thirty-five (35) months on the following terms and
7 conditions.

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

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

27 A medical record keeping course taken after the acts that gave rise to the charges in the
28 First Amended Accusation, but prior to the effective date of the Decision may, in the sole

1 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the
2 course would have been approved by the Board or its designee had the course been taken after the
3 effective date of this Decision.

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

7 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
8 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
9 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
10 Respondent shall participate in and successfully complete that program. Respondent shall
11 provide any information and documents that the program may deem pertinent. Respondent shall
12 successfully complete the classroom component of the program not later than six (6) months after
13 Respondent's initial enrollment, and the longitudinal component of the program not later than the
14 time specified by the program, but no later than one (1) year after attending the classroom
15 component. The professionalism program shall be at Respondent's expense and shall be in
16 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

17 A professionalism program taken after the acts that gave rise to the charges in the First
18 Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of
19 the Board or its designee, be accepted towards the fulfillment of this condition if the program
20 would have been approved by the Board or its designee had the program been taken after the
21 effective date of this Decision.

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

25 4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
26 Respondent shall provide a true copy of this Decision and First Amended Accusation to the Chief
27 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
28 extended to Respondent, at any other facility where Respondent engages in the practice of

1 medicine, including all physician and locum tenens registries or other similar agencies, and to the
2 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
3 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
4 15 calendar days.

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

6 5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
7 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
8 advanced practice nurses.

9 6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
10 governing the practice of medicine in California and remain in full compliance with any court
11 ordered criminal probation, payments, and other orders.

12 7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
13 under penalty of perjury on forms provided by the Board, stating whether there has been
14 compliance with all the conditions of probation.

15 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
16 of the preceding quarter.

17 8. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

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

20 Address Changes

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

26 Place of Practice

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

1 facility.

2 License Renewal

3 Respondent shall maintain a current and renewed California physician's and surgeon's
4 license.

5 Travel or Residence Outside California

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

9 In the event Respondent should leave the State of California to reside or to practice,
10 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
11 departure and return.

12 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
13 available in person upon request for interviews either at Respondent's place of business or at the
14 probation unit office, with or without prior notice throughout the term of probation.

15 10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
16 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
17 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
18 defined as any period of time Respondent is not practicing medicine as defined in Business and
19 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
20 patient care, clinical activity or teaching, or other activity as approved by the Board. If
21 Respondent resides in California and is considered to be in non-practice, Respondent shall
22 comply with all terms and conditions of probation. All time spent in an intensive training
23 program which has been approved by the Board or its designee shall not be considered non-
24 practice and does not relieve Respondent from complying with all the terms and conditions of
25 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
26 on probation with the medical licensing authority of that state or jurisdiction shall not be
27 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
28 period of non-practice.

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

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

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

8 Periods of non-practice for a Respondent residing outside of California will relieve
9 Respondent of the responsibility to comply with the probationary terms and conditions with the
10 exception of this condition and the following terms and conditions of probation: Obey All Laws;
11 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
12 Controlled Substances; and Biological Fluid Testing..

13 11. COMPLETION OF PROBATION. Respondent shall comply with all financial
14 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
15 completion of probation. Upon successful completion of probation, Respondent's certificate shall
16 be fully restored.

17 12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
18 of probation is a violation of probation. If Respondent violates probation in any respect, the
19 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
20 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
21 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
22 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
23 the matter is final.

24 13. LICENSE SURRENDER. Following the effective date of this Decision, if
25 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
26 the terms and conditions of probation, Respondent may request to surrender his or her license.
27 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
28 determining whether or not to grant the request, or to take any other action deemed appropriate

1 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
2 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
3 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
4 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
5 application shall be treated as a petition for reinstatement of a revoked certificate.

6 14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
7 with probation monitoring each and every year of probation, as designated by the Board, which
8 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
9 California and delivered to the Board or its designee no later than January 31 of each calendar
10 year.

11 ACCEPTANCE

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

17
18 DATED: 9/12/19 Jerry Mitchell
19 JERRY MITCHELL, M.D.
20 Respondent

21 I have read and fully discussed with Respondent Jerry Mitchell, 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 DATED: 9/17/19 [Signature]
25 PETER OSINOFF, ESQ.
26 Attorney for Respondent

27 ///
28 ///

ENDORSEMENT

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

DATED: October 21, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General



BENETH A. BROWNE
Deputy Attorney General
Attorneys for Complainant

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DECLARATION OF SERVICE BY CERTIFIED AND FIRST CLASS MAIL

In the Matter of the First Amended Accusation Against:

RE: Jerry Mitchell, M.D.File No: 800-2015-012241

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 2005 Evergreen St., Suite 1200, Sacramento, California 95815. I served a true copy of the attached:

ORDER CORRECTING CLERICAL ERROR IN
SIGNATURE BLOCK" PORTION OF DECISION

by certified mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESSCERT NO.

Jerry Mitchell, M.D.
3847 Deervale Drive
Sherman Oaks, CA 91403

7019 1120 0000 3152 7825

Peter Osinoff, Esq., Esq.
355 S. Grand Avenue, Suite 1750
Los Angeles, CA 90071

7019 1120 0000 3152 7832

Beneth A. Browne
Deputy Attorney General
Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

FIRST CLASS MAIL

Each said envelope was then, on February 11, 2020, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, either as certified mail or first class U.S. mail with the postage thereon fully prepaid and return receipt requested for the certified mail.

Executed on February 11, 2020, at Sacramento, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Shari Wilkie

Shari Wilkie, Declarant

Exhibit A

First Amended Accusation No. 800-2015-012241

1 XAVIER BECERRA
Attorney General of California
2 STEVE DIEHL
Supervising Deputy Attorney General
3 BENETH A. BROWNE
Deputy Attorney General
4 State Bar No. 202679
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6501
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Sept. 24 2019*
BY *[Signature]* ANALYST

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 800-2015-012241

FIRST AMENDED ACCUSATION

13 **Jerry Mitchell, M.D.**
14 **3847 Deervale Drive**
Sherman Oaks, CA 91403

15 **Physician's and Surgeon's Certificate**
16 **No. G 55977,**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about September 9, 1985, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 55977 to Jerry Mitchell, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on February 28, 2021, unless renewed.

27 **JURISDICTION**

28 3. This First Amended Accusation is brought before the Board, under the authority of

1 the following laws. All section references are to the Business and Professions Code unless
2 otherwise indicated.

3 4. Section 2220 of the Code states:

4 "Except as otherwise provided by law, the board may take action against all persons guilty
5 of violating this chapter. The board shall enforce and administer this article as to physician and
6 surgeon certificate holders[.]"

7 5. Section 2229 of the Code states:

8 "(a) Protection of the public shall be the highest priority for the Division of Medical
9 Quality,^[1] the California Board of Podiatric Medicine, and administrative law judges of the
10 Medical Quality Hearing Panel in exercising their disciplinary authority.

11 "(b) In exercising his or her disciplinary authority an administrative law judge of the
12 Medical Quality Hearing Panel, the division, or the California Board of Podiatric Medicine, shall,
13 wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or
14 where, due to a lack of continuing education or other reasons, restriction on scope of practice is
15 indicated, to order restrictions as are indicated by the evidence.

16 "(c) It is the intent of the Legislature that the division, the California Board of Podiatric
17 Medicine, and the enforcement program shall seek out those licensees who have demonstrated
18 deficiencies in competency and then take those actions as are indicated, with priority given to
19 those measures; including further education, restrictions from practice, or other means, that will
20 remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall
21 be paramount."

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

26
27 ¹ Pursuant to Business and Professions Code section 2002, the "Division of Medical Quality" or
28 "Division" shall be deemed to refer to the Medical Board of California.

1 7. Section 2004 of the Code states:

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

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

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

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

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

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

12 "..."

13 8. Section 2234 of the Code, states:

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

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

19 "(b) Gross negligence.

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

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

25 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
26 constitutes the negligent act described in paragraph (1), including, but not limited to, a
27 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
28

1 applicable standard of care, each departure constitutes a separate and distinct breach of the
2 standard of care.

3 “(d) Incompetence.

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

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

7 “. . . .”

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

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Gross Negligence)**

13 10. Respondent Jerry Mitchell, M.D. is subject to disciplinary action under section 2234,
14 subdivision (b), in that he was grossly negligent in the care and treatment of a patient. The
15 circumstances are as follows:

16 11. On or about January 3, 2013, patient A, a 68-year old male, consulted with a
17 physician at the Center for Orthopedic Surgery [COSI] regarding pain he experienced in his left
18 hip, leg and foot. The physician proposed performing a series of three facet joint injection
19 procedures.² Patient A agreed to the plan of action.³

20 12. On or about January 10, 2013, the physician performed the first facet injection.

21
22 ² A facet joint injection used therapeutically is a minimally invasive procedure commonly
23 performed under local anesthesia involving injection of a steroid medication similar to cortisone
24 into a facet joint in the spine. It is used to treat neck, middle back, or low back pain including
when pain radiates into shoulders, buttocks, or upper legs. It is often used when pain is caused by
degenerative/arthritis conditions or injury.

25 ³ Patient A later described that the physician’s plan had been to initially perform one facet
26 injection, and if that did not relieve the pain, then to try a second facet injection, and if that didn’t
27 work, then try a third facet injection. If the three facet injections did not relieve the problem, then
28 a procedure called ablation that would burn the end of the nerve that was causing the pain could
be performed. The patient indicated that the physician said, however, to take one step at a time.

1 13. Several weeks later, patient A's wife called COSI to inform them that her husband
2 had experienced only modest improvement, and that he was ready to undergo the second in his
3 series of facet joint injections. Subsequently, the procedure was scheduled for March 7, 2013.

4 14. On March 6, 2013, there was no contact between the patient and any physician.

5 Respondent did not interview or examine the patient. Subsequently, however, the patient
6 received an Explanation of Benefits (EOB) from his insurance company indicating that
7 Respondent had billed for an appointment on that day. Respondent subsequently produced a false
8 medical record reflecting that he performed a consultation with the patient on March 6, 2013,
9 when, in fact, he had not.⁴

10 15. On or about March 7, 2013, the patient returned to COSI. The patient was under the
11 impression that he was undergoing his second facet injection. He was provided and he signed a
12 generic COSI consent form that listed the procedure as "lumbar facet injection under
13 fluoroscopy" and an additional consent form listing an "epidural injection."⁵ The patient was
14 not aware that there was a difference between a facet injection and an epidural injection.
15 Respondent failed to describe either procedure or their risks, benefits or alternatives to the patient.
16 Respondent neither signed the consent form nor did he make any attempt to educate the patient so
17 the patient could make informed health care choices. Respondent failed to perform any
18 meaningful physical examination or have a substantive conversation with the patient. In fact,
19 Respondent did not introduce himself to the patient until after the patient had been sedated. Pre-
20 operatively, Respondent failed to request the patient's prior medical records or to "access the

21
22
23 _____
24 ⁴ Not only was the fact of the appointment false; it also inaccurately reflected the patient's
25 history. Whereas Respondent documented that the patient suffered pain down his right leg and
denied pain in his left leg, in fact, all of the patient's pain was on his left side.

26 ⁵ An epidural injection used therapeutically involves injecting an anesthetic and an anti-
27 inflammatory medication, such as a steroid (cortisone), into the spine near a nerve that is causing
28 pain to radiate from the spine to an arm or leg (an inflamed, compressed or "pinched" nerve). It
reduces the inflammation and lessens or resolves the pain.

1 computer” to review pertinent patient information. Instead of a facet injection, Respondent
2 performed an epidural injection.⁶

3 16. Several weeks later, the patient’s wife again called COSI to convey that adequate
4 improvement had not been achieved and to schedule the third “facet injection.” Subsequently, the
5 procedure was scheduled for April 11, 2013.

6 17. On or about April 11, 2013, the patient returned to COSI. The patient was provided
7 and signed a COSI consent form for an epidural injection. The patient remained unaware that
8 there was a difference between a facet injection and epidural injection. Although the patient was
9 under the impression that he was receiving a third facet joint treatment, Respondent again
10 performed an epidural steroid injection. Respondent failed to describe either procedure or their
11 risks, benefits or alternatives to the patient.⁷ Respondent documented erroneous information in a
12 consultation record including the time interval, the location of the patient’s pain and the MRI
13 findings.

14 18. Much later, at an interview during investigation by the HQUI, Respondent admitted
15 several facts pertaining to his medical record keeping. First, he routinely dictated his pre-
16 operative consultation records *after* performing procedures. Second, he sometimes altered
17 documentation of his pre-operative assessments based upon *intra*-operative findings. Third, he
18 routinely carried documentation of sensitive patient information out of his office in an unsecured
19 briefcase. Fourth, Respondent provided conflicting accounts of his use and the disposition of
20 handwritten notes regarding patient visits that he claimed were the basis of his typed notes.

21 19. Respondent was grossly negligent in his care and treatment of patient A, individually
22 or collectively, in his pre-operative assessments by failing to: (a) obtain and review prior medical
23 records; (b) take the patient’s history; (c) perform an adequate physical exam and (d) have
24 adequate substantive conversation with the patient.

25
26 ⁶ Respondent advised the patient that it would take a couple of weeks to see the full results.

27 ⁷ When later questioned at an interview during investigation by the Health Quality Investigation
28 Unit (HQUI) of the Department of Consumer Affairs, Respondent was unable to adequately
explain what alternatives were available.

1 20. Respondent was grossly negligent in his care and treatment of patient A, when he
2 failed to obtain adequate informed consent prior to performing procedures on the patient,
3 individually or collectively, by failing to adequately: (a) discuss the patient's underlying medical
4 problems; (b) describe the proposed procedure; (c) describe the risks of the proposed procedure;
5 (d) describe benefits of procedure; (e) describe potential alternatives to the proposed procedure.

6 Respondent failed to adequately educate patient A to enable him to make informed health care
7 choices. Additionally, Respondent failed to sign any consent form.

8 21. Respondent was grossly negligent in his care and treatment of patient A by his
9 inadequate and inaccurate medical record keeping, individually or collectively, by: (a)
10 demonstrating a pattern of indifference to ensuring adequate documentation; (b) documenting
11 erroneous information in a consultation record dated April 11, 2013; (c) documenting false
12 information in a consultation record dated March 6, 2013 when no consultation occurred; and (d)
13 billing for documented services that were not performed on March 6, 2013.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Repeated Negligent Acts)**

16 22. Respondent Jerry Mitchell, M.D. is subject to disciplinary action under section 2234,
17 subdivision (c), in that he was repeatedly negligent in the care and treatment of a patient. The
18 circumstances are set forth in paragraphs 11 through 21, above, which are incorporated here by
19 reference as if fully set forth.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Inadequate and Inaccurate Medical Record Keeping)**

22 23. Respondent Jerry Mitchell, M.D. is subject to disciplinary action under section 2266
23 in that he created and maintained inadequate and inaccurate medical records related to his care
24 and treatment of Patient A. The circumstances are set forth in paragraphs 11 through 21, above,
25 which are incorporated here by reference as if fully set forth.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

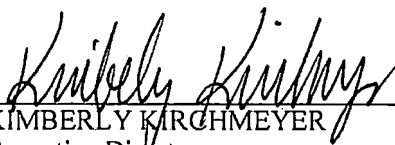
3 24. Respondent Jerry Mitchell, M.D. is subject to disciplinary action under section 2234
4 in that he engaged in unprofessional conduct. The circumstances are set forth in paragraphs 11
5 through 21, above, which are incorporated here by reference as if fully set forth.

6 **PRAAYER**

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

- 9 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 55977,
10 issued to Jerry Mitchell, M.D.;
- 11 2. Revoking, suspending or denying approval of Jerry Mitchell, M.D.'s authority to
12 supervise physician assistants and advanced practice nurses;
- 13 3. Ordering Jerry Mitchell, M.D., if placed on probation, to pay the Board the costs of
14 probation monitoring; and
- 15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED: September 24, 2019

18 
19 KIMBERLY KIRCHMEYER
20 Executive Director
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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