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

In the Matter of the Accusation Against:	
Gregory John Withers, M.D.	**Case No. 800-2017-039288**
Physician's & Surgeon's Certificate No. G 27800	
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 July 30, 2020.

IT IS SO ORDERED June 30, 2020.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
REBECCA L. SMITH
Deputy Attorney General
State Bar No. 179733
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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: GREGORY JOHN WITHERS, M.D. 301 West Huntington Drive, Suite 407 Arcadia, California 91107 Physician's and Surgeon's Certificate No. G 27800, Respondent.	Case No. 800-2017-039288 OAH No. 2020010475 **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. Christine J. Lally ("Complainant") is the Interim 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 Rebecca L. Smith, Deputy Attorney General.

2. Respondent Gregory John Withers, M.D. ("Respondent") is represented in this proceeding by attorney Mark B. Guterman, whose address is: 865 South Figueroa Street, 32nd Floor, Los Angeles, California 90017.

3. On or about August 14, 1974, the Board issued Physician's and Surgeon's Certificate No. G 27800 to Respondent. That licensee was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-039288, and will expire on November 30, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-039288 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 December 24, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2017-039288 is attached as Exhibit A and 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. 800-2017-039288. 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 does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2017-039288 and that he has thereby subjected his license to disciplinary action.

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

CONTINGENCY

11. 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.

12. 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.

13. 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:

A. PUBLIC REPRIMAND.

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 27800 issued to Respondent Gregory John Withers, M.D. is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Respondent's care and treatment of Patient 1 as set forth in Accusation No. 800-2017-039288, is as follows:

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On June 21, 2017, you committed acts constituting negligence in violation of Business and Professions Code section 2234, in your care and treatment of Patient 1, by failing to timely respond to a potentially life threatening complaint and rapidly perform an emergency procedure, as set forth in Accusation No. 800-2017-039288.

B. EDUCATION COURSE. Within sixty (60) calendar days of the effective date of this Decision, 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 twenty (20) hours. 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 twenty (20) hours of CME in satisfaction of this condition.

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

If Respondent fails to enroll, participate in, or successfully complete the educational program(s) or course(s) within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall not resume the practice of medicine until enrollment or participation in the educational program(s) or course(s) has been completed. Failure to successfully complete the educational program(s) or course(s) outlined above shall constitute unprofessional conduct and is grounds for further disciplinary action.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark B. Guterman. 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: 4/20/2020

Gregory J. Withers.

GREGORY JOHN WITHERS, M.D.
Respondent

I have read and fully discussed with Respondent Gregory John Withers, 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: 4/22/2020

MARK B. GUTERMAN
Attorney for Respondent

ENDORSEMENT

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

DATED: 4/23/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

REBECCA L. SMITH
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039288

XAVIER BECERRA
Attorney General of California
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BEFORE THE
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In the Matter of the Accusation Against: GREGORY JOHN WITHERS, M.D. 301 West Huntington Drive, Suite 407 Arcadia, California 91107 Physician's and Surgeon's Certificate No. G 27800, Respondent.	Case No. 800-2017-039288 **A C C U S A T I O N**

PARTIES

1. Christine J. Lally ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about August 14, 1974, the Medical Board issued Physician's and Surgeon's Certificate Number G 27800 to Gregory John Withers, M.D. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code ("Code") unless otherwise indicated.

4. 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.

"..."

5. 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.

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"(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."

6. 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

7. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he engaged in gross negligence in his care and treatment of Patient 1. The circumstances are as follows:

8. On June 13, 2017, Patient 1,[1] a 70-year old male, was admitted to Methodist Hospital of Southern California ("hospital"). Patient 1 had previously been seen at Whittier Hospital where he was thought to have had a cerebral vascular accident ("CVA") and was started on Aspirin and Plavix.[2] An MRI of the cervical spine revealed severe stenosis at C3-4.

9. Respondent, a neurosurgeon, saw Patient 1 in consultation that same day, June 13, 2017. Respondent noted that Patient 1 had been suffering from left arm and leg weakness for the past four months, becoming severe over the past two months. On physical examination, Respondent noted a left hemiparesis, with the left arm and the left leg barely able to overcome gravity and tone decreased on the left side as well as hemi-anesthesia to the left arm, leg and left body upon pin and soft touch. Respondent's impression was spinal cord compression secondary to severe stenosis at C3-4 with early myelomalacia (softening of the spinal cord) and left-sided cord symptoms for two months. He recommended surgical intervention. Respondent noted that

[1] For privacy purposes, the patient in this Accusation is referred to as Patient 1, with the identity of the patient disclosed to Respondent in discovery.

[2] Following a CVA, aspirin and Plavix are antiplatelet medications used in combination to reduce the rate of recurrent CVA.

the patient should not be given any additional antiplatelet medications, should be started on steroids and should receive medical clearance prior to any surgical intervention. Respondent arranged for a family discussion regarding the recommended surgical intervention to take place the following day.

10. Patient 1 was next seen by Respondent on June 14, 2017 at which time Respondent noted a discussion with the patient and the patient's son regarding surgery and he obtained informed consent. Respondent recommended holding the patient's Plavix and Aspirin for at least five days prior to surgery. Surgery was tentatively scheduled for June 20, 2017.

11. On June 15, 2017 at 16:05, Respondent saw Patient 1 again in consultation. Respondent noted that the decision for surgery was made yesterday and that there was no change in the need for surgery. An informed consent document was provided for Patient 1 and his family to review and read. That same day at 17:50, Respondent noted that the informed consent document was signed. Surgery was scheduled for June 20, 2017.

12. Platelet studies were performed prior to surgery and noted to be normal.

13. On June 20, 2017, Respondent performed a C4 and partial C3 corpectomy, discectomy at C3-4 and C4-5, and arthrodesis with placement of interbody cage and anterior plate. Patient 1 was noted to have tolerated the procedure well.

14. Patient 1 remained intubated in the post-anesthesia care unit ("PACU") and from there was taken directly to the intensive care unit ("ICU") where he remained intubated pending extubation in the ICU by Respondent. At approximately 20:56, Respondent extubated the patient.

15. Patient 1 was next seen by Respondent on June 21, 2017 at approximately 07:00 at which time Respondent noted that Patient 1 was stable with improved motor weakness.

16. At approximately 22:45 on June 21, 2017, the patient complained to Nurse J.D.C. that there was "something wrong with his throat and he can't breathe." Nurse J.D.C. noted that the patient was saturating on nasal cannula with no signs of respiratory distress and was able to phonate words without any difficulty. She further noted that the patient's right neck was "more swollen though, but no stridor noted." Respondent was paged and made aware of the patient's

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status. Respondent ordered the application of an ice pack and platelet and coagulation blood tests.

17. Patient 1 became short of breath, was unable to phonate words and started turning blue. A code blue was called at 23:33 and Respondent was notified. Emergency room physician Dr. J.M. responded at 23:35. Multiple attempts to intubate were made and Dr. P.N. was also at bedside to help with intubation. Respondent arrived at 23:54.

18. Respondent observed 2-3 failed intubation attempts by Drs. J.M. and P.N. and then proceeded with an emergency cricothyroidectomy[3] at 00:14. Respondent estimated that the procedure took about 30 seconds, which was 41 minutes after the code blue was called and 20 minutes after Respondent arrived to the patient's bedside.

19. Following the cricothyroidectomy, it was revised to a tracheostomy and the surgical wound was opened. A small amount of clot was noted.

20. Following the code blue event, Patient 1 had poor neurological function secondary to anoxic brain injury. He was maintained on a ventilator and received supportive care. An electroencephalogram ("EEG") eventually revealed a lack of cortical activity. He was subsequently pronounced dead on August 16, 2017.

21. A known risk of an anterior cervical corpectomy with instrumented interbody arthrodesis and anterior instrumentation is post-operative hematoma and/or swelling at the surgical site with resulting airway compromise. Neurosurgeons are trained to be aware of this potential complication. Any subjective or objective symptoms or signs referable to airway issues must be attended to promptly by the neurosurgeon.

22. The standard of care requires physicians to promptly respond to complaints that could represent a potentially life threatening event in an attempt to prevent morbidity and/or mortality. Patient 1's subjective complaint of breathing difficulty, especially in the setting of wound swelling, should have been considered a potentially ominous sign to Respondent. Although the patient was reportedly breathing and phonating well at that time, the subjective complaint of

[3] A cricothyrotomy is an incision made through the skin and cricothyroid membrane to establish a patent airway.

breathing difficulty was of sufficient concern in this clinical setting to have warranted a more aggressive approach than ordering that an ice pack be applied to the wound. Respondent failed to appropriately respond and attend to this complaint himself, exposing Patient 1 to high risk of airway compromise.

23. The standard of care requires that emergency procedures be performed rapidly when indicated to avoid potential complications. Upon Respondent's arrival to Patient 1's beside following the code blue respiratory arrest, he failed to perform emergency procedures rapidly. The surgical wound should have been immediately opened and explored to evacuate any potential clot that may be contributing to airway compromise and/or intubation difficulty. While it was appropriate to allow for an attempted intubation, there was a 20 minute delay between Respondent's arrival at the bedside and his performance of the circothyroidectomy.

24. Respondent's acts and/or omissions as set forth in paragraphs 7 through 23, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 2234, subdivision (b), of the Code. Therefore cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

25. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he engaged in repeated acts of negligence in the care and treatment of Patient 1. Complainant refers to and, by this reference, incorporates herein, paragraphs 7 through 24, above, as though fully set forth herein.

26. Respondent's acts and/or omissions as set forth in paragraphs 7 through 24, above, whether proven individually, jointly, or in any combination thereof, constitute repeated acts of negligence pursuant to section 2234, subdivision (c), of the Code. Therefore cause for discipline exists.

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PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 27800, issued to Gregory John Withers, M.D.;

2. Revoking, suspending or denying approval of Gregory John Withers, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Gregory John Withers, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: December 24, 2019

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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