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

In the Matter of the Accusation Against: David Ari Friedberg, M.D. Physician's and Surgeon's License No. A112102 Respondent.	Case No. 800-2017-030158

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 October 16, 2020.

IT IS SO ORDERED: September 18, 2020.

MEDICAL BOARD OF CALIFORNIA

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

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
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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: **DAVID ARI FRIEDBERG, M.D.** **3628 E. Imperial Hwy, Suite 300** **Lynwood, CA 90262-2643** **Physician's and Surgeon's Certificate No. A 112102,** Respondent.	Case No. 800-2017-030158 OAH No. 2020010967 **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, via Joshua M. Templet, Deputy Attorney General.

2. Respondent David Ari Friedberg, M.D. (Respondent) is represented in this proceeding by attorney Mark B. Guterman, LaFollette, Johnson, DeHaas, Fesler & Ames, 865 South Figueroa Street, 32nd Floor, Los Angeles, CA 90017.

3. On April 20, 2010, the Board issued Physician's and Surgeon's Certificate No. A 112102 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-030158, and will expire on April 3, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2017-030158 (Accusation) 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 4, 2019. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of the Accusation 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 the Accusation. Respondent has also carefully read, fully discussed with his 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 the Accusation, if proven at a hearing, constitute cause for imposing discipline on his Physician's and Surgeon's Certificate.

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10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in the Accusation and that he has thereby subjected his Physician's and Surgeon's Certificate to disciplinary action.

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 probationary terms as set forth in the Disciplinary Order below.

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

14. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in the Accusation shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

15. 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.

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16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 112102 issued to Respondent DAVID ARI FRIEDBERG, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three years, with the following terms and conditions:

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

2. 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 months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

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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.

3. PRACTICE MONITORING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering; shall be in Respondent's field of practice; and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee, which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the medical standards of care, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within ten calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION. Within seven days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief

Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

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

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

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

7. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Place of Practice

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

License Renewal

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

Travel or Residence Outside California

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

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

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

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

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model

Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

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

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

12. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver his wallet and wall certificate to the Board or its designee and shall no longer practice medicine. Respondent then will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

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

14. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in the Accusation shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict a license or certification.

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: 6/17/2020

DAVID ARI FRIEDBERG, M.D.
Respondent

I have read and fully discussed with Respondent David Ari Friedberg, 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: 6/18/2020

MARK B. GUTERMAN
LaFollette, Johnson, DeHaas, Fesler & Ames
Attorney for Respondent

ENDORSEMENT

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

DATED: 6/18/2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

Joshua M. Templet
JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-030158

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Dec. 4 2019
BY A. Garcia ANALYST

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

In the Matter of the Accusation Against: DAVID ARI FRIEDBERG, M.D. 3628 E Imperial Hwy, Suite 300 Lynwood, CA 90262-2643 Physician's and Surgeon's Certificate No. A 112102, Respondent.	Case No. 800-2017-030158 **ACCUSATION**

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 April 28, 2010, the Board issued Physician's and Surgeon's Certificate Number A 112102 to David Ari Friedberg, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on April 3, 2020, 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.

STATUTORY PROVISIONS

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 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 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.

FACTUAL ALLEGATIONS

7. At all times relevant to the allegations herein, Respondent was a physician practicing in the area of orthopedics.

8. Patient 1 was a 60-year-old female, right-hand-dominant, suffering from a right trigger thumb. She was referred by her primary care physician to Respondent for an orthopedic consult.

9. On or about August 25, 2016, Patient 1 was evaluated by Respondent, who diagnosed a "trigger thumb, left thumb." Respondent treated the right thumb with an injection of corticosteroid, however, his notes indicated that the injection site was the left knee. On or about September 15, 2016, Respondent noted again the patient's history of "left" trigger thumb, but then charted the finger pain was located in the "right" thumb.

10. Subsequently, Patient 1 called Respondent advising that her symptoms had recurred and she was interested in proceeding with surgery. Following the phone call, Respondent scheduled Patient 1 for right trigger thumb release surgery without seeing her preoperatively for an evaluation or consultation. Respondent did not document in Patient 1's medical records that during any such preoperative visit he discussed alternatives to surgery, what the surgery would entail both preoperatively and postoperatively, and the relative risks and benefits of the proposed surgery.

11. On or about October 24, 2016, Respondent performed a right trigger thumb release on Patient 1. Following the surgery, Patient 1 presented to the emergency room four times complaining of significant pain in her hand as well as symptoms of numbness. On or about November 11, 2016, Patient 1's white blood cell count was elevated at 13.5 and C-reactive Protein (CRP) was also elevated at 0.77. She was diagnosed with a cellulitis and possible post-operative infection, admitted to the hospital, and given intravenous (IV) antibiotics. Respondent had been telephoned and recommended that she be admitted to rule out tenosynovitis.

12. On or about December 9, 2016, while at the emergency room, Patient 1 complained of increasing hand swelling. Respondent was notified and indicated that he had nothing to offer the patient unless she has an infection. A complete blood count (CBC) was performed showing a left shift with neutrophils at 74.2 and lymphocytes at 15. On December 29, 2016, Patient 1 returned to the emergency room with right hand and thumb swelling.

13. Approximately six weeks post surgery, Respondent saw Patient 1 in the hospital and diagnosed her with complex regional pain syndrome (CRPS) as the cause of her pain. However, Respondent never instituted treatment or made a referral to address the patient's purported CRPS.

14. On or about January 5, 2017, Patient 1 presented to Respondent's office with complaints of swelling, pain, and purulent drainage from her thumb. Respondent's examination revealed complete wound dehiscence with exposed tendon at the level of the right metacarpophalangeal joint with macerated skin, but no fluid collection, erythema, or evidence of purulent drainage.

15. On or about January 9, 2017, Respondent performed debridement of nonviable-

appearing skin and nonviable portions of the tendon. He described "diminutive flexor tendon of the thumb with pathological appearance and relative insufficiency," yet he did not make the connection that the tendon was infected nor did he take a culture and sensitivity, which could have been done to rule out a deep infection. He removed specimens of tendon and necrotic tissue, but did not send those for culture and sensitivity, nor for pathological examination, all of which could have identified a deep infection.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

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

17. Complainant refers to and, by this reference, incorporates paragraphs 7 through 15, above, as though set forth fully herein.

18. The standard of care requires that a preoperative visit be performed within a reasonable time before surgery so that the patient could be examined, and all of the patient's questions can be answered about a proposed surgical procedure, the pathology, the options of treatment, preoperative and postoperative course of therapy, and the possible risks and benefits of the surgery can be fully explained. Furthermore, the surgeon can reassesses the pathology and planned procedure as well as any changes in symptoms.

19. Respondent recommended trigger thumb release surgery to Patient 1 following a phone call. There is no documentation that the patient was examined, that alternatives of therapy were discussed, that she was advised as to the pathology of a trigger finger, what the surgery would entail either preoperatively or postoperatively, and the relative risks and benefits of the proposed surgery. Not performing a preoperative visit is an extreme departure from the standard of care.

20. The standard of care is that proper diagnosis be made during the course of treatment to effectuate timely care in preoperative, operative, and postoperative care, to most effectively treat the patient and to avoid unnecessary complications.

21. Respondent's failure to properly diagnose a deep infection and failure to treat the infection appropriately represents an extreme departure from the standard of care.

22. Respondent's acts and/or omissions as set forth in Paragraphs 17 through 21, 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)

23. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care and treatment of Patient 1. The circumstances are as follows:

24. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

25. Medical records are integral in the care of patients. The standard of care requires careful history taking, examination, and supportive documentation to help make a diagnosis and formulate a cogent treatment plan. Medical record keeping also requires careful identification of body parts involved and identification of the correct side (*e.g.,* left or right) to be noted.

26. Respondent's medical record keeping intermixed the right and left thumbs, and on the note of August 25, 2016, the injection of corticosteroid is indicated as going into the knee. Respondent's failure to review and correct the chart prior to surgery is a simple departure from the standard of care.

27. There is no documentation in Respondent's records that he performed a preoperative visit, during which the alternative of therapy were discussed with Patient 1, that she was advised as to the pathology of a trigger finger, what the surgery would entail, both pre- and postoperatively, and the relative risks and benefits of the proposed surgery.

28. Respondent's acts and/or omissions as set forth in Paragraphs 24 through 27, above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

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THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

29. Respondent's license is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate records of his care and treatment of Patient 1. The circumstances are as follows:

30. The allegations of the Second Cause for Discipline are incorporated herein by reference as if fully set forth.

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 112102, issued to David Ari Friedberg, M.D.;

2. Revoking, suspending or denying approval of David Ari Friedberg, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering David Ari Friedberg, 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 4, 2019

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

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