

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

In the Matter of the Accusation
Against:

Richard C. Agnew, M.D.

Case No. 800-2018-042791

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

Respondent.

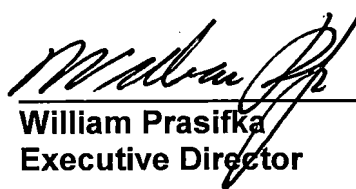
DECISION

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

This Decision shall become effective at 5:00 p.m. on April 14, 2021.

IT IS SO ORDERED April 7, 2021.

MEDICAL BOARD OF CALIFORNIA



William Prasifka
Executive Director

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

9

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

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In the Matter of the Accusation Against:

Case No. 800-2018-042791

14

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

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

15

16

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

17

Respondent.

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. William Prasifka (Complainant) is the Executive Director of the Medical Board of
23 California (Board). He brought this action solely in his official capacity and is represented in this
24 matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields,
25 Deputy Attorney General.

26

2. Richard C. Agnew, M.D. (Respondent) is represented in this proceeding by attorney
27 Rachael C. Kogen, Esq. with Fraser Watson Croutch, LLP, whose address is: 1100 West Town
28 and Country Road, Suite 1030, Orange, CA 92868-4687.

1 Accusation No. 800-2018-042791, and agrees that he has thereby subjected his Physician's and
2 Surgeon's Certificate No. C 28577 to disciplinary action, and hereby surrenders his Physician's
3 and Surgeon's Certificate No. C 28577 for the Board's formal acceptance.

4 10. Respondent agrees that if he files a petition for reinstatement or relicensure, or an
5 accusation and/or petition to revoke probation is filed against him before the Medical Board of
6 California, all of the charges and allegations contained in Accusation No. 800-2018-042791 shall
7 be deemed true, correct, and fully admitted by Respondent for purposes of any such proceeding or
8 any other licensing proceeding involving Respondent in the State of California.

9 11. Respondent understands that by signing this stipulation he enables the Board to issue
10 an order accepting the surrender of his Physician's and Surgeon's Certificate No. C 28577
11 without notice to, or opportunity to be heard by, Respondent.

12 **CONTINGENCY**

13 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
14 part, that the Medical Board "shall delegate to its executive director the authority to adopt a ...
15 stipulation for surrender of a license."

16 13. Respondent understands that, by signing this stipulation, he enables the Executive
17 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his
18 Physician's and Surgeon's Certificate No. C 28577, without further notice to, or opportunity to be
19 heard by, Respondent.

20 14. This Stipulated Surrender of License and Disciplinary Order shall be subject to the
21 approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated
22 Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his
23 consideration in the above-entitled matter and, further, that the Executive Director shall have a
24 reasonable period of time in which to consider and act on this Stipulated Surrender of License and
25 Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands
26 and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the
27 time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

28 ///

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 28577, issued to Respondent RICHARD C. AGNEW, M.D., is hereby surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate No. C 28577 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a physician and surgeon in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2018-042791 shall be deemed to be true, correct and fully admitted by Respondent when the Board determines whether to grant or deny the petition.

5. 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 agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2018-042791 shall be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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ACCEPTANCE

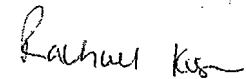
I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney Rachael C. Kogen, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 28577. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3-8-21


RICHARD C. AGNEW, MD.
Respondent

I have read and fully discussed with Respondent Richard C. Agnew, M.D., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 3/8/21


RACHAEL C. KOGEN, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: March 8, 2021

Respectfully submitted,

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



LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-042791

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
Deputy Attorney General
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In the Matter of the Accusation Against:

Case No. 800-2018-042791

14

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

A C C U S A T I O N

15

16

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

17

Respondent.

18

19

20

PARTIES

21

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
22 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
23 (Board).

24

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

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JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 2227 of the Code states:

6 (a) A licensee whose matter has been heard by an administrative law judge of
7 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
8 Code, or whose default has been entered, and who is found guilty, or who has entered
9 into a stipulation for disciplinary action with the board, may, in accordance with the
10 provisions of this chapter:

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

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

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

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

19 (5) Have any other action taken in relation to discipline as part of an order of
20 probation, as the board or an administrative law judge may deem proper.

21 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
22 medical review or advisory conferences, professional competency examinations,
23 continuing education activities, and cost reimbursement associated therewith that are
24 agreed to with the board and successfully completed by the licensee, or other matters
25 made confidential or privileged by existing law, is deemed public, and shall be made
26 available to the public by the board pursuant to Section 803.1.

27 5. Section 2234 of the Code, states, in pertinent part:

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

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

9 ...

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Gross Negligence)**

12 6. Respondent has subjected his Physician's and Surgeon's Certificate No. C 28577 to
13 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
14 the Code, in that he committed gross negligence in his care and treatment of Patient A,¹ as more
15 particularly alleged hereinafter.

16 7. On or about August 1, 2014, Patient A, a then 27-year-old female, presented for
17 treatment with Respondent. Records for this visit indicate Respondent performed a routine
18 annual pelvic exam and noted Patient A had multiple prior miscarriages and a prior diagnosis of
19 anemia.

20 8. On or about January 5, 2015, Respondent ordered a blood test which revealed Patient
21 A was pregnant.

22 9. On or about January 16, 2015, Patient A underwent an ultrasound and was
23 determined to be approximately five to six weeks pregnant with an estimated delivery date of
24 September 10, 2015.

25 10. Respondent continued to provide prenatal care and treatment throughout Patient A's
26 pregnancy.

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¹ Patient identity has been withheld to maintain patient confidentiality. The patient's
identity is known to Respondent or will be disclosed to Respondent upon receipt of a duly issued
request for discovery and in accordance with Government Code section 11507.6

1 11. On or about July 15, 2015, Patient A was noted to have polyhydramnios² with an
2 amniotic fluid index of 28.8.

3 **September 11, 2015**

4 12. On or about September 11, 2015, Patient A presented at Hoag Memorial Hospital for
5 fetal diagnostic testing. During antepartum testing, Patient A was admitted to Labor and Delivery
6 for induction at or around 10:48 a.m. due to a late deceleration noted on the fetal monitor.

7 13. At or around 12:10 p.m., records indicate a nurse examined Patient A and determined
8 Patient A was one (1) centimeter dilated. At or around 12:15 p.m., Patient A started receiving
9 Pitocin³ to induce labor.

10 14. At or around 4:00 p.m., records indicate Patient A's fetal heart rate monitoring strip
11 documented late decelerations, moderate variability,⁴ and a baseline rate of 140 bpm.

12 15. At or around 4:30 p.m., records indicate Patient A was provided a face mask to
13 provide Patient A with additional oxygen.

14 16. At or around 5:00 p.m., records indicate Patient A's fetal heart rate monitoring strip
15 documented late decelerations, moderate variability, and a baseline rate of 145 bpm.

16 17. At or around 5:12 p.m., records indicate Patient A's oxygen mask was removed and
17 Patient A returned to room air.

18 18. At or around 5:59 p.m., records indicate a nurse examined Patient A and determined
19 Patient A was still one (1) centimeter dilated.

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22 _____
23 ² Polyhydramnios is a condition characterized by excessive accumulation of amniotic fluid
24 in the uterus during pregnancy. This accumulation of excess fluid is associated with several
25 complications, including but not limited to, premature rupture of membranes, placental abruption,
26 umbilical cord prolapse, etc.

26 ³ Pitocin is the brand name for the synthetic version of oxytocin, a hormone commonly
27 used to cause contractions to induce labor.

27 ⁴ Moderate variability means the fetal heart monitor is documenting a difference between
28 6 to 25 beats per minute (bpm) in the fetus's heart rate over a given period of time.

1 19. At or around 6:00 p.m., records indicate Patient A's fetal heart rate monitoring strip
2 documented late decelerations, moderate variability, and a baseline rate of 150 bpm.

3 20. At or around 6:13 p.m., records indicate Respondent was contacted over the
4 telephone and given an update on Patient A's condition. Respondent ordered a cervical ripening
5 balloon⁵ for Patient A.

6 21. At or around 6:30 p.m., records indicate Patient A's fetal heart rate monitoring strip
7 documented late decelerations, moderate variability, and a baseline rate of 150 bpm.

8 22. At or around 6:33 p.m., records indicate a cervical ripening balloon was inserted by
9 the hospitalist laborist.

10 23. At or around 6:56 p.m., records indicate Patient A was provided a face mask to
11 provide Patient A with additional oxygen.

12 24. At or around 7:00 p.m., records indicate Patient A's fetal heart rate monitoring strip
13 documented late decelerations, minimal to undetectable variability,⁶ and a baseline rate of 145
14 bpm.

15 25. At or around 8:30 p.m., records indicate Patient A's fetal heart rate monitoring strip
16 documented late decelerations, moderate variability with periods of minimal variability, and a
17 baseline rate of 135 bpm.

18 26. At or around 8:58 p.m., records indicate a nurse examined Patient A and determined
19 Patient A was four and a half (4.5) centimeters dilated.

20 27. At or around 10:00 p.m., records indicate Patient A's membranes spontaneously
21 ruptured and that a nurse examined Patient A and determined Patient A was five (5) centimeters
22 dilated.

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24 _____
25 ⁵ A cervical ripening balloon is a device that is inserted into the cervix during labor,
26 commonly used to induce labor.

27 ⁶ Minimal to undetectable variability means the fetal heart monitor is documenting a
28 difference of less than 5 beats per minute (bpm) in the fetus's heart rate over a given period of
time.

1 **September 12, 2015**

2 28. On or about September 12, 2015, at or around 1:30 a.m., records indicate Patient A's
3 fetal heart rate monitoring strip documented late decelerations, moderate variability, and a
4 baseline rate of 140 bpm. Records further indicate a nurse examined Patient A and determined
5 Patient A was six (6) centimeters dilated with caput.⁷

6 29. At or around 2:00 a.m., records indicate Patient A's fetal heart rate monitoring strip
7 documented late decelerations, moderate variability, and a baseline rate of 150 bpm.

8 30. At or around 2:30 a.m., records indicate Patient A's fetal heart rate monitoring strip
9 documented late decelerations, moderate variability with periods of minimal variability, and a
10 baseline rate of 150 bpm.

11 31. At or around 3:30 a.m., records indicate Patient A's fetal heart rate monitoring strip
12 documented tachycardia,⁸ late and variable decelerations, moderate variability with periods of
13 minimal and undetectable variability, and a baseline rate of 160 bpm.

14 32. At or around 3:44 a.m., records indicate Patient A's administration of Pitocin was
15 discontinued.

16 33. At or around 4:00 a.m., records indicate Patient A's fetal heart rate monitoring strip
17 documented late decelerations, minimal and undetectable variability, and a baseline rate of 160
18 bpm.

19 34. At or around 4:03 a.m., records indicate Respondent was contacted over the telephone
20 and given an update on Patient A's condition, including but not limited to, the repetitive late
21 decelerations and minimal variability. Respondent ordered the initiation of amnioinfusion⁹ and to
22 discontinue the administration of Pitocin until the fetal heart rate tone improved.

23 35. At or around 4:14 a.m., records indicate the amnioinfusion was initiated.

24
25 ⁷ Caput succedaneum is the swelling that occurs to a fetus's head during delivery due to
pressure exerted on the head as it passes through the cervical opening and vaginal canal.

26 ⁸Tachycardia is an abnormal increase in fetal heart rate, generally ranging between 170
27 and 220 bpm.

28 ⁹ Amnioinfusion is the infusion of fluids into the uterine cavity commonly used to correct
fetal heart rate changes caused by umbilical compression as indicated by variable decelerations.

1 36. At or around 4:20 a.m., records indicate Patient A's fetal heart rate monitoring strip
2 documented a deceleration lasting approximately two (2) minutes.

3 37. At or around 4:29 a.m., records indicate Patient A's fetal heart rate monitoring strip
4 documented late and variable decelerations, moderate variability, and a baseline rate of 160 bpm.

5 38. At or around 5:30 a.m., records indicate Patient A's fetal heart rate monitoring strip
6 documented late and variable decelerations, moderate variability with periods of minimal
7 variability, and a baseline rate of 160 bpm.

8 39. At or around 6:30 a.m., records indicate Patient A's fetal heart rate monitoring strip
9 documented late decelerations, moderate variability with periods of minimal variability, and a
10 baseline rate of 155 bpm.

11 40. At or around 6:41 a.m., records indicate Respondent was contacted over the telephone
12 and given an update on Patient A's condition, including but not limited to, the occasional
13 variables, late decelerations, periods of minimal variability, and Patient A's progress in labor to
14 be seven (7) centimeters dilated, 90% effaced, and station -2 with caput. Respondent ordered the
15 continued administration of oxygen and repositioning of Patient A on her left lateral side.

16 41. At or around 7:00 a.m., records indicate Patient A's fetal heart rate monitoring strip
17 documented late decelerations, marked variability,¹⁰ and a baseline rate of 150 bpm.

18 42. At or around 8:00 a.m., Respondent presented at bedside and performed a cervical
19 examination of Patient A. Records indicate Patient A's history and physical evaluation were still
20 pending, Patient A's progress in labor was nine (9) centimeters dilated, 100% effaced, and station
21 -1. The fetal heart rate monitoring strip documented variable decelerations, moderate variability,
22 and a baseline rate of 150 bpm. Respondent ordered an increase in the administration of Pitocin
23 and informed Patient A he would return shortly to deliver the baby.

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28 ¹⁰ Marked variability means the fetal heart monitor is documenting a difference greater than 25 beats per minute (bpm) in the fetus's heart rate over a given period of time.

1 43. At or around 8:35 a.m., records indicate Patient A's fetal heart rate monitoring strip
2 documented late and variable decelerations, with decelerations to around 80 bpm and 60 bpm
3 lasting approximately seventy (70) seconds.¹¹ Records indicate Pitocin was discontinued.

4 44. At or around 9:00 a.m., records indicate Patient A's fetal heart rate monitoring strip
5 documented late and variable decelerations, moderate variability, and a baseline rate of 160 bpm.

6 45. At or around 9:30 a.m., records indicate Patient A's fetal heart rate monitoring strip
7 documented late and variable decelerations, with a deceleration to around 85 bpm for
8 approximately eighty (80) seconds, moderate variability, and a baseline rate of 155 bpm.

9 46. At or around 9:35 a.m., records indicate a message was left for Respondent and the
10 hospitalist laborist was also contacted to assess the fetal heart rate tracing.

11 47. At or around 9:39 a.m., records indicate Patient A's fetal heart rate monitoring strip
12 documented a fetal heart rate of 60 bpm with no variability.

13 48. At or around 9:41 a.m., records indicate the hospitalist laborist evaluated Patient A,
14 and after an attempt to push resulting in a deceleration in the fetal heart rate to approximately 70
15 bpm for approximately seventy (70) seconds, the decision was made to transfer Patient A to the
16 operating room for an emergency cesarean section.

17 49. At or around 9:44 a.m., records indicate Patient A's fetal heart rate monitoring strip
18 documented a fetal heart rate of 50 bpm.

19 50. Respondent arrived in the operating room and the cesarean section was performed by
20 Respondent at 9:54 a.m. The fetus did not respond to resuscitation efforts.

21 51. Throughout Patient A's labor and delivery, Respondent did not adequately counsel
22 Patient A regarding the indications for admission, interventions, risks, or his plan of care for labor
23 and delivery.

24 52. Throughout Patient A's labor and delivery, Respondent did not perform a physical
25 evaluation of Patient A until 8:00 a.m. on September 12, 2015, despite nonreassuring fetal heart
26 rate tracing, Patient A's slow progression of labor, and Patient A's diagnosis of polyhydramnios.

27
28 ¹¹ Bradycardia is an abnormal decrease in fetal heart rate, generally ranging below 120
bpm.

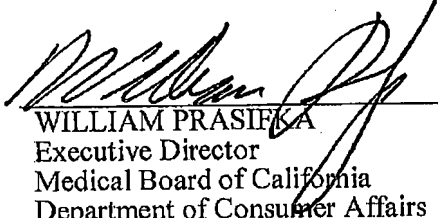
1 Surgeon's Certificate No. C 28577 was publicly reprimanded for committing negligence and
2 failing to maintain adequate and accurate medical records in his care and treatment of a single
3 patient. That decision is now final and is incorporated by reference as if fully set forth herein.

4 PRAYER

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

- 7 1. Revoking or suspending Physician's and Surgeon's Certificate No. C 28577, issued to
8 Respondent Richard C. Agnew, M.D.;
- 9 2. Revoking, suspending or denying approval of Respondent Richard C. Agnew, M.D.'s
10 authority to supervise physician assistants and advanced practice nurses;
- 11 3. Ordering Respondent Richard C. Agnew, M.D., if placed on probation, to pay the
12 Board the costs of probation monitoring; and
- 13 4. Taking such other and further action as deemed necessary and proper.

14
15 DATED: FEB 16 2021

16 
17 WILLIAM PRASIFKA
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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