

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

**In the Matter of the First Amended
Against:**

BRIAN T. MARSH, M.D.

**Physician's and Surgeon's
Certificate No. G77041**

Respondent

Case No. 800-2018-041505

DECISION

**The attached Stipulated Surrender of License and 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 31, 2019.

IT IS SO ORDERED December 10, 2019.

MEDICAL BOARD OF CALIFORNIA



Christine J. Lally
Interim Executive Director

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation Against:

Case No. 800-2018-041505

12 **BRIAN T. MARSH, M.D.**
13 4828 Vine Hill Rd.
Sebastopol CA 95472

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Physician's and Surgeon's Certificate No. G 77041

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

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) was the Executive Director of the Medical
22 Board of California (Board), and brought this action solely in her official capacity. Complainant
23 is represented in this matter by Xavier Becerra, Attorney General of the State of California, by
24 Jane Zack Simon, Supervising Deputy Attorney General.

25 2. Brian T. Marsh, M.D. (Respondent) is represented in this proceeding by Dominique
26 A. Pollara, Pollara Law Group, 3600 American River Drive, Suite 160, Sacramento, CA 95864.

27 3. On July 1, 1993, the Board issued Physician's and Surgeon's Certificate No. G 77041
28 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times

1 relevant to the charges brought in First Amended Accusation No. 800-2018-041505 and will
2 expire on June 30, 2021, unless renewed.

3 **JURISDICTION**

4 4. First Amended Accusation No. 800-2018-041505 was filed before the Board, and is
5 currently pending against Respondent. The First Amended Accusation and all other statutorily
6 required documents were properly served on Respondent, who timely filed his Notice of Defense.
7 A copy of First Amended Accusation No. 800-2018-041505 (hereinafter Accusation) is attached
8 as Exhibit A.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, fully discussed with counsel, and understands the
11 charges and allegations in the Accusation. Respondent also has carefully read, fully discussed
12 with counsel, and understands the effects of this Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
15 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
16 to the issuance of subpoenas to compel the attendance of witnesses and the production of
17 documents; the right to reconsideration and court review of an adverse decision; and all other
18 rights accorded by the California Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
20 every right set forth above.

21 **CULPABILITY**

22 8. Respondent understands that the charges and allegations in the Accusation, if proven
23 at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's
24 Certificate.

25 9. For the purpose of resolving the Accusation without the expense and uncertainty of
26 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
27 basis for the charges in the Accusation and that those charges constitute cause for discipline.
28

1 Respondent hereby gives up his right to contest that cause for discipline exists based on those
2 charges.

3 10. Respondent understands that by signing this stipulation he enables the Board to issue
4 an order accepting the surrender of his Physician's and Surgeon's Certificate without further
5 process.

6 CONTINGENCY

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

16 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
17 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
18 thereto, shall have the same force and effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Board may, without further notice or formal proceeding, issue and enter the following Order:

21 ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 77041, issued
23 to Respondent Brian T. Marsh, M.D., is surrendered and accepted by the Board.

24 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
25 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
26 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
27 of Respondent's license history with the Board.
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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.

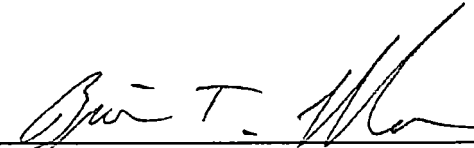
4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2018-041505 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition. Pursuant to Business and Professions Code section 2307(b)(1), Respondent shall be permitted to seek reinstatement after two years.

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. 800-2018-041505 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 licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 11/11/2019


BRIAN T. MARSH, M.D.
Respondent

1 I have read and fully discussed with Respondent BRIAN T. MARSH, M.D. the terms and
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I
3 approve its form and content.

4 DATED: 11/11/19


DOMINIQUE A. POLLARA
Attorney for Respondent

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7 **ENDORSEMENT**

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

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11 DATED: 11/4/19

Respectfully submitted,

12 XAVIER BECERRA
Attorney General of California

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15 JANE ZACK SIMON
16 Supervising Deputy Attorney General
17 Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-041505

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6 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO, SEP 4 2019
BY *[Signature]* ANALYST

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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:

Case No. 800-2018-041505

FIRST AMENDED ACCUSATION

13 **BRIAN T. MARSH, M.D.**

14 4828 Vine Hill Rd.
Sebastopol CA 95472

15 Physician's and Surgeon's Certificate
16 No. G 77041,

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On July 1, 1993, the Medical Board issued Physician's and Surgeon's Certificate
25 Number G 77041 to Brian T. Marsh, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate is renewed and current and will expire on June 30, 2019, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 2234 of the Code requires the Board to take action against any licensee who is charged with unprofessional conduct.

6. Section 2236 of the Code provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct.

7. Section 2239 of the Code provides that the use of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely constitutes unprofessional conduct.

8. Section 822 of the Code provides that if the Board determines that a licensee's ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the Board may take action revoking or suspending the license, placing the licensee on probation, or taking such other action as the Board in its discretion deems proper.

9. Section 2228.1 of the Code provides, in pertinent part, that the Board shall require a licensee who is disciplined based on drug or alcohol abuse to the extent that such use impairs the ability of the licensee to practice safely, to disclose to his or her patients information regarding his or her probation status. The licensee is required to disclose: Probation status, the length of the probation, the probation end date, all practice restrictions placed on the license by the Board, the Board's telephone number, and an explanation of how the patient can find further information on

1 the licensee's probation on the Board's Internet Web site.

2 **FIRST CAUSE FOR DISCIPLINE**

3 (Unprofessional Conduct: Conviction of a Crime/Dangerous Use of Alcohol)

4 10. On February 4, 2018, Respondent was involved in a head-on traffic collision caused
5 when Respondent drove his vehicle in the wrong lane. The airbags in both vehicles deployed,
6 and both cars had major front end damage. Respondent's 14 year old daughter, a passenger in his
7 car, and the 17 year old driver of the other car, sustained injuries in the accident and Respondent
8 suffered a lacerated tongue. Responding officers observed that Respondent appeared to be under
9 the influence of alcohol, although Respondent denied consuming any alcohol, and declined to
10 submit to a preliminary alcohol screening test. Respondent and his daughter were transported to
11 the hospital where Respondent worked as an anesthesiologist.¹ Respondent again denied having
12 consumed alcohol, but a blood alcohol test revealed a .11/.12% blood alcohol content.

13 11. Respondent's anesthesia medical group reported that Respondent attempted to escape
14 the scene of the accident by phoning a colleague to assist him, a request the colleague declined.
15 Once at the hospital, Respondent asked a trauma surgeon to shield him from the consequences of
16 the accident and delay the blood alcohol test by admitting him for minor surgery. The trauma
17 surgeon refused this request.

18 12. Respondent was arrested and charged in Sonoma County Superior Court with a
19 number of crimes related to child cruelty/endangerment (Penal Code section 273(a)) and driving
20 under the influence of alcohol with associated injuries (Vehicle Code sections 23153(a),
21 23153(b), 23558). Pursuant to a plea bargain agreement, Respondent was convicted of child
22 cruelty/endangerment and driving with a blood alcohol level of .08% with injuries. Respondent's
23 sentence included 30 days of actual incarceration, followed by release to a two month residential
24 treatment program, and four years of formal probation. Conditions of probation include random
25 chemical testing, no possession or use of alcohol or controlled substances, and a requirement that
26 Respondent stay out of places where alcohol is the primary item of sale.

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28 ¹ The driver of the other car sustained a knee laceration, neck strain and bruising on his
chest and abdomen. He was treated in the emergency room.

13. Respondent's criminal convictions for child cruelty/endangerment and driving with a blood alcohol content greater than 0.08% with injuries, are substantially related to the qualifications, functions and duties of a physician and surgeon, and constitute cause for discipline for unprofessional conduct pursuant to sections 2234 and/or 2236 of the Code.

14. Respondent's conduct in driving under the influence of alcohol and causing a serious motor vehicle accident resulting in injuries to Respondent, his daughter and the driver of the other vehicle, constitute unprofessional conduct and the use of alcohol in a dangerous manner, and constitute cause for discipline pursuant to sections 2234 and/or 2239 of the Code.

15. Respondent's conduct in falsely denying that he had consumed any alcohol when asked by the police, in attempting to avoid the consequences of his actions by trying to prevail on one colleague to help him leave the scene of the accident, and another colleague to help him delay biological fluid testing, constitute unprofessional conduct and cause for discipline pursuant to section 2234 of the Code.

SECOND CAUSE FOR DISCIPLINE

(Impaired Ability to Safely Practice)

16. Respondent underwent an evaluation in February 2019 with a Board-appointed psychiatrist. The evaluator concluded that Respondent has an "Alcohol Abuse Disorder, Moderate², in sustained remission." The evaluator noted that Respondent exhibited very poor judgment in driving while intoxicated, with his daughter in the car, and that he continues to minimize his level of intoxication during that incident, as well as his history of alcohol use, which somewhat increases his risk of relapse. Respondent is unable to safely practice medicine without the imposition of restrictions or conditions and participation in an appropriate monitoring and treatment program.

17. Respondent's license is subject to disciplinary action pursuant to Sections 822 and 2227 of the Code in that Respondent is impaired in his ability to safely practice medicine as a result of substance abuse.

² The November 22, 2018 discharge assessment from the residential treatment Respondent attended immediately following his release from jail characterized Respondent's substance abuse disorder as "severe" and in remission for five months.

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

Kimberly Kirchmeyer
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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