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

In the Matter of the Accusation Against:	)	
Marvin L. Ginsburg, M.D.	)	**Case No. 800-2015-017198**
Physician's and Surgeon's Certificate No. G 10816	)	
Respondent	)	

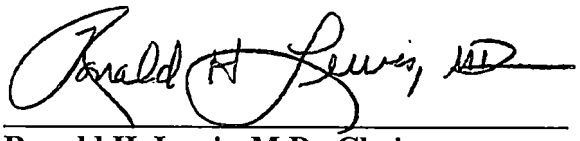
DECISION

The attached Stipulated Settlement 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 January 10, 2020.

IT IS SO ORDERED: December 12, 2019.

MEDICAL BOARD OF CALIFORNIA



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

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

In the Matter of the Accusation Against: MARVIN L. GINSBURG, M.D. 43839 N 15th Street West Lancaster, CA 93534 Physician's and Surgeon's Certificate No. G 10816, Respondent.	Case No. 800-2015-017198 OAH No. 2018121054 **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. Kimberly Kirchmeyer (Complainant) is the 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 Christina Sein Goot, Deputy Attorney General.

2. Respondent Marvin L. Ginsburg, M.D. (Respondent) is represented in this proceeding by attorney Peter Osinoff, whose address is 355 S. Grand Avenue, Ste. 1750, Los Angeles, CA 90071-1562.

3. On July 1, 1965, the Board issued Physician's and Surgeon's Certificate No. G 10816 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. 800-2015-017198, and will expire on February 20, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2015-017198 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 October 3, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-017198 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. 800-2015-017198. 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. 800-2015-017198 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 800-2015-017198 shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

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.

CONTINGENCY

12. 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.

13. 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.

14. 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:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 10816 issued to Respondent Marvin L. Ginsburg, M.D. is revoked. However, the revocation is stayed

and Respondent is placed on probation for three (3) years on 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 (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Before engaging in the clinical practice of medicine, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

Respondent shall not engage in the clinical practice of medicine until Respondent has successfully completed the program and has been so notified by the Board or its designee in writing.

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4. MONITORING - PRACTICE. 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(s), 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(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), 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 (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) 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 standards of practice of medicine, 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 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 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 (3) 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.

5. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting 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 (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent

shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, 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. The Respondent shall not resume practice until an appropriate practice setting is established.

6. NOTIFICATION. Within seven (7) 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(s) in hospitals, other facilities or insurance carrier.

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

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

9. 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 10 calendar days after the end of the preceding quarter.

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10. 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(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 thirty (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.

11. 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.

12. 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 (2) 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; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing..

13. 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.

14. 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, or Petition to Revoke Probation, or an 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.

15. 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 or her 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 Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent 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.

16. 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.

[Signatures on following page]

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Peter Osinoff. 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: 10/11/19

MARVIN L. GINSBURG, M.D.
Respondent

I have read and fully discussed with Respondent Marvin L. Ginsburg, 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: 10/11/19

PETER OSINOFF
Attorney for Respondent

ENDORSEMENT

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

DATED: _____

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
Deputy Attorney General
Attorneys for Complainant

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MARVIN L. GINSBURG, M.D.
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DATED: _____

PETER OSINOFF
Attorney for Respondent

ENDORSEMENT

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DATED: 10/11/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

CHRISTINA SEIN GOOT
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO October 3 2018
BY: Judy Wright ANALYST

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

In the Matter of the Accusation Against: **Marvin L. Ginsburg, M.D.** **43839 N 15th Street West** **Lancaster, CA 93534** **Physician's and Surgeon's Certificate No. G 10816,** Respondent.	Case No. 800-2015-017198 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 7, 1965, the Medical Board issued Physician's and Surgeon's Certificate Number G 10816 to Marvin L. Ginsburg, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 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 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 states, in pertinent part:

"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:

". . . .

"(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.

". . . ."

6. Section 2266 of the Code states:

"The failure of a physician and surgeon to maintain adequate records relating to the provision of services to their patients constitutes unprofessional conduct."

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FACTUAL BACKGROUND

7. At all times relevant to the charges herein, Respondent was a licensed physician and surgeon working as a hospitalist.

Patient 1[1]

8. Patient 1 was a 90-year-old male with a past medical history of stroke with expressive aphasia and dysphagia, coronary artery disease with stents, atrial fibrillation, and status-post pacemaker. He was admitted to the hospital on or about July 14, 2015 with abdominal pain and altered mental status. A CT of the abdomen showed findings consistent with acute cholecystitis and possibly diverticulitis. He was treated aggressively with intravenous fluid resuscitation and antibiotics.

9. Respondent initially saw Patient 1 on or about July 16, 2015, and then passed his care to other physicians in the group due to a scheduled vacation. On or about July 16, 2015, a robotic, laparoscopic cholecystectomy was performed on Patient 1 revealing a perforated, necrotic cholecystitis with associated intra-abdominal abscess that required drainage and lysis of adhesions with placement of two drains. After surgery, Patient 1 developed complications including hypernatremia and gastrointestinal bleeding.

10. Respondent resumed his care of Patient 1 on or about July 23, 2015, and continued caring for Patient 1 until his discharge to a skilled nursing facility on July 25, 2015. Respondent discharged Patient 1 on total parenteral nutrition (TPN) with a variety of abnormalities, specifically, tachycardia, tachypnea, hypoxia, and anemia. On the day of discharge, Patient 1's pulse was 103, which is modestly elevated. His respiratory rate was as high as 30, which is markedly elevated. His oxygen saturation was as low as 86% the day before discharge. Furthermore, Patient 1's hemoglobin had dropped from 10.1 on July 24, 2015 to 8.2 the following day. Taken together, these values point to unstabilized acute processes at the time of discharge.

11. Patient 1 was transferred to a skilled nursing facility on July 25, 2015, but required a transfer back to the hospital hours later due to shortness of breath and unresponsiveness at the nursing home. On or about July 26, 2015, after Patient 1's readmittance to the hospital, Patient

[1] Patients are referred to by number to protect privacy.

1's son then agreed to hospice care.

Patient 2

12. Patient 2 was a 71-year-old female with a past medical history of hyperlipidemia, bilateral knee replacements, chronic kidney disease, and depression. She was subsequently diagnosed with locally advanced adenocarcinoma of the pancreas and suffered a stroke with visual and upper extremity residua.

13. On or about January 14, 2016, Patient 2 was admitted to the hospital with severe generalized weakness, syncope, hypotension, hematochezia, coagulopathy, and severe anemia. Her troponins were somewhat elevated. On or about January 15, 2016, Patient 2 was seen by Respondent who wrote a subjective, objective, assessment, and plan (SOAP) note documenting her lab abnormalities, episode of hypotension, and transfusions given. There is no physical exam noted and the problem list consists only of nursing diagnoses and the assessment consisted of lab values only.

14. On or about January 16, 2016, Patient 2 underwent an esophagogastroduodenoscopy (EGD) and colonoscopy. These procedures revealed a giant duodenal ulcer at a Billroth II anastomotic site and extensive sigmoid diverticulosis with clots. The ulcer was biopsied and recommendations were for IV Protonix, blood transfusion as required, and to await results of the campylobacter-like organism (CLO) test report. On that same day, Respondent dictated a discharge summary prior to knowing the results of the endoscopies stating "[s]he is getting a colonoscopy and EGD today and will be discharged if nothing further is required." In that summary, Respondent did not make note of the presentation with syncope, hypotension, generalized weakness, or coagulopathy.

15. On or about January 17, 2016, Respondent noted a variety of objective findings, however, there is no physical exam noted and the problem list and assessment sections consist of a list of nursing problems and documentation of lab values.

16. On or about January 18, 2016, Respondent saw Patient 2 and noted that her anemia had improved and a discharge was planned. No physical exam is noted and there is no substantial problem list and assessment/plan other than noting a few nursing diagnoses and lab values. On or

about January 19, 2016, Respondent noted in the subjective section of his note, "appeal pending-vss -very weak." On or about January 20, 2016, Respondent failed to note a physical exam and only charted a set of nursing problems without substantial physician assessment. On or about January 21, 2016, Respondent noted in Patient 2's chart, "awaiting appeal snf bed awaits[,]" "no need for acute care[.]" Patient 2 was discharged to a skilled nursing facility on January 21, 2016.

17. Throughout Patient 2's hospital course, Respondent did not document the meaning or importance of Patient 2's severely low albumin values, other than to record the lab value. While there are multiple nursing notes to the effect that Patient 2 had a poor appetite, Respondent did not diagnose her with severe malnutrition and did not consider treatments for it.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Patients 1 and 2)

18. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code in that he was grossly negligent in his care and treatment of Patients 1 and 2. The circumstances are as follows:

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

20. The standard of care provides that patients will be discharged from the acute setting to the long-term care setting when all acute processes have stabilized. Alternatively, patients can be transferred to long-term care with acute processes active, if they or their surrogates accept hospice care, or a no-hospitalization order.

21. Respondent's care and treatment of Patient 1, as set forth above in Paragraphs 8 through 11, includes the following act and/or omission which constitutes an extreme departure from the standard of care: Respondent's discharge of Patient 1 to a skilled nursing facility on July 25, 2015 with unstabilized acute processes.

22. The standard of care for a hospitalist's note in SOAP format requires patient's subjective comments in the S section, objective data in the O section including relevant portions of the physical exam, and a relevant problem list with physician's assessment and plan.

23. The standard of care provides that, for sick hospital patients with a gastrointestinal

malignancy, very low albumin levels should cause the physician to request a professional nutritionist's evaluation and recommend appropriate treatment.

24. The standard of care requires that discharge orders be written for patients once it is known that all of their acute medical issues have resolved.

25. Respondent's care and treatment of Patient 2, as set forth above in Paragraphs 12 through 17, includes the following acts and/or omissions which constitute extreme departures from the standard of care:

a. Taken as a whole for this hospitalization, Respondent's documentation was inadequate.

b. Respondent's nonexistent evaluation and treatment of Patient 2's profound hypoalbuminemia.

c. The timing of Respondent's discharge order on January 16, 2016.

26. Respondent's acts and/or omissions as set forth in Paragraphs 19 through 25, 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 – Patients 1 and 2)

27. 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 and 2. The circumstances are as follows:

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

29. One of the critical issues in Patient 1's care was whether he should continue to receive a form of artificial nutrition in the context of its role as a form of life-support. Percutaneous endoscopic gastrostomy (PEG) tube placement is a means of delivering artificial nutrition directly to the stomach through a hole in the abdominal wall. PEG has risks and benefits.

30. Respondent should have explored all options with Patient 1's surrogate for providing

nutrition, including PEG, TPN, and "comfort feeding," and come to understand whether there was an agreement between all parties or any disagreement. Respondent should have documented such a discussion after the fact, in detail.

31. The standard of care requires that when a physician speaks with a patient's surrogate decision-maker at a time when there is an important decision to be made, the physician will document the goals of care conversation.

32. Respondent's care and treatment of Patient 1, as set forth above in Paragraphs 8 through 11, includes the following acts and/or omissions which constitute repeated negligent acts:

a. Respondent's discharge of Patient 1 to a skilled nursing facility on July 25, 2015 with unstabilized acute processes.

b. The failure of Respondent to document a goals of care conversation in detail.

33. When troponins are elevated in a sick, hospitalized patient, the standard of care requires that the patient be evaluated and assessed for the presence of acute coronary syndrome.

34. Respondent's care and treatment of Patient 2, as set forth above in Paragraphs 12 through 17, includes the following acts and/or omissions which constitute repeated negligent acts:

a. Taken as a whole for this hospitalization, Respondent's documentation was inadequate.

b. Respondent's nonexistent evaluation and treatment of Patient 2's profound hypoalbuminemia.

c. The timing of Respondent's discharge order on January 16, 2016.

d. Respondent's evaluation and treatment of Patient 2's elevated troponin values.

35. Respondent's acts and/or omissions as set forth in Paragraphs 28 through 34, 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.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records – Patients 1 and 2)

36. 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 Patients 1

and 2. The circumstances are as follows:

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

38. Complainant refers to and, by this reference, realleges the allegations set forth in Paragraphs 22, 23, 25(a) and (b), 29 through 31, 32(b), and 34(d).

39. Respondent's care and treatment of Patients 1 and 2, as set forth above in Paragraphs 37 through 38, constitute failure to maintain adequate and accurate records.

DISCIPLINARY CONSIDERATIONS

40. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about January 13, 2005, in a prior disciplinary action entitled *In the Matter of the Accusation Against: Marvin L. Ginsburg, M.D.*, before the Medical Board of California, Case No. 16-2004-158328, Respondent's license was placed on probation for three years, during which he was required to take educational courses and was prohibited from performing colonoscopies, to include sigmoidoscopy or upper gastrointestinal endoscopic procedures, without first completing a regimen of medical training pre-approved by the Board. Respondent's license was disciplined based on disciplinary action taken against his license in Oregon for repeatedly performing endoscopic procedures in a manner which departed from the standard of care, without proper training, and at a clinic which was not a certified surgical facility. That decision is now final and is incorporated by reference as if fully set forth herein.

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:

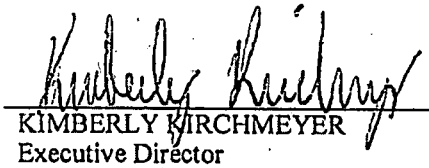
1. Revoking or suspending Physician's and Surgeon's Certificate Number G 10816, issued to Marvin L. Ginsburg, M.D.;

2. Revoking, suspending or denying approval of Marvin L. Ginsburg, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Marvin L. Ginsburg, 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: October 3, 2018



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

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