

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

**In the Matter of the Accusation
Against:**

Jonathan David Rand, M.D.

Case No. 800-2017-036123

**Physician's and Surgeon's
Certificate No. G 37418**

Respondent

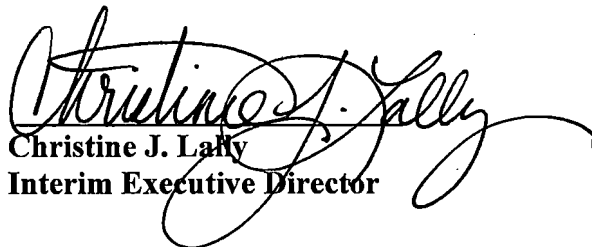
DECISION

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 23, 2019.

IT IS SO ORDERED December 16, 2019.

MEDICAL BOARD OF CALIFORNIA


**Christine J. Lally
Interim Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
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7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **JONATHAN DAVID RAND, M.D.**

14 Access Medical Group
4644 Lincoln Blvd., Suite 113
Marina Del Rey, CA 90292

15 Physician's and Surgeon's Certificate
16 No. G 37418,

17 Respondent.

Case No. 800-2017-036123

OAH No. 2019061140

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

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. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical
23 Board of California (Board). She brought this action solely in her official capacity and is
24 represented in this matter by Xavier Becerra, Attorney General of the State of California, via
25 Joshua M. Templet, Deputy Attorney General.

26 2. Jonathan David Rand, M.D. (Respondent) is represented in this proceeding by
27 attorneys Dennis Ames and Pogey Henderson, 2677 North Main Street, Suite 901, Santa Ana, CA
28 92705-6632.

3. On or about July 17, 1978, the Board issued Physician's and Surgeon's Certificate No. G 37418 to Jonathan David Rand, M.D. (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. 800-2017-036123 and will expire on March 31, 2020.

JURISDICTION

4. Accusation No. 800-2017-036123 (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 January 7, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of the Accusation is attached as **Exhibit A** and incorporated by reference.

ADVISEMENT AND WAIVERS

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

6. 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.

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

CULPABILITY

8. Respondent understands 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.

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

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 37418, issued
23 to Respondent Jonathan David Rand, 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 the Accusation shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorneys Dennis Ames and Poge Henderson. 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: December 1, 2019

Jonathan Rand
JONATHAN DAVID RAND, M.D.
Respondent

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

DATED: 12/1/19

Poge Henderson
DENNIS AMES
POGEY HENDERSON
Attorneys for Respondent

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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: 12/2/2019

Respectfully submitted,

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

Joshua M. Temple

JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

LA2018503246
14288192

Exhibit A

Accusation No. 800-2017-036123

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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 800-2017-036123

14 **JONATHAN DAVID RAND, M.D.**
15 **4644 Lincoln Blvd Ste 113**
Marina Del Rey, CA 90292

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. G 37418,**

18 **Respondent.**

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about July 17, 1978, the Medical Board issued Physician's and Surgeon's
26 Certificate Number G 37418 to Jonathan David Rand, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on March 31, 2020, unless renewed.

1 **JURISDICTION**

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 unless otherwise indicated.

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

8 5. Section 2234 of the Code, subdivision (c), states:

9 "The board shall take action against any licensee who is charged with unprofessional
10 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
11 limited to, the following:

12 "....

13 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
14 omissions. An initial negligent act or omission followed by a separate and distinct departure from
15 the applicable standard of care shall constitute repeated negligent acts.

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

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

23 6. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
24 adequate and accurate records relating to the provision of services to their patients constitutes
25 unprofessional conduct."

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(Repeated Negligent Acts)**

28 7. 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:

8. At all times relevant to the charges herein, Respondent was a licensed physician and surgeon practicing internal medicine.

9. Patient 1 was a forty-three-year-old male when he first treated with Respondent in June 2004. His medical history included hypertension and headaches.

10. On or about November 29, 2011, Patient 1 presented with dizziness and headaches. Respondent believed the dizziness could be attributed to Patient 1's blood pressure medication. Respondent changed the blood pressure medication and prescribed tramadol and Vicodin for the headaches. Respondent claimed he instructed Patient 1 to try tramadol first because it was less potent, and if that did not work, to take the Vicodin.

11. Approximately three weeks later, on or about December 22, 2011, Respondent returned for follow-up, still complaining about headaches. Respondent believed anxiety played a role in the headaches and started Patient 1 on Ativan because it had helped him in the past. Respondent prescribed another 30 tablets of Vicodin as well as Ativan 1 mg (30 tablets). The progress note indicated that Patient 1 was planning to see neurology the following week.

12. When Patient 1 returned on March 2, 2012, he told Respondent he was seeing a behavioral therapist instead of a neurologist. Because he was still complaining of anxiety, Respondent prescribed Celexa. On or about May 4, 2012, Patient 1 returned for follow-up indicating that the Celexa did not help. Respondent was given refills for Vicodin (60 tablets) and Ativan (60 tablets).

13. On or about June 8, 2012, Patient 1 continued to complain of anxiety, headaches, and back pain. He was now taking Vicodin three times per day. Respondent wrote a new prescription for Vicodin (90 tablets) and refilled Ativan (60 tablets). These same medications were refilled on October 19, 2012.

14. At the next visit, on or about February 5, 2013, Respondent refilled Vicodin (90 tablets) and Ativan was increased to 2 mg. These prescriptions were refilled at Patient 1's final visit with Respondent on May 23, 2013.

1 15. On or about June 2, 2013, Patient 1 was found deceased at his residence. The
2 coroner's medical report indicated the cause of death to be "effects of hydrocodone and ethanol."

3 16. At the time Respondent treated Patient 1, the standard of care for prescribing
4 controlled substances provided that a treatment plan should state objectives by which the
5 treatment plan could be evaluated, such as pain relief and/or improved physical and psychosocial
6 function, and indicate if any further diagnostic evaluations or other treatments were planned. The
7 physician should tailor pharmacological therapy to the individual medical needs of each patient.
8 Multiple treatment modalities and/or a rehabilitation program may be necessary if the pain is
9 complex or is associated with physical and psychosocial impairment.

10 17. At the time Respondent treated Patient 1, the standard of care provided that a
11 physician should discuss the risks and benefits of the use of controlled substances and other
12 treatment modalities with the patient, caregiver, or guardian.

13 18. At the time Respondent treated Patient 1, the standard of care provided that a
14 physician should periodically review the course of pain treatment and any new information about
15 the etiology of the pain or the patient's state of health. Continuation or modification of controlled
16 substances for pain management therapy depends on the physician's evaluation of progress
17 toward treatment objectives. If the patient's progress is unsatisfactory, the physician should
18 assess the appropriateness of continued use of the current treatment plan and consider the use of
19 other therapeutic modalities.

20 19. At the time Respondent treated Patient 1, the standard of care provided a physician
21 should keep accurate and complete records, including the medical history and physical
22 examination, other evaluations and consultations, treatment plan objectives, informed consent,
23 treatments, medications, rationale for changes in the treatment plan or medications, agreements
24 with the patient, and periodic reviews of the treatment plan.

25 20. Respondent's care and treatment of Patient 1, as set forth above in Paragraphs 8
26 through 14, includes the following acts and/or omissions which constitute repeated negligent acts:

- 27 a. Respondent failed to document a treatment plan.
28 b. Respondent was unaware of controlled substance prescribing guidelines that

- 1 had been available for 8 to 10 years.
- 2 c. Respondent failed to document a discussion of the potential side effects of the
- 3 controlled substances he prescribed.
- 4 d. Respondent failed to assess the appropriateness of continued use of Vicodin and
- 5 Ativan, and failed to monitor for compliance with treatment.
- 6 e. Respondent failed to keep accurate and complete medical records.

7 21. Respondent's acts and/or omissions as set forth in Paragraph 20, above, whether

8 proven individually, jointly, or in any combination thereof, constitute repeated negligent acts

9 pursuant to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Maintain Adequate and Accurate Records)**

12 22. Respondent's license is subject to disciplinary action under section 2266 of the Code

13 in that he failed to maintain adequate and accurate records of his care and treatment of Patient 1.

14 The circumstances are as follows:

15 23. Complainant refers to and, by this reference, realleges the allegations set forth in the

16 First Cause for Discipline, as though set forth fully herein.

17 24. Respondent's care and treatment of Patient 1 as set forth in Paragraph 23, above,

18 constitute failure to maintain adequate and accurate records.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,

21 and that following the hearing, the Medical Board of California issue a decision:

- 22 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 37418,
- 23 issued to Jonathan David Rand, M.D.;
- 24 2. Revoking, suspending or denying approval of Jonathan David Rand, M.D.'s authority
- 25 to supervise physician assistants and advanced practice nurses;
- 26 3. Ordering Jonathan David Rand, M.D., if placed on probation, to pay the Board the
- 27 costs of probation monitoring; and


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

DATED:

January 7, 2019


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

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