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. 800-2016-025764**
Physician's and Surgeon's Certificate No. C28577	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on March 4, 2020.

IT IS SO ORDERED February 3, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Ronald H. Lewis, MD

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

XAVIER BECERRA
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RICHARD C. AGNEW, M.D.** 351 Hospital Road, Suite 306 Newport Beach, CA 92663 Physician's and Surgeon's Certificate No. C 28577, Respondent.	Case No. 800-2016-025764 OAH No. 2019100034 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Christine J. Lally (Complainant) is the Interim Executive Director of the Medical Board of California (Board). This action was brought by then Complainant Kimberly Kirchmeyer solely in her official capacity.[1] Complainant is represented in this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields, Deputy Attorney General.

[1] Ms. Kirchmeyer became the Director of the Department of Consumer Affairs on October 28, 2019.

2. Respondent Richard C. Agnew, M.D. (Respondent) is represented in this proceeding by attorneys Dennis K. Ames, Esq., and Pogey Henderson, Esq., with La Follette, Johnson, DeHaas, Fesler & Ames, whose address is: 2677 North Main Street, Suite 901, Santa Ana, CA 92705.

3. On or about October 19, 1966, the Board issued Physician's and Surgeon's Certificate No. C 28577 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. 800-2016-025764, and will expire on July 31, 2021, unless renewed.

JURISDICTION

4. On August 21, 2019, Accusation No. 800-2016-025764 was filed before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 800-2016-025764 and all other statutorily required documents were properly served on Respondent on August 21, 2019. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2016-025764 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2016-025764. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary 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. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in paragraphs 1 through 6, 8 through 15, 17, 19 and 20, in Accusation No. 800-2016-025764, and that he has thereby subjected his Physician's and Surgeon's Certificate No. C 28577 to disciplinary action.

9. Respondent agrees that his Physician's and Surgeon's Certificate No. C 28577 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any

member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

13. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as 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. C 28577 issued to Respondent Richard C. Agnew, M.D. shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Accusation No. 800-2016-025764, is as follows:

From on or about June 26, 2013, through on or about March 10, 2014, Respondent committed negligence and failed to maintain adequate and accurate medical records in his care and treatment of Patient A.

1. 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

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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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorneys, Dennis K. Ames, Esq., and Pogey Henderson, 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 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: 12-19-19

RICHARD C. AGNEW, M.D.
Respondent

I have read and fully discussed with Respondent Richard C. Agnew, 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: 12/19/19

DENNIS K. AMES, ESQ.
POGEY HENDERSON, ESQ.
Attorneys for Respondent

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ENDORSEMENT

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

DATED: 12/20/19

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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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 21 2019
BY [illegible] ANALYST

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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.** **351 Hospital Road, Suite 306** **Newport Beach, CA 92663** **Physician's and Surgeon's Certificate No. C 28577,** Respondent.	Case No. 800-2016-025764 **A C C U S A T I O N**

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 October 19, 1966, the Medical Board issued Physician's and Surgeon's Certificate No. C 28577 to Richard C. Agnew, 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 July 31, 2021, unless renewed.

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JURISDICTION

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

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

5. Section 2234 of the Code, states:

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

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

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

(1) An initial negligent diagnosis followed by an act or omission medically

appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

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

...

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

7. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,[1] The circumstances are as follows:

8. On or about June 26, 2013, Patient A, a then 36 year-old female, began seeing respondent for prenatal care related to her second pregnancy. Patient A's genetic history was significant for advanced maternal age, a daughter with urinary reflux and a cousin with autism. Patient A's general history was significant for prior Cesarean section delivery (C-section).

9. On or about June 26, 2013, Patient A underwent an ultrasound exam that detected an intrauterine pregnancy with positive cardiac motion, along with a subchorionic hematoma.

10. On or about July 10, 2013, Patient A underwent a follow up ultrasound that demonstrated that the hematoma had resolved.

11. On or about September 23, 2013, Patient A underwent a first trimester ultrasound that demonstrated a viable fetus of 17.4 weeks gestation with a small peri-cardial effusion.

12. On October 21, 2013, Patient A underwent a follow up ultrasound that showed a 22.3 week fetus with growth below the 10th percentile.

13. Subsequent to this ultrasound Patient A underwent Triple Screening, the use of AFP blood tests along with ultrasound examinations with nuchal translucency testing, which were

[1] "Patient A" is used to protect the patient's privacy.

negative for chromosomal abnormalities. There is no documented discussion in Patient A's medical records regarding Patient A's risk factors or an offer of further genetic testing, including an amniocentesis and serial ultrasound examinations, given risk factors including maternal age, scarring in the uterus, and evidence of intrauterine growth below 10%.

14. Respondent's medical records for Patient A are devoid of a diagnosis of Intrauterine Growth Retardation (IUGR), a discussion with the patient regarding IUGR, or a plan to manage the risks of IUGR.

15. On or about February 14, 2014, Patient A gave birth by C-section to a baby boy with a significant chromosomal defect that resulted in developmental delay, deafness, and blindness.

16. Respondent committed gross negligence in his care and treatment of Patient A, which includes, but is not limited to the following:

a. Respondent failed to inform and/or document informing Patient A about available prenatal screening, including an amniocentesis, given Patient A's know risk factors;

b. Respondent failed to perform and/or document an evaluation of Patient A's genetic risk factors, and

c. Respondent failed to recognize, evaluate, or properly treat IUGR.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

17. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, The circumstances are as follows:

18. Paragraphs 8 through 16, above, are hereby incorporated by reference and realleged as if fully set forth herein.

19. Respondent committed repeated negligent acts in his care and treatment of Patient A, which includes, but is not limited to the following:

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a. Respondent failed to inform and/or document informing Patient A about available prenatal screening, including an amniocentesis, given Patient A's know risk factors;

b. Respondent failed to perform an evaluation of Patient A's genetic risk factors;

c. Respondent failed to recognize, evaluate, or properly treat IUGR; and

d. Respondent failed to adequately document Patient A's risk factors.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

20. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate records relating to the provision of services to Patient A. The circumstances are set forth in paragraphs 8 through 19, above, which are hereby incorporated by reference and realleged 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:

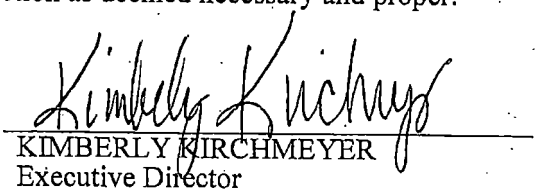
1. Revoking or suspending Physician's and Surgeon's Certificate No. C 28577, issued to Richard C. Agnew, M.D.;

2. Revoking, suspending or denying approval of Richard C. Agnew, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Richard C. Agnew, 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: August 21, 2019



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