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

In the Matter of the Accusation Against:	)	
Neil Kenneth Goldstein, M.D.	)	**Case No. 800-2016-022089**
Physician's and Surgeon's Certificate No. G 84575	)	
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 6, 2020.

IT IS SO ORDERED February 5, 2020.

MEDICAL BOARD OF CALIFORNIA

By: _____
Ronald H. Lewis, M.D., Chair
Panel A

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
MARTIN W. HAGAN
Deputy Attorney General
State Bar No. 155553
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9405
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: **Neil Kenneth Goldstein, M.D.** **8 San Sovino** **Newport Coast, CA 92657-1313** **Physician's and Surgeon's Certificate No. G 84575,** Respondent.	Case No. 800-2016-022089 OAH No. 2019051305 **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 former 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 Martin W. Hagan, Deputy Attorney General.

2. Respondent Neil Kenneth Goldstein, M.D. (Respondent) is represented in this proceeding by Raymond J. McMahon, Esq., of Doyle Schafer & McMahon, whose address is: 5440 Trabuco Road, Irvine, California 92620.

3. On or about June 5, 1998, the Board issued Physician's and Surgeon's Certificate No. G 84575 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. 800-2016-022089, and will expire on May 31, 2020, unless renewed.

JURISDICTION

Accusation No. 800-2016-022089 was filed before the Board, and is currently pending against Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. The Accusation and all other statutorily required documents were properly served on Respondent on April 2, 2019. A true and correct copy of Accusation No. 800-2016-022089 is attached as Exhibit A and incorporated herein by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2016-022089. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

5. 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 be represented by counsel at his own expense; 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.

6. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

7. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations in Accusation No. 800-2016-022089, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G 84575 to

disciplinary action. Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

8. Respondent further agrees that if an accusation is filed against him before the Board, all of the charges and allegations contained in Accusation No. 800-2016-022089 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 or elsewhere.

CONTINGENCY

9. 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. 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.

10. 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

11. 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.

12. 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.

13. 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

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 84575 issued to Respondent Neil Kenneth Goldstein, M.D., shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, issued in connection with the allegations and causes of discipline set forth in Accusation No. 800-2016-022089, is as follows:

> You are hereby publicly reprimanded for the repeated negligent acts and failure to maintain adequate or accurate records concerning Patient A, which are set forth more fully in Accusation No. 800-2016-022089, a true and correct copy of which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

////

////

B. 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. Failure to participate in and successfully complete the medical record course requirements as outlined above shall constitute unprofessional conduct and be grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. 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: 11/7/19

NEIL KENNETH GOLDSTEIN, M.D.
Respondent

I have read and fully discussed with Respondent Neil Kenneth Goldstein, 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: November 7, 2019

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: November 12, 2019

Respectfully submitted,

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

MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

SD2019700671
Revised Stip.docx

Exhibit A

Accusation No. 800-2016-022089

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
MARTIN W. HAGAN
Deputy Attorney General
State Bar No. 155553
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9405
Facsimile: (619) 645-2061

Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 2, 2019
BY: ANALYST

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

In the Matter of the Accusation Against: **Neil Kenneth Goldstein, M.D.** **8 San Sovino** **Newport Coast, CA 92657-1313** **Physician's and Surgeon's Certificate No. G 84575,** Respondent.	Case No. 800-2016-022089 **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 June 5, 1998, the Medical Board issued Physician's and Surgeon's Certificate Number G 84575 to Neil Kenneth Goldstein, 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 May 31, 2020, unless renewed.

////

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:

"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.

". . .

"(o) 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.

". . .

////

"(f) Any action or conduct which would have warranted the denial of a certificate.

". . . ."

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."

CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

7. 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[1] as more particularly alleged hereinafter:

8. On or about January 28, 2014, respondent assumed the care and treatment of patient A, who was previously treated by another physician in respondent's medical group. At the time that respondent assumed care, patient A was a then-78-year-old male with a recorded history of leg swelling (left leg greater than right leg) and varicose veins that had worsened over the last couple of years. Patient A's surgical history included, but was not limited to, a previous lower extremity arterial vascularization on August 15, 2012, and a venous ablation and phlebectomy on February 12, 2013, both of which were performed by other physician in the medical group. The patient's physical examination was notable for cold right foot and absent pedal (foot) pulses. A lower extremity arterial ultrasound of January 28, 2014, indicated "right SFA [superficial femoral artery] re-occlusion" in the thigh with reconstitution (re-establishment of flow) above the knee. The right ankle-brachial index (ABI) was documented as 0.61. The left leg showed a narrowing in the popliteal artery near the knee. The left ABI was normal at 1.03. Respondent recommended revascularization of both legs – right leg first and then left leg.

////

[1] Patient A is being used in place of the patient's name or initials to maintain patient confidentiality.

9. On or about February 6, 2014, respondent performed an atherectomy (minimally invasive endovascular procedure to address atherosclerosis [plaque] in a blood vessel), angioplasty, and stenting for patient A's right leg without incident.

10. On or about February 18, 2014, respondent performed an atherectomy and angioplasty for patient A's left leg without incident.

11. On or about March 5, 2014, respondent had a post-procedure follow-up on patient A. The medical record for this visit listed the same history of present illness (HPI) as set forth in the visit of January 28, 2014 (36 days prior). The review of symptoms (ROS) showed no claudication (pain in a limb that can be associated with atherosclerosis, accumulation of plaque inside an artery or arteries) and the ROS for musculoskeletal was documented as "Doing well post intervention." The physical exam for the extremities noted, among other things, "[p]ulses diminished...." An arterial ultrasound of the same date showed a widely patent (viable) right SFA and left popliteal artery and normal ABI's of right 1.10 and left 1.13. The plan section of the medical record indicated "Doing well post bilat[eral] intervention and improved TBI [toe brachial index] bilat[erally]. Routine 3 month follow up."

12. On or about June 13, 2014, respondent had a follow-up appointment with patient A. The medical record for this visit, once again, listed the same history of present illness (HPI) as set forth in the visit of January 28, 2014 (151 days prior). There was no apparent claudication and the ROS for musculoskeletal was documented as "No complaints at this time, legs feel well, walking, normal activity." The physical exam for extremities noted "[p]ulses not palpable." Arterial ultrasound of the same date indicated narrowing in the right and left SFA with a right ABI of 0.87 (mildly abnormal) and left ABI of 0.99. Respondent recommended re-intervention for the right leg ("schedule for angio") with close follow up for patient A's left leg.

13. On or about June 23, 2014, respondent performed an atherectomy, angioplasty for patient A's pre-existing SFA stent, and additional stent placement for the distal SFA, all without incident.

14. On or about July 23, 2014, respondent had a post-procedure follow-up appointment with patient A. The medical record for this visit, once again, listed the same history of present

illness (HPI) as set forth in the visit of January 28, 2014 (176 days prior). The ROS showed no claudication and the ROS for musculoskeletal was documented as "[d]oing well, no complaints." The physical exam section of the medical record made no mention of pulses. Arterial ultrasound of the same date indicated a widely patent right SFA and a narrowing of the left SFA. The right ABI was normal at 1.16 and the left ABI was 0.54. Respondent recommended re-intervention for the left leg.

15. On or about August 18, 2014, occlusion of patient A's left SFA was confirmed through an arteriogram (imaging of the arteries). Respondent performed an atherectomy, angioplasty and stent placement without incident, which restored flow in the left SFA.

16. On or about September 10, 2014, respondent had a post-procedure follow-up appointment with patient A. The medical record for this visit listed the HPI as "Hypertension, AFIB." The ROS showed no claudication, the ROS for musculoskeletal indicated that the patient felt well, and the physical exam for extremities noted, among other things, "pulses diminished." The plan was documented as "[d]oing well post left leg intervention, stable right leg [and] 3 month follow up.

17. On or about January 6, 2015, respondent had a follow-up appointment with patient A. The medical record for this visit listed the HPI as "Hypertension, AFIB." The ROS showed no claudication and the ROS for the musculoskeletal indicated "[d]enies joint or muscle pain, or back pain. Notes that feel look purple." Physical exam indicated, among other things, "Feet slightly cyanotic (bluish or purplish discoloration), right worse" and "pulses diminished." Arterial ultrasound of the same date indicated a narrowing of the right upper SFA with a right ABI of 0.66 and narrowing of the left SFA with ABI of 0.77. Respondent noted the "established problem" was worsening and recommended further ultrasound work up for venous reflux disease and arterial re-intervention of the right SFA.

18. On or about January 7, 2015, patient A underwent left leg arteriography followed by respondent performing an atherectomy and angioplasty of the right SFA.

19. On or about January 16, 2015, respondent had a post-procedure follow-up appointment with patient A. The medical record for this visit listed the same HPI ("Hypertension,

Afib") as the visit of January 6, 2015 (10 days prior). The ROS showed no claudication. The physical exam for extremities noted, among other things, diminished left femoral pulse and diminished pedal pulses bilaterally. An arterial ultrasound of the same date indicated a widely patent right SFA with a right ABI of 0.99 while the left leg showed equivocal narrowing of the common femoral artery with maintained normal arterial waveform and a left ABI of 0.70. There was no flow noted in the left great toe. Respondent was concerned about possible injury to the left common femoral artery and, therefore, ordered an arteriogram and possible revascularization of the left leg. The plan included, among other things, "possible intervention next available."

20. On or about January 22, 2015, patient A had an ateriogram followed by respondent performing an atherectomy and angioplasty of the left SFA without incident.

21. On or about February 6, 2015, respondent had a post-procedure follow-up appointment with patient A who had no complaints and was documented as "doing well" and had ABI's that were within normal limits. The plan included close follow up "due to aggressive recurrence of disease" with six week follow up with ultrasound and then every three months thereafter.

22. On or about March 20, 2015, respondent had a follow-up appointment with patient A who had no complaints and was documented as "doing well" and had ABI's that were within normal limits. The plan included three month follow up with arterial ultrasound bilaterally.

23. On or about June 19, 2015, respondent had a post-procedure follow up with patient A. The medical record for this visit listed the same HPI ("Hypertension, Afib") as the visit of January 6, 2015 (164 days prior). The ROS showed no claudication and the ROS for the musculoskeletal indicated "[patient] has no complaints at this time." The physical exam for extremities noted, among other things, "pulses not palpable." An arterial ultrasound of the same date indicated a narrowing in the upper right SFA with a right ABI of 0.73 and mild narrowing of the SFA in the left leg with an ABI of 0.83. Respondent recommended revascularization of the right leg.

24. On or about July 13, 2015, respondent performed an atherectomy, angioplasty, and placed a stent in the right popliteal artery without incident.

25. On or about July 21, 2015, respondent had a post-procedure follow-up appointment with patient A. The HPI was documented as "Hypertension, Afib, PVD." The ROS noted no claudication and the ROS for musculoskeletal indicated "No complaints, feels well." The physical exam failed to indicate whether there were any palpable pulses. An arterial ultrasound of the same date indicated a patent right SFA with a normal right ABI of 0.99 and the left leg showed mild narrowing in the SFA with an ABI of 0.80. Follow up was recommended in six weeks.

26. On or about September 2, 2015, respondent had a post-procedure follow-up appointment with patient A. The HPI ("Hypertension, Afib, PVD") was the same as July 21, 2015 (43 days prior). The ROS noted no claudication and the ROS for musculoskeletal indicated "No complaints, feels well." The physical exam portion of the medical record indicated "pulses not palpable." An arterial ultrasound of the same date indicated a patent right SFA with a normal right ABI of 0.95 and the left leg showed narrowing in the upper SFA with an ABI of 0.70. Respondent noted that patient A has worsening left leg SFA stenosis (narrowing of the artery) and recommended revascularization of the left leg.

27. On or about September 18, 2015, respondent performed an atherectomy and angioplasty of the left leg without incident.

28. On or about October 2, 2015, respondent had a post-procedure follow-up appointment with patient A who reported "[b]oth legs feel better." An arterial ultrasound of the same date indicated patent SFA's and normal ABI's bilaterally. Respondent's plan was for a follow-up bilateral ultrasound in January 2016.

29. On or about January 5, 2016, respondent had his last visit with patient A. The HPI ("Hypertension, Afib, PVD") was the same as July 21, 2015 (168 days prior). The ROS noted no claudication and the ROS for musculoskeletal indicated "Swelling, fallen aches, bilat[erally]." The physical exam for extremities noted "pulses absent, mild edema, skin intact." An arterial ultrasound of the same date indicated in the upper right SFA with a right ABI of 0.57 and the left leg was patent with a normal ABI of 1.14. Respondent's plan was for revascularization of the right leg.

30. Respondent committed repeated negligent acts in his care and treatment of patient A which included, but was not limited to, the following:

(a) Respondent repeatedly failed to maintain adequate or accurate medical records regarding his care and treatment of patient A when he, among other things, consistently failed to document a relevant and detailed History of Present Illness and occasionally failed to document pedal pulses as part of his physical examination; and

(b) Respondent performed multiple interventional vascular procedures on patient A without sufficient clinical indication and/or documentation of the clinical indication for the multiple interventional vascular procedures.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate or Accurate Records)

31. 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 in his care and treatment of patient A, as more particularly alleged in paragraphs 7 through 30, 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 Number G 84575, issued to Respondent Neil Kenneth Goldstein, M.D.;

2. Revoking, suspending or denying approval of Respondent Neil Kenneth Goldstein, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Neil Kenneth Goldstein, 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: April 2, 2019

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

SD2019700671
Accusation.docx