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

In the Matter of the Accusation Against:	)	
Daniel Alexander Capen, M.D.	)	**Case No. 800-2018-045455**
Physician's and Surgeon's Certificate No. G32316	)	
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 March 16, 2020.

IT IS SO ORDERED March 9, 2020.

MEDICAL BOARD OF CALIFORNIA

By: Christine J. Lally
Christine J. Lally
Interim Executive Director

XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
Deputy Attorney General
State Bar No. 267098
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6688
Facsimile: (916) 731-2311
Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 800-2018-045455
DANIEL ALEXANDER CAPEN, M.D. **15901 Hawthorne Blvd., #250** **Lawndale, CA 90260-2660** **Physician's and Surgeon's Certificate** **No. G 32316** Respondent.	**STIPULATED SURRENDER OF LICENSE AND 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). 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, via Joshua M. Templet, Deputy Attorney General.

2. Daniel Alexander Capen, M.D. (Respondent) is represented in this proceeding by attorney Aaron M. May, whose address is 550 S. Hope Street, Suite 1850, Los Angeles, CA 90071.

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3. On or about July 12, 1976, the Board issued Physician's and Surgeon's Certificate No. G 32316 to Daniel Alexander Capen, M.D. (Respondent). The certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-045455 and will expire on October 31, 2021, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-045455 (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 December 2, 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.

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

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, 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 Surrender 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.

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

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 32316, issued to Respondent Daniel Alexander Capen, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part 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 attorney Aaron M. May. 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: 1/17/20

DANIEL A. CAPEN, M.D.
Respondent

I have read and fully discussed with Respondent Daniel A. Capen, 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: 1/17/20

AARON M. MAY
Attorney 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: January 23, 2020

Respectfully submitted,

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

Joshua M. Templet

JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2018-045455

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
CHRISTINA SEIN GOOT
Deputy Attorney General
State Bar No. 229094
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6481
Facsimile: (213) 897-9395
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Mar 13 2019
BY _____ ANALYST

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

In the Matter of the Accusation Against:	Case No. 800-2018-045455
Daniel Alexander Capen, M.D. **15901 Hawthorne Blvd. #250** **Lawndale, CA 90260-2655** **Physician's and Surgeon's Certificate No. G 32316,** Respondent.	**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 12, 1976, the Medical Board issued Physician's and Surgeon's Certificate Number G 32316 to Daniel Alexander Capen, 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 October 31, 2019, 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 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:

"(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.

"....

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"...."

6. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(b) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician

and surgeon.

"(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

7. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

8. 18 U.S.C. section 371 states:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

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9. 42 U.S.C. section 1320a-7b, subdivision (b)(1), states in pertinent part:

"....

"(b) Illegal remunerations

"(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

"(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or

"(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program,

"shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both."

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions, or Duties of a Physician and Surgeon)

10. Respondent's license is subject to disciplinary action under section 2236 of the Code, in that he pled guilty to the following crimes: (1) violation of 18 U.S.C. section 371 [conspiracy to commit offense or to defraud the United States]; and (2) violation of 42 U.S.C. section 1320a-7b, subdivision (b)(1) [soliciting and receiving illegal remunerations for health care referrals], substantially related to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as follows:

11. At all times relevant to the allegations herein, Respondent was practicing as an orthopedic surgeon specializing in spinal surgeries.

12. Beginning in or around 1998 and continuing through at least March 2013, Respondent, along with others, agreed to participate and did, in fact, participate in an illegal arrangement to pay and receive kickbacks in exchange for referring and performing surgeries and other patient-related services at Pacific Hospital of Long Beach ("Pacific Hospital") and its

affiliated entities. As part of the agreement, Respondent agreed to receive proceeds of the kickback scheme, and subsequently participated in financial transactions involving such proceeds.

13. To facilitate the payment of kickbacks, Pacific Hospital and its affiliated entities entered into agreements with Respondent that were used to pay kickbacks in exchange for the referral of spinal surgeries, other types of surgeries, magnetic resonance imaging ("MRI"), toxicology urine drug tests, durable medical equipment, and other services to be performed at Pacific Hospital and its affiliated entities.

14. In many cases, the agreements would be reduced to written contracts, including, among others, collection agreements, option agreements, research and development agreements, lease and rental agreements, consulting agreements, marketing agreements, management agreements, and pharmacy agreements. The value or consideration discussed as part of these arrangements would be paid, entirely or in part, depending on the arrangement, to cause Respondent to refer surgeries and other patient-related services to Pacific Hospital and its affiliated entities. The written contracts would generally allow for remuneration to Respondent far in excess of any reasonable fair market value assessment of legitimate services or things of value purportedly contracted for -- to the extent calculated without regard to the value of the surgeries or other patient-related services.

15. Respondent received remuneration in exchange for referring and performing surgeries and other patient-related services at Pacific Hospital and its affiliated entities. These illegal kickbacks and bribes were provided to Respondent under the guise of various arrangements.

16. The surgeries Respondent referred to Pacific Hospital included surgeries reimbursed under various federal health programs.

17. Respondent and his co-conspirators knew that the payment of bribes and kickbacks for the referral of patients for medical services was illegal. Respondent also understood the above-described kickback and bribe payments were conditioned on his continued volume of referrals to Pacific Hospital and its affiliated entities. Moreover, the payment of kickbacks for the referral of surgeries and other patient-related services performed at Pacific Hospital was material to health care benefit programs and patients.

18. Between 1998 and April 2013, Respondent referred or performed surgeries and other patient-related services comprising approximately $142 million of the total amount Pacific Hospital billed to health care benefit programs, and for which Pacific Hospital was paid approximately $56 million. The value of the benefit conferred to Pacific Hospital from the arrangements with Respondent, which were designed to steer surgeries and other patient-related services to Pacific Hospital and its affiliated entities, was between $9.5 million and $25 million.

19. On or about June 28, 2018, in the case entitled *United States of America v. Daniel Capen*, United States District Court, Central District of California, Case No. 8:18-cr-00124-JLS, Respondent was charged with felonies in Count One for violation of 18 U.S.C. section 371 [conspiracy to commit offense or to defraud the United States], and Count Two for violation of 42 U.S.C. section 1320a-7b, subdivision (b)(1) [soliciting and receiving illegal remunerations for health care referrals].

20. On or about June 28, 2018, in the case entitled *United States of America v. Daniel Capen*, United States District Court, Central District of California, Case No. 8:18-cr-00124-JLS, a Plea Agreement was filed wherein Respondent pled guilty to Counts One and Two. Respondent admitted he was, in fact, guilty of Counts One and Two, including the facts set forth in Paragraphs 11 through 18, above.

SECOND CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

21. Respondent's license is subject to disciplinary action under section 2234, subdivision (e), of the Code, in that he participated in a conspiracy to defraud the United States, and solicited and received illegal remunerations for health care referrals, as more particularly alleged in Paragraphs 11 through 20, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of the State Medical Practice Act)

22. Respondent's license is subject to disciplinary action under section 2234, subdivision (a), of the Code, and California Code of Regulations, title 16, section 1360, in that he violated a

provision or provisions of the Medical Practice Act, as more particularly alleged in Paragraphs 11 through 20, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

23. Respondent's license is subject to disciplinary action under section 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in Paragraphs 11 through 20, 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 32316, issued to Daniel Alexander Capen, M.D.;

2. Revoking, suspending or denying approval of Daniel Alexander Capen, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Daniel Alexander Capen, 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: MARCH 13, 2019

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

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DECLARATION OF SERVICE BY CERTIFIED AND FIRST CLASS MAIL

In the Matter of the Accusation Against:

DANIEL ALEXANDER CAPEN, M.D. **File No. 800-2018-045455**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 2005 Evergreen St., Sacramento, California 95815. I served a true copy of the attached:

STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; GOVERNMENT CODE SECTIONS 11507.5, 11507.6, 11507.7 and 11455.10; NOTICE OF DEFENSE FORM (2 COPIES); A MANUAL OF MODEL DISCIPLINARY ORDERS AND MODEL DISCIPLINARY GUIDELINES; UNIFORM STANDARDS FOR SUBSTANCE-ABUSING LICENSEES

by U.S. Certified mail on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

NAME AND ADDRESS	CERTIFICATION #
Daniel Alexander Capen, M.D. 15901 Hawthorne Blvd., #250 Lawndale, CA 90260	7018 1830 0001 5934 5302
Christina Sein Goot Deputy Attorney General Office of the Attorney General 300 S. Spring Street, Ste. 1702 Los Angeles, CA 90013	**U.S. MAIL SERVICE**

Each said envelope was then, on March 13, 2019, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, either as certified mail or first class U.S. mail with the postage thereon fully prepaid and return receipt requested for the certified mail.

Executed on March 13, 2019, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Michelle Solario, Declarant