

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

In the Matter of the Accusation)	
Against:)	
)	
)	
THOMAS SAMUEL COWAN, M.D.)	Case No. 8002015016334
)	
Physician's and Surgeon's)	
Certificate No. G86923)	
)	
Respondent)	
_____)	

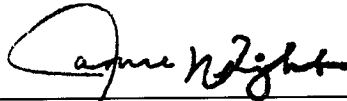
DECISION

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 June 9, 2017.

IT IS SO ORDERED: May 10, 2017.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, J.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **THOMAS SAMUEL COWAN, M.D.**
12 **661 Chenery**
13 **San Francisco, CA 94117**
14 **Physician's and Surgeon's Certificate No.**
G86923

15 Respondent.

Case No. 800-2015-016334

OAH No. 2017030251

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California (Board). She brought this action solely in her official capacity and is represented in
22 this matter by Xavier Becerra, Attorney General of the State of California, by Alice W. Wong,
23 Deputy Attorney General.

24 2. On or about June 18, 2003, the Board issued Physician's and Surgeon's Certificate
25 No. G 86923 to Thomas Samuel Cowan, M.D (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
27 No. 800-2015-016334, and will expire on October 31, 2018, unless renewed.

JURISDICTION

1
2 3. Accusation No. 800-2015-016334 was filed before the Board, and is currently
3 pending against Respondent. The Accusation and all other statutorily required documents were
4 properly served on Respondent on January 9, 2017. Respondent timely filed his Notice of
5 Defense contesting the Accusation.

6 4. A copy of Accusation No. 800-2015-016334 is attached as exhibit A and incorporated
7 herein by reference.

ADVISEMENT AND WAIVERS

8
9 5. Respondent Thomas Samuel Cowan, M.D. is represented by attorney David Steele,
10 whose address is: Yaron & Associates, 1300 Clay Street, Suite 800, Oakland, CA 94612.

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2015-016334. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

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

CULPABILITY

24
25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 800-2015-016334.
27
28

1 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
2 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
3 Disciplinary Order below.

4 CONTINGENCY

5 11. This stipulation shall be subject to approval by the Medical Board of California.
6 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
7 Board of California may communicate directly with the Board regarding this stipulation and
8 settlement, without notice to or participation by Respondent or his counsel. By signing the
9 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
10 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
11 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
12 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
13 action between the parties, and the Board shall not be disqualified from further action by having
14 considered this matter.

15 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
16 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
17 signatures thereto, shall have the same force and effect as the originals.

18 13. In consideration of the foregoing admissions and stipulations, the parties agree that
19 the Board may, without further notice or formal proceeding, issue and enter the following
20 Disciplinary Order:

21 DISCIPLINARY ORDER

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 86923 issued
23 to Respondent THOMAS SAMUEL COWAN, M.D. is revoked. However, the revocation is
24 stayed and Respondent is placed on probation for five (5) years on the following terms and
25 conditions.

26 1. EDUCATION COURSE. Within 60 calendar days of the effective date of this
27 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
28 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours

1 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
2 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
3 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
4 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
5 completion of each course, the Board or its designee may administer an examination to test
6 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
7 hours of CME of which 40 hours were in satisfaction of this condition.

8 2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective
9 date of this Decision, respondent shall enroll in a course in prescribing practices approved in
10 advance by the Board or its designee. Respondent shall provide the approved course
11 provider with any information and documents that the approved course provider may deem
12 pertinent. Respondent shall participate in and successfully complete the classroom
13 component of the course not later than six (6) months after respondent's initial enrollment.
14 Respondent shall successfully complete any other component of the course within one (1)
15 year of enrollment. The prescribing practices course shall be at respondent's expense and
16 shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
17 licensure.

18 A prescribing practices course taken after the acts that gave rise to the charges in the
19 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the
20 Board or its designee, be accepted towards the fulfillment of this condition if the course
21 would have been approved by the Board or its designee had the course been taken after the
22 effective date of this Decision.

23 Respondent shall submit a certification of successful completion to the Board or its
24 designee not later than 15 calendar days after successfully completing the course, or not later than
25 15 calendar days after the effective date of the Decision, whichever is later.

26 3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the
27 effective date of this Decision, respondent shall enroll in a course in medical record keeping
28 approved in advance by the Board or its designee. Respondent shall provide the approved

1 course provider with any information and documents that the approved course provider may
2 deem pertinent. Respondent shall participate in and successfully complete the classroom
3 component of the course not later than six (6) months after respondent's initial enrollment.
4 Respondent shall successfully complete any other component of the course within one (1)
5 year of enrollment. The medical record keeping course shall be at respondent's expense and
6 shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
7 licensure.

8 A medical record keeping course taken after the acts that gave rise to the charges in the
9 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
10 or its designee, be accepted towards the fulfillment of this condition if the course would have
11 been approved by the Board or its designee had the course been taken after the effective date of
12 this Decision.

13 Respondent shall submit a certification of successful completion to the Board or its
14 designee not later than 15 calendar days after successfully completing the course, or not later than
15 15 calendar days after the effective date of the Decision, whichever is later.

16 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
17 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
18 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
19 Respondent shall participate in and successfully complete that program. Respondent shall
20 provide any information and documents that the program may deem pertinent. Respondent shall
21 successfully complete the classroom component of the program not later than six (6) months after
22 Respondent's initial enrollment, and the longitudinal component of the program not later than the
23 time specified by the program, but no later than one (1) year after attending the classroom
24 component. The professionalism program shall be at Respondent's expense and shall be in
25 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

26 A professionalism program taken after the acts that gave rise to the charges in the
27 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
28 or its designee, be accepted towards the fulfillment of this condition if the program would have

1 been approved by the Board or its designee had the program been taken after the effective date of
2 this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its
4 designee not later than 15 calendar days after successfully completing the program or not later
5 than 15 calendar days after the effective date of the Decision, whichever is later.

6 5. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective
7 date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a
8 practice monitor, the name and qualifications of one or more licensed physicians and surgeons
9 whose licenses are valid and in good standing, and who are preferably American Board of
10 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or
11 personal relationship with Respondent, or other relationship that could reasonably be expected to
12 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
13 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
14 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

15 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
16 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
17 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
18 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
19 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
20 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
21 signed statement for approval by the Board or its designee.

22 Within 60 calendar days of the effective date of this Decision, and continuing throughout
23 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
24 make all records available for immediate inspection and copying on the premises by the monitor
25 at all times during business hours and shall retain the records for the entire term of probation.

26 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
27 date of this Decision, Respondent shall receive a notification from the Board or its designee to
28 cease the practice of medicine within three (3) calendar days after being so notified. Respondent

1 shall cease the practice of medicine until a monitor is approved to provide monitoring
2 responsibility.

3 The monitor(s) shall submit a quarterly written report to the Board or its designee which
4 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
5 are within the standards of practice of medicine, and whether Respondent is practicing medicine
6 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
7 that the monitor submits the quarterly written reports to the Board or its designee within 10
8 calendar days after the end of the preceding quarter.

9 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
10 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
11 name and qualifications of a replacement monitor who will be assuming that responsibility within
12 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
13 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
14 notification from the Board or its designee to cease the practice of medicine within three (3)
15 calendar days after being so notified Respondent shall cease the practice of medicine until a
16 replacement monitor is approved and assumes monitoring responsibility.

17 In lieu of a monitor, Respondent may participate in a professional enhancement
18 program approved in advance by the Board or its designee, that includes, at minimum,
19 quarterly chart review, semi-annual practice assessment, and semi-annual review of
20 professional growth and education. Respondent shall participate in the professional
21 enhancement program at respondent's expense during the term of probation.

22 6. PROHIBITED PRACTICE. During probation, Respondent is prohibited from
23 providing cancer treatment to patients. After the effective date of this Decision, all patients being
24 treated by the Respondent shall be notified that the Respondent is prohibited from providing
25 cancer treatment to patients. Any new patients must be provided this notification at the time of
26 their initial appointment.

27 Respondent shall maintain a log of all patients to whom the required oral notification was
28 made. The log shall contain the: 1) patient's name, address and phone number; patient's medical

1 record number, if available; 3) the full name of the person making the notification; 4) the date the
2 notification was made; and 5) a description of the notification given. Respondent shall keep this
3 log in a separate file or ledger, in chronological order, shall make the log available for immediate
4 inspection and copying on the premises at all times during business hours by the Board or its
5 designee, and shall retain the log for the entire term of probation.

6 7. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
7 respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or
8 the Chief Executive Officer at every hospital where privileges or membership are extended to
9 respondent, at any other facility where respondent engages in the practice of medicine,
10 including all physician and locum tenens registries or other similar agencies, and to the Chief
11 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
12 respondent. Respondent shall submit proof of compliance to the Board or its designee within
13 15 calendar days.

14 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

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

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

21 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
22 under penalty of perjury on forms provided by the Board, stating whether there has been
23 compliance with all the conditions of probation.

24 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
25 of the preceding quarter.

26 11. GENERAL PROBATION REQUIREMENTS.

27 Compliance with Probation Unit

28 Respondent shall comply with the Board's probation unit.

1 Address Changes

2 Respondent shall, at all times, keep the Board informed of Respondent's business and
3 residence addresses, email address (if available), and telephone number. Changes of such
4 addresses shall be immediately communicated in writing to the Board or its designee. Under no
5 circumstances shall a post office box serve as an address of record, except as allowed by Business
6 and Professions Code section 2021(b).

7 Place of Practice

8 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
9 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
10 facility.

11 License Renewal

12 Respondent shall maintain a current and renewed California physician's and surgeon's
13 license.

14 Travel or Residence Outside California

15 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
16 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
17 (30) calendar days.

18 In the event Respondent should leave the State of California to reside or to practice
19 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
20 departure and return.

21 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
22 available in person upon request for interviews either at Respondent's place of business or at the
23 probation unit office, with or without prior notice throughout the term of probation.

24 13. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
25 its designee in writing within 15 calendar days of any periods of non-practice lasting more
26 than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-
27 practice is defined as any period of time respondent is not practicing medicine as defined in
28 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar

1 month in direct patient care, clinical activity or teaching, or other activity as approved by the
2 Board. If respondent resides in California and is considered to be in non-practice, respondent
3 shall comply with all terms and conditions of probation. All time spent in an intensive
4 training program which has been approved by the Board or its designee shall not be
5 considered non-practice and does not relieve respondent from complying with all the terms
6 and conditions of probation. Practicing medicine in another state of the United States or
7 Federal jurisdiction while on probation with the medical licensing authority of that state or
8 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice
9 shall not be considered as a period of non-practice.

10 In the event respondent's period of non-practice while on probation exceeds 18 calendar
11 months, respondent shall successfully complete the Federation of State Medical Board's
12 Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment
13 program that meets the criteria of Condition 18 of the current version of the Board's "Manual
14 of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of
15 medicine.

16 Respondent's period of non-practice while on probation shall not exceed two (2) years.
17 Periods of non-practice will not apply to the reduction of the probationary term.

18 Periods of non-practice for a respondent residing outside of California, will relieve
19 respondent of the responsibility to comply with the probationary terms and conditions with
20 the exception of this condition and the following terms and conditions of probation: Obey
21 All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of
22 Alcohol and/or Controlled Substances; and Biological Fluid Testing.

23 14. COMPLETION OF PROBATION. Respondent shall comply with all financial
24 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
25 completion of probation. Upon successful completion of probation, Respondent's certificate shall
26 be fully restored.

27 15. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
28 of probation is a violation of probation. If Respondent violates probation in any respect, the

1 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
2 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
3 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
4 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
5 the matter is final.

6 16. LICENSE SURRENDER. Following the effective date of this Decision, if
7 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
8 the terms and conditions of probation, Respondent may request to surrender his or her license.
9 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
10 determining whether or not to grant the request, or to take any other action deemed appropriate
11 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
12 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
13 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
14 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
15 application shall be treated as a petition for reinstatement of a revoked certificate.

16 17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
17 with probation monitoring each and every year of probation, as designated by the Board, which
18 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
19 California and delivered to the Board or its designee no later than January 31 of each calendar
20 year.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27

28

ACCEPTANCE

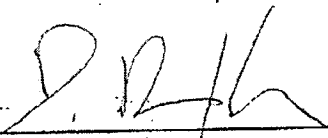
I have carefully read the above Stipulated Settlement Agreement and Disciplinary Order and have fully discussed it with my attorney, David Steele. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/31/17


THOMAS SAMUEL COWAN, M.D.
Respondent

I have read and fully discussed with Respondent Thomas Samuel Cowan, 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: 3/31/17

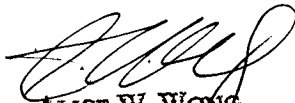

DAVID STEELE
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/4/2017

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2016505847

Exhibit A

Accusation No. 800-2015-016334

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan 9 20 16
BY [Signature] ANALYST

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:

Case No. 800-2015-016334

13 **Thomas Samuel Cowan, M.D.**
14 **661 Chenery**
15 **San Francisco, CA 94117**

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. G 86923,**

Respondent.

18 Complainant alleges:

PARTIES

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

22 2. On or about June 18, 2003, the Medical Board issued Physician's and Surgeon's
23 Certificate Number G 86923 to Thomas Samuel Cowan, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2018, unless renewed.

JURISDICTION

26
27 3. This Accusation is brought before the Board, under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2004 of the Code states, in pertinent part:

2 “The board shall have the responsibility for the following:

3 “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
4 Act.

5 “(b) The administration and hearing of disciplinary actions.

6 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
7 administrative law judge.

8 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
9 disciplinary actions.

10 “(e) Reviewing the quality of medical practice carried out by physician and surgeon
11 certificate holders under the jurisdiction of the board.

12 “ ”

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

17 6. Section 2234 of the Code, states, in pertinent part:

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

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

23 “(b) Gross negligence.

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

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

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

6 “ ”

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

10 FACTS

11 8. At all times relevant to this matter, Respondent was licensed and practicing medicine
12 in San Francisco, California.

13 9. Patient P-1¹, who resided in Los Angeles, California, contacted Respondent by
14 telephone on or about September 19, 2013 seeking alternative treatment for metastatic breast
15 cancer. Respondent did not ask for or obtain copies of any of P-1’s prior medical records
16 documenting her treatment for the breast cancer. He documented measurements that P-1 reported
17 to him but never saw her complete blood panel test results, physical examination findings
18 documented by the oncologist, complete reports on diagnostic imaging studies ordered by the
19 oncologist, or any other reports or findings.

20 10. Without seeing P-1 in person and without conducting a physical examination,
21 Respondent recommended that P-1 consult with a local oncologist and, in conjunction with any
22 treatment prescribed by the oncologist, obtain and use GcMAF, an experimental, unlicensed, non-
23 FDA approved drug, available only outside the United States.

24 11. When P-1 asked Respondent if she should tell her oncologist about taking GcMAF,
25 Respondent told her that it would be best for her to be upfront with her oncologist about
26 everything that she was doing including taking GcMAF. He did not document this discussion.

27 ¹ The patient is designated in this document as Patient P-1 to protect her privacy.
28 Respondent knows the name of the patient and can confirm her identity through discovery.

1 12. Respondent did not advise P-1 that the FDA had not approved GcMAF and that there
2 were no formal safety or efficacy studies regarding the use of GcMAF in humans and obtain
3 informed consent from her before or in conjunction with recommending the treatment.

4 13. Respondent consulted with P-1 by telephone concerning her metastatic breast cancer
5 on four occasions—September 19, 2013, October 18, 2013, November 21, 2014, and February 9,
6 2015. He never saw her in person. Respondent did not advise P-1 of the potential risks of
7 evaluating a patient by telephone without examining the patient in person.

8 14. In February 2015, P-1 learned that GcMAF from ImmunoBiotech, where Respondent
9 had directed her to obtain the product, was potentially unsafe. On her last telephonic visit with
10 Respondent on February 9, 2015, she advised Respondent that she was concerned about the
11 health consequences of having taken an unsafe medication for fifteen months. Respondent did
12 not document this discussion in his chart notes.

13 FIRST CAUSE FOR DISCIPLINE

14 (Gross Negligence)

15 15. Respondent is guilty of unprofessional conduct and subject to disciplinary action
16 under section 2234, subdivision (b) (gross negligence) and/or (c) (repeated negligent acts), of the
17 Code in that he recommended a drug to P-1 that did not have safety studies in humans or efficacy
18 studies in humans and he did not obtain informed consent from P-1 for that recommendation.

19 SECOND CAUSE FOR DISCIPLINE

20 (Repeated Negligent Acts, Inadequate Records)

21 16. Respondent is guilty of unprofessional conduct and subject to disciplinary action
22 under section 2234, subdivision (c) (repeated negligent acts), of the Code and/or section 2266
23 (inadequate records) of the Code in that Respondent engaged in the conduct described above
24 including, but not limited to, the following:

25 A. Respondent recommended a medication to P-1 without first performing a physical
26 examination.

27 B. Respondent failed to obtain informed consent from P-1 about the potential risks of
28 treatment over the telephone without performing a physical examination.

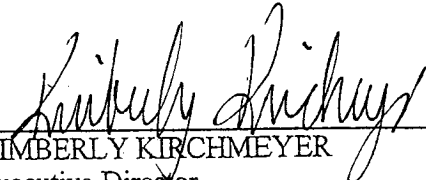
- 1 C. Respondent failed to ask for or obtain records of P-1's prior treatment for cancer.
- 2 D. Respondent did not document the discussion he had with P-1 advising her to be
- 3 upfront with her oncologist about taking GcMAF.
- 4 E. Respondent did not document the discussion he had with P-1 about her concerns
- 5 about the health consequences of having taken an unsafe medication for fifteen months.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Medical Board of California issue a decision:

- 9 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 86923,
- 10 issued to Thomas Samuel Cowan, M.D.;
- 11 2. Revoking, suspending or denying approval of Thomas Samuel Cowan, M.D.'s
- 12 authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 13 3. Ordering Thomas Samuel Cowan, M.D., if placed on probation, to pay the Board the
- 14 costs of probation monitoring; and
- 15 4. Taking such other and further action as deemed necessary and proper.

16
17 DATED: January 9, 2017


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

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