

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

| | | |
|--|---|--------------------------------|
| In the Matter of the Accusation |) | |
| Against: |) | |
| |) | |
| |) | |
| LAUREN BATTAT GERSON M.D. |) | File No. 03-2012-226597 |
| |) | |
| Physician's and Surgeon's |) | |
| Certificate No. G72756 |) | |
| |) | |
| Respondent |) | |
| _____ |) | |

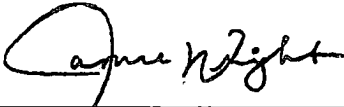
DECISION

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 July 19, 2017.

IT IS SO ORDERED June 19, 2017.

MEDICAL BOARD OF CALIFORNIA

By: 

Jamie Wright, J.D.
Chair, Panel A

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

11 LAUREN BATTAT GERSON, M.D.
2340 Clay Street, 6th Floor
12 San Francisco, CA 94115-1932

13 Physician's and Surgeon's Certificate No. G72756

14 Respondent.

Case No. 03-2012-226597

OAH No. 2017020410

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
17 entitled proceedings that the following matters are true:

- 18
- 19 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
20 of California. She brought this action solely in her official capacity and is represented in this
21 matter by Xavier Becerra, Attorney General of the State of California, by Lawrence Mercer.
 - 22 2. Respondent Lauren Battat Gerson, M.D. is represented in this matter by her attorneys
23 Mitchell J. Green and Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.
 - 24 3. On or about October 22, 1991, the Medical Board of California issued Physician's
25 and Surgeon's Certificate Number G72756 to Lauren Battat Gerson, M.D. (Respondent). The
26 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges
27 brought herein and will expire on February 28, 2019, unless renewed.
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JURISDICTION

4. On April 10, 2015, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Board, filed Accusation No. 03-2012-226597 (Accusation) against Respondent. The Accusation was duly served upon Respondent and she timely filed a Notice of Defense. A copy of the Accusation is attached hereto as Exhibit A.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 03-2012-226597.

6. Respondent has carefully read and fully understands the contents, force and effect of this Stipulated Settlement and Disciplinary Order, and has fully reviewed and discussed same with her attorney of record.

7. Respondent is fully aware of her legal rights in this matter including her right to a hearing on the charges and allegations contained in Accusation No. 03-2012-226597, her right to present witnesses and evidence and to testify on her own behalf, her right to confront and cross-examine all witnesses testifying against her, her right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, her right to reconsideration and court review of an adverse decision, and all other rights accorded her pursuant to the California Administrative Procedure Act, the California Code of Civil Procedure, and all other applicable laws, having been fully advised of same by her attorney of record. Respondent, having the benefit of counsel hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 03-2012-

1 226597 and that she has thereby subjected her Physician's and Surgeon's Certificate to
2 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
3 discipline as set forth in the Disciplinary Order below.

4 **CONTINGENCY**

5 9. 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 her counsel. By signing the
9 stipulation, Respondent understands and agrees that she may not withdraw her 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.
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17 10. The parties understand and agree that facsimile copies of this Stipulated Settlement
18 and Disciplinary Order, including electronic PDF and facsimile signatures thereto, shall have the
19 same force and effect as the originals.

20 11. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following
22 Disciplinary Order:
23

24 **DISCIPLINARY ORDER**

25 **A. PUBLIC REPRIMAND**

26 **IT IS HEREBY ORDERED:** that Respondent Lauren Battat Gerson, M.D., Physician's
27 and Surgeon's Certificate No. G72756, shall be and is hereby publicly reprimanded pursuant to
28

1 California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued
2 in connection with Respondent's actions as set forth in Accusation No. 03-2012-226597, is as
3 follows:

4
5 On June 25, 2012, you performed an elective endoscopy procedure on
6 Patient T.G., who had multiple illnesses and conditions, including a recent
7 hospitalization for pneumonia. The patient had an unstable post procedure course and
8 he elected to leave the hospital against medical advice, but his decision to leave AMA
9 was not documented by you in his chart.

10 **B. EDUCATION COURSE:** Within 60 calendar days of the effective date of this
11 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
12 program(s) or course(s) which shall not be less than 60 hours. The educational program(s) or
13 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be
14 Category I certified and shall include: Pre-operative patient evaluation, informed consent,
15 sedation and medical record keeping. The educational program(s) or course(s) shall be at
16 Respondent's expense and shall be in addition to the Continuing Medical Education (CME)
17 requirements for renewal of licensure. Following the completion of each course, the Board or its
18 designee may administer an examination to test Respondent's knowledge of the course.
19 Respondent shall provide proof of attendance for 85 hours of CME of which 60 hours were in
20 satisfaction of this condition.

21 In consideration for her agreement to complete the education course, as set forth above,
22 Respondent shall be publicly reprimanded as set forth in the public letter of reprimand, as set
23 forth above in Paragraph 11(A).

24 Respondent understands that failure to submit and/or complete the education course, as set
25 forth above, would constitute unprofessional conduct and grounds for further disciplinary action.

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Stipulation

ACCEPTANCE

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2 I, LAUREN B. GERSON, M.D., have carefully read this Stipulated Settlement and
3 Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently
4 and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No.
5 G72756. I fully understand that, after signing this stipulation, I may not withdraw from it, that it
6 shall be submitted to the Medical Board of California for its consideration, and that the Board
7 shall have a reasonable period of time to consider and act on this stipulation after receiving it. By
8 entering into this stipulation; I fully understand that, upon formal acceptance by the Board, I shall
9 be publically reprimanded by the Board and shall be required to comply with the terms and
10 conditions of the Disciplinary Order set forth above. I, also, fully understand that any failure to
11 comply with the terms and conditions of the Disciplinary Order set forth above shall constitute
12 unprofessional conduct and that my Physician's and Surgeon's Certificate No. G72756 will be
13 subject to further disciplinary action.

14 Dated:

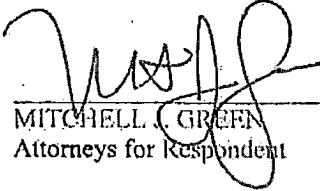


15 LAUREN B. GERSON, M.D.
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17 I have read and fully discussed with Respondent LAUREN B. GERSON, M.D. the terms
18 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
19 Order. I approve its form and content.

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21 Dated:

NOSSAMAN, LLP



22 MITCHELL J. GREEN
23 Attorneys for Respondent
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ENDORSEMENT

The foregoing Stipulation is respectfully submitted for consideration by the Medical Board of California, Department of Consumer Affairs.

Dated: 5/19/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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EXHIBIT A

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 10 2015
BY H. Voong ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 VIVIEN H. HARA
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E-mail: vivien.hara@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **LAUREN BATTAT GERSON, M.D.**
13 **2340 Clay St., Fl. 6**
14 **San Francisco, CA 94115-1932**
15 **Physician and Surgeon's Certificate**
16 **No. G 72756**
17 Respondent.

Case No. 03-2012-226597

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

- 20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs.
23 2. On or about October 22, 1991, the Medical Board of California issued Physician and
24 Surgeon's Certificate Number G 72756 to Lauren Battat Gerson, M.D. (Respondent). The
25 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges
26 brought herein and will expire on February 28, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, 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.

"(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.

"(d) Incompetence.

"(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. The incidents described herein occurred in 2012 while Respondent was on staff at the Stanford Gastroenterology Clinic and Hospital.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence/Negligence/Incompetence – Patient T.G.¹)

3 7. Patient T.G. was a 69 year-old male with diffuse systemic sclerosis (scleroderma),
4 interstitial lung disease, end stage renal disease (on hemodialysis), anemia, hypertension,
5 hypoalbuminemia, secondary hypothyroidism, and gastric antral vascular ectasia (GAVE). He
6 had been referred to the Stanford Gastroenterology Clinic and Respondent for evaluation of recent
7 problems with weight loss and dysphagia (difficulty swallowing). It was assumed that T.G.'s
8 disease had progressed to esophageal scleroderma² and that a percutaneous endoscopic
9 gastrostomy (PEG) would be necessary to bypass his esophagus and would allow him to take in
10 adequate nutrition without swallowing. T.G. was referred to the Stanford Gastroenterology Clinic
11 for evaluation and a PEG.

12 8. Respondent ordered a PEG for T.G. on June 25, 2012, and she scheduled an
13 esophagogastroduodenoscopy (EGD or upper endoscopy) and esophageal manometry for the
14 afternoon of June 25, 2012, both elective, non-emergent diagnostic procedures, scheduled to be
15 done on an outpatient basis. 24 to 48 hours before, on June 23 or 24, 2012, T.G. had been
16 discharged from Mills Peninsula Hospital on antibiotics with home oxygen administration after
17 treatment for aspiration pneumonia.

18 9. Respondent performed a pre-endoscopy history and physical examination in the early
19 afternoon of June 25, 2012 and noted that T.G. had active diffuse scleroderma complicated by
20 renal crisis, diffuse systemic sclerosis, interstitial lung disease, GAVE with multiple
21 cauterizations, and end stage kidney disease. In past medical history, she listed "scleroderma
22 renal crisis, *Started dialysis December 30, 2011,*" and "Pneumonia. *Admitted to er 6/24/12.*" She
23 noted that T.G. had had multiple upper endoscopies for gastrointestinal bleeding prior to this
24 EGD. Her physical examination listed "Lungs: Clear Auscultation. Clear Percussion and Normal
25 Symmetry and Expansion." She noted that she, not an anesthesiologist, was ordering sedation.

26 ¹ Initials are used to protect patient privacy. Respondent will be provided with the full
27 names of patients upon the filing of a Request for Discovery.

28 ² In esophageal scleroderma, the muscles in the lower esophagus cease to move, resulting
in severe gastroesophageal reflux.

1 Sedation was to be administered by a registered nurse. Respondent listed Airway as Class 2 and
2 ASA Level (American Society of Anesthesiologists physical status classification system) as 3
3 (severe systemic disease).

4 10. Respondent performed an upper endoscopy and took biopsies on T.G. beginning at
5 approximately 2:48 p.m. on June 25, 2012 and ending at approximately 3:15 p.m. Nursing
6 records indicate that sedation consisted of midazolam, 7 mg. administered over the 22 minutes;
7 fentanyl, 175 micrograms administered over the 22 minutes; and Cetacaine spray applied to the
8 throat prior to the procedure.

9 11. T.G. was transferred from the endoscopy procedure room to the recovery area under
10 the care of a registered nurse. The nurse noted that T.G. was unresponsive to verbal and painful
11 stimuli, with blood pressure 108/70, heart rate 86, and O2 saturation 89% on 2 liters delivered by
12 nasal cannula. A face mask was applied at 10 liters O2, and oxygen saturation went up to 97%.
13 When Respondent was notified, she ordered reversal medications: Flumazenil 0.2 mg. IVP over
14 15 seconds and Narcan 0.4 mg. IVP at 3:40 p.m., and T.G. was still unresponsive. A second dose
15 of Flumazenil 0.2 mg. IVP was given at 3:43 p.m., and the patient became responsive at 3:44 p.m.
16 Once T.G. was responsive, Respondent performed the esophageal manometry procedure. No
17 time is entered in the medical record for this procedure although Respondent acknowledges that it
18 was done, and the results are recorded.

19 12. Respondent was later notified by nursing staff of concerns with T.G.'s breath sounds,
20 and Respondent noted stridor at 4:26 p.m. She was notified at 5:19 p.m. that T.G.'s O2 saturation
21 was 89% on 5 liters oxygen delivered by nasal cannula. At 5:20 p.m., Respondent ordered a chest
22 X-ray due to the inability to wean T.G. off oxygen after the endoscopy. A face mask was applied
23 at 10 liters oxygen at 5:21 p.m., and O2 saturation went up to 93%. The chest X-ray indicated "a
24 dense retrocardiac opacity and a left pleural effusion" and a "volume loss in the left lung with
25 mild shift of the mediastinum towards the left."

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1 13. After the manometry procedure in the recovery room, T.G.'s O2 saturation was
2 monitored, and when the O2 saturation remained above 90% for 30 minutes on room air, T.G.
3 met endoscopy discharge criteria, and so the patient was discharged home with instructions
4 concerning any complications that might arise. Respondent avers that she arranged to admit T.G.
5 to the hospital, but the patient left against medical advice (AMA). No notation of this or a signed
6 AMA release is in the record. Pathology results of the EGD was gastritis, and the manometry
7 procedure revealed a condition consistent with esophageal scleroderma.

8 14. Two days later, on June 27, 2012, T.G. presented to the Stanford Emergency
9 Department with shortness of breath and cough. Chest X-ray showed new right lung patchy
10 opacities and T.G. was cachectic. He was admitted to the intensive care unit for treatment of
11 pneumonia. The admission diagnosis was "most likely persistent PNA, likely aspiration due to
12 esophageal dysmotility." T.G. failed to improve despite intensive hospital care. Although
13 Respondent had scheduled a PEG for July 2, 2012, it was decided not to go through with the
14 procedure and instead provide palliative care for T.G. T.G. died on July 4, 2012. Cause of death
15 was aspiration pneumonia due to esophageal dysmotility and end-stage scleroderma.
16 Contributing to death was severe malnutrition (cachexia).

17 15. Respondent was grossly negligent and/or negligent and/or incompetent in her care and
18 treatment of patient T.G. by reason of the following acts or omissions:

19 A. Respondent failed to provide an accurate analysis of T.G.'s suitability for the
20 endoscopic and manometry procedures. She classified T.G. as an ASA Level 3, which denotes an
21 individual with stable multiple system disease that limits daily activity without immediate danger
22 of death. At the time of the EGD and manometry done by Respondent, T.G. had just been
23 released from another hospital, where he had been treated for aspiration pneumonia and
24 discharged on antibiotics and home oxygen. By reason of T.G.'s recent aspiration pneumonia and
25 the necessity for home oxygen administration, his ongoing scleroderma renal crisis which
26 necessitated hemodialysis, his persistent interstitial lung disease, and his frequent bleeding and
27 cauterizations for GAVE, his condition was not stable, and elective procedures at this time were
28 contraindicated. T.G.'s classification was clearly ASA Level 4, which denotes an individual with

1 severe, incapacitating disease, poorly controlled or end stage, at risk for death due to organ
2 failure. T.G. was a patient with severe systemic disease that was a constant threat to life.

3 B. Respondent failed to provide for an anesthesiology consultation, given T.G.'s
4 unstable and life-threatening condition, and instead elected to provide conscious sedation directed
5 by Respondent and administered by a registered nurse. The level of sedation administered to T.G.
6 during the upper endoscopy procedure was relatively large for an individual with so many co-
7 morbid conditions, and an anesthesiologist or nurse anesthetist should have been in attendance.

8 C. Since both procedures were elective, Respondent failed to reschedule the procedures
9 for a time when the patient was stable and able to tolerate conscious sedation directed by the
10 gastroenterologist and administered by a nurse.

11 D. T.G. had a very unstable post-procedure course in the recovery room. He was
12 unresponsive to verbal and painful stimuli and O2 saturation was below 90%. Reversal
13 medications had to be administered before the patient became responsive. When the patient
14 became responsive, Respondent performed the esophageal manometry in the recovery room. This
15 procedure was unnecessary to determine the need for a PEG and further endangered the health of
16 the patient.

17 E. Respondent approved sending T.G. home with instructions after his O2 saturation was
18 above 93% for 30 minutes. T.G. was a very high-risk patient for elective procedures and had had
19 a very unstable post-procedure course in the recovery room, including the development or
20 exacerbation of pneumonia. Under these circumstances, in conjunction with his numerous co-
21 morbidities, it was unsafe to send T.G. home. There is no record of T.G. leaving the clinic AMA.

22 16. Therefore, Respondent is subject to disciplinary action pursuant to section 2234(b)
23 and/or (c) and/or (d) of the Code.

24 SECOND CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct/Negligence/Incompetence – Patient W.Z.)

26 17. Patient W.Z., a 56 year-old female, underwent a colonoscopic examination performed
27 by Respondent on November 17, 2011. W.Z. had undergone a bone marrow transplant (BMT) for
28 chronic lymphocytic leukemia (CLL). After the procedure, W.Z. complained of nausea, vomiting,

1 and epigastric pain. An endoscopy was performed the previous day to rule out graft versus host
2 disease (GVHD) or cytomegalovirus (CMV) infection, and the colonoscopy was part of that
3 procedure.

4 18. Respondent performed the colonoscopy to the terminal ileum. W.Z. was sedated with
5 midazolam 8 mg. IV, fentanyl 175 micrograms IV, diphenhydramine 50 mg. IV, in divided doses
6 as the patient exhibited any signs of discomfort. Biopsies and cultures were obtained and
7 submitted for evaluation; pathology results indicated apoptosis of the ileum and right colon, but
8 negative findings for CMV.

9 19. During the course of the colonoscopic procedure, full sedation was not achieved.
10 W.Z. became drowsy, but she became fully awake during the procedure more than once,
11 complained of pain, and asked that the procedure be stopped. Respondent continued and
12 completed the procedure, despite the patient's urgent requests.

13 20. Respondent is subject to discipline under section 2234(c) in conjunction with the
14 allegations of paragraph 15, above and/or section 2234(d) and/or section 2234 (general
15 unprofessional conduct).

16 PRAYER

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

19 1. Revoking or suspending Physician and Surgeon's Certificate Number G 72756, issued
20 to Lauren Battat Gerson, M.D.

21 2, Revoking, suspending or denying approval of Lauren Battat Gerson, M.D.'s authority
22 to supervise physician assistants, pursuant to section 3527 of the Code;

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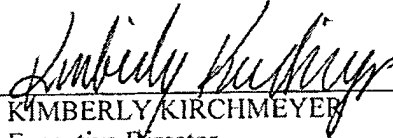
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3. Ordering Lauren Battat Gerson, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring;

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

DATED: April 10, 2015


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

SF2015400749