

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

**In the Matter of the Accusation Against: )**

**ROBERT MARK AGULNEK, M.D. )**

**File No. 800-2014-004684**

**Physician's and Surgeon's )  
Certificate No. G 24127 )**

**Respondent )**

**DECISION AND ORDER**

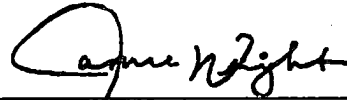
**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on September 8, 2017.**

**IT IS SO ORDERED August 10, 2017.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**



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

1 XAVIER BECERRA  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 CHRISTINA L. SEIN  
Deputy Attorney General  
4 State Bar No. 229094  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
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7 *Attorneys for Complainant*

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. 800-2014-004684

13 ROBERT MARK AGULNEK, M.D.

OAH No. 2017020265

14 15614 Royal Ridge Road  
Sherman Oaks, California 91403

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Physician's and Surgeon's Certificate G 24127,

16 Respondent.

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

20 **PARTIES**

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

25 2. Respondent Robert Mark Agulnek, M.D. (Respondent) is represented in this  
26 proceeding by attorney Henry Lewin, of 1251 Fairburn Avenue, Los Angeles, CA 90024.

27 3. On March 16, 1973, the Board issued Physician's and Surgeon's Certificate Number  
28 G 24127 to Respondent. That license was in full force and effect at all times relevant to the

1 charges brought in Accusation No. 800-2014-004684, and will expire on September 30, 2017,  
2 unless renewed.

### 3 JURISDICTION

4 4. Accusation No. 800-2014-004684 was filed before the Board, and is currently  
5 pending against Respondent. The Accusation and all other statutorily required documents were  
6 properly served on Respondent on January 11, 2017. Respondent filed a timely Notice of  
7 Defense contesting the Accusation.

8 5. A copy of Accusation No. 800-2014-004684 is attached as Exhibit A and is  
9 incorporated herein by reference.

### 10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 800-2014-004684. 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 confront and cross-examine  
17 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
19 documents; the right to reconsideration and court review of an adverse decision; and all other  
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

### 23 CULPABILITY

24 9. Respondent does not contest that, at an administrative hearing, Complainant could  
25 establish a *prima facie* case with respect to the charges and allegations contained in Accusation  
26 No. 800-2014-004684 and that he has thereby subjected his license to disciplinary action.

27 10. Respondent agrees that if he ever petitions for modification of these terms, or if a  
28 subsequent Accusation is ever filed against him before the Board, all of the charges and

1 allegations contained in Accusation No. 800-2014-004684 shall be deemed true, correct and fully  
2 admitted by Respondent for purposes of any such proceeding or any other licensing proceeding  
3 involving Respondent in the State of California.

4 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
5 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
6 Disciplinary Order below.

7 **CONTINGENCY**

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

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

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

24 **DISCIPLINARY ORDER**

25 A. **PUBLIC REPRIMAND**

26 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate number G-  
27 24127 issued to Respondent Robert Mark Agulnek, M.D., shall be and is hereby publicly  
28 reprimanded pursuant to California Business and Professions Code section 2227, subdivision

1 (a)(4). This Public Reprimand, which is issued in connection with Accusation No. 800-2014-  
2 004684, is as follows:

3 "On or about January 15, 2010, you interpreted a thoracic and lumbar MRI of a patient,  
4 failing to diagnose a significant abnormality on the MRI. You also failed to document a  
5 discussion of a significant abnormality with the referring physician with time and date. In a  
6 patient with acute weakness immediately after an epidural injection, you should have considered  
7 epidural hematoma as the most likely diagnosis and, if the images are not of diagnostic quality,  
8 urgent repeat study should be performed and documentation of discussion with the referring  
9 physician is needed."

10 ACCEPTANCE

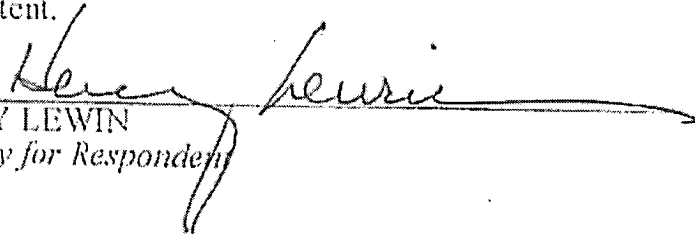
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorney, Henry Lewin. I understand the stipulation and the effect it will  
13 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
14 Disciplinary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

16  
17 DATED: 6/29/17

  
18 ROBERT MARK AGULNEK, M.D.  
19 Respondent

20 I have read and fully discussed with my client, Respondent Robert Mark Agulnek, M.D.,  
21 the terms and conditions and other matters contained in the above Stipulated Settlement and  
22 Disciplinary Order. I approve its form and content.

23 DATED: June 29, 2017

  
24 HENRY LEWIN  
25 Attorney for Respondent

26 [Endorsement on following page]  
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ENDORSEMENT

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

Dated: 6/30/17

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
JUDITH T. ALVARADO  
Supervising Deputy Attorney General



CHRISTINA L. SEIN  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 800-2014-004684**

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO, Jan 11 20 17  
BY D. Richards ANALYST

1 KATHLEEN A. KENEALY  
Acting Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 CHRISTINA L. SEIN  
Deputy Attorney General  
4 State Bar No. 229094  
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Los Angeles, CA 90013  
6 Telephone: (213) 897-9444  
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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:  
12 **Robert Mark Agulnek, M.D.**  
13 **15614 Royal Ridge Road**  
**Sherman Oaks, CA 91403**  
14 **Physician's and Surgeon's Certificate**  
15 **No. G 24127,**  
16 Respondent.

Case No. 800-2014-004684

**ACCUSATION**

17  
18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs (Board).  
24 2. On or about March 16, 1973, the Medical Board issued Physician's and Surgeon's  
25 Certificate Number G 24127 to Robert Mark Agulnek, M.D. (Respondent). The Physician's and  
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein  
27 and will expire on September 30, 2017, unless renewed.

28 ///



1 JURISDICTION

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

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

8 5. Section 2234 of the Code, states:

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

12 "...

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

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

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

23 "...."

24 CAUSE FOR DISCIPLINE

25 (Repeated Negligent Acts)

26 6. Respondent's license is subject to disciplinary action under section 2234, subdivision  
27 (c), of the Code in that he committed repeated negligent acts in his care and treatment of patient  
28 A.H. The circumstances are as follows:

1           7. At all times relevant to the allegations herein, Respondent was an independent  
2 contractor radiologist providing services to Encino Hospital Medical Center.

3           8. On or about January 15, 2010, patient A.H., who was a 61 year-old female, underwent  
4 an epidural injection at Libbit Surgical Center. Following the injection procedure, A.H.  
5 complained of sharp pain in the lower extremities, followed by sensory and motor function loss  
6 below the T10 and T11 level. A.H. was transferred by ambulance to the emergency room of  
7 Encino Hospital Medical Center.

8           9. On or about January 15, 2010, a thoracic and lumbar MRI was performed on A.H. and  
9 interpreted by Respondent. Respondent's final report for the lumbar spine states "Mild  
10 desiccation and degenerative changes of the disc but no disc bulge or herniation is noted." His  
11 final report of the thoracic spine demonstrates "normal MRI of the thoracic spine... A repeat  
12 study of the thoracolumbar spine is recommended without contrast infusion in both projections to  
13 better evaluate this area as this is on the edge of the study on the current images both lumbar and  
14 thoracic is not well delineated." Although the images were suboptimal, the epidural hematoma of  
15 the lower thoracic spine is evident on the axial images.

16          10. On or about January 19, 2010, a repeat MRI was performed. Respondent interpreted  
17 the MRI stating there is "abnormal signal focus demonstrated in the spinal canal from  
18 approximately the T10-T11 disc space inferiorly through the T12-L1 disc space located mostly in  
19 the posterior and posterolateral aspect of the spinal canal displacing the cords slightly anteriorly  
20 and causing a slight mass effect on the cord and subarachnoid sac. This is consistent with a  
21 subdural or epidural hematoma."

22          11. The standard of care requires a physician to observe and document all pertinent  
23 findings on diagnostic imaging studies.

24          12. The standard of care provides that pertinent findings requiring urgent treatment need  
25 to be discussed with the referring physician or caretaker and documented.

26          13. Respondent's care and treatment of A.H. as set forth above in Paragraphs 7 through  
27 12, include the following acts and/or omissions which constitute repeated negligent acts:

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A. The failure to diagnose a significant abnormality on the initial MRI of January 15, 2010.


B. The failure to document a discussion of a significant abnormality with the referring physician with time and date. In a patient with acute weakness immediately after an epidural injection, an epidural hematoma must be the most likely diagnosis, and if the images are not of diagnostic quality, urgent repeat study should be performed and documentation of discussion with the referring physician is needed.

PRAAYER

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 24127, issued to Robert Mark Agulnek, M.D.;
2. Revoking, suspending or denying approval of Robert Mark Agulnek, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Robert Mark Agulnek, 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: January 11, 2017

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

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