

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

In the Matter of the Accusation)	
Against:)	
)	
)	
BRIAN MARCEL CABLE, M.D.)	Case No. 12-2013-234662
)	
Physician's and Surgeon's)	
Certificate No. G80508)	
)	
Respondent)	
_____)	

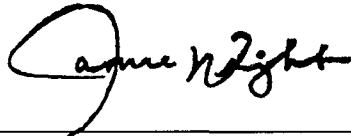
DECISION

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 December 16, 2016.

IT IS SO ORDERED: November 16, 2016.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, J.D., Chair
Panel A

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5529
6 Facsimile: (415) 703-5480
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 **BRIAN MARCEL CABLE, M.D.**

12 **4877 Black Bart Trail**
13 **Redwood Valley, CA 95470-9410**

14 **Physician's and Surgeon's Certificate No.**
15 **G80508**

16 Respondent.

Case No. 12-2013-234662

OAH No. 2016051241

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Joshua M. Templet,
25 Deputy Attorney General.

26 2. Respondent Brian Marcel Cable, M.D. (Respondent) is represented in this proceeding
27 by attorney Albert J. Garcia, 2000 Powell Street, Suite 1290, Emeryville, CA 94608.
28

1 probation remaining on the Decision and Order in Medical Board Case No. 12-2013-234005, with
2 the following terms and conditions:

3 1. EDUCATION COURSE. Within 60 calendar days of the effective date of
4 this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its
5 designee for its prior approval educational program(s) or course(s) which shall not be less than 40
6 hours per year, for each year of probation. The educational program(s) or course(s) shall be
7 aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified.
8 The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition
9 to the Continuing Medical Education (CME) requirements for renewal of licensure. Following
10 the completion of each course, the Board or its designee may administer an examination to test
11 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
12 hours of CME of which 40 hours were in satisfaction of this condition.

13 2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of
14 the effective date of this Decision, Respondent shall enroll in a course in medical record keeping
15 equivalent to the Medical Record Keeping Course offered by the Physician Assessment and
16 Clinical Education Program, University of California, San Diego School of Medicine (Program),
17 approved in advance by the Board or its designee. Respondent shall provide the program with any
18 information and documents that the Program may deem pertinent. Respondent shall participate in
19 and successfully complete the classroom component of the course not later than six (6) months
20 after Respondent's initial enrollment. Respondent shall successfully complete any other
21 component of the course within one (1) year of enrollment. The medical record keeping course
22 shall be at Respondent's expense and shall be in addition to the Continuing Medical Education
23 (CME) requirements for renewal of licensure.

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

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

4 3. CLINICAL TRAINING PROGRAM. Within 6 months of the effective
5 date of this Decision, Respondent shall enroll in a clinical training or educational program
6 equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the
7 University of California - San Diego School of Medicine ("Program"). Respondent shall
8 successfully complete the Program not later than six (6) months after Respondent's initial
9 enrollment unless the Board or its designee agrees in writing to an extension of that time.

10 The Program shall consist of a Comprehensive Assessment program comprised of a two-
11 day assessment of Respondent's physical and mental health; basic clinical and communication
12 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to
13 Respondent's area of practice in which Respondent was alleged to be deficient, and at minimum,
14 a 40 hour program of clinical education in the area of practice in which Respondent was alleged
15 to be deficient and which takes into account data obtained from the assessment, Decision(s),
16 Accusation(s), and any other information that the Board or its designee deems relevant.
17 Respondent shall pay all expenses associated with the clinical training program.

18 Based on Respondent's performance and test results in the assessment and clinical
19 education, the Program will advise the Board or its designee of its recommendation(s) for the
20 scope and length of any additional educational or clinical training, treatment for any medical
21 condition, treatment for any psychological condition, or anything else affecting Respondent's
22 practice of medicine. Respondent shall comply with Program recommendations.

23 At the completion of any additional educational or clinical training, Respondent shall
24 submit to and pass an examination. Determination as to whether Respondent successfully
25 completed the examination or successfully completed the program is solely within the program's
26 jurisdiction.

27 If Respondent fails to enroll, participate in, or successfully complete the clinical training
28 program within the designated time period, Respondent shall receive a notification from the

1 Board or its designee to cease the practice of medicine within three (3) calendar days after being
2 so notified. The Respondent shall not resume the practice of medicine until enrollment or
3 participation in the outstanding portions of the clinical training program have been completed. If
4 the Respondent did not successfully complete the clinical training program, the Respondent shall
5 not resume the practice of medicine until a final decision has been rendered on the accusation
6 and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of
7 the probationary time period.

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

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

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

28 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective

1 date of this Decision, Respondent shall receive a notification from the Board or its designee to
2 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
3 shall cease the practice of medicine until a monitor is approved to provide monitoring
4 responsibility.

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

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

19 In lieu of a monitor, Respondent may participate in a professional enhancement program
20 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
21 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
22 chart review, semi-annual practice assessment, and semi-annual review of professional growth
23 and education. Respondent shall participate in the professional enhancement program at
24 Respondent's expense during the term of probation.

25 5. NOTIFICATION. Within seven (7) days of the effective date of this
26 Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief
27 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
28 extended to Respondent, at any other facility where Respondent engages in the practice of

1 medicine, including all physician and locum tenens registries or other similar agencies, and to the
2 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
3 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
4 15 calendar days.

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

6 6. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation,
7 Respondent is prohibited from supervising physician assistants except during surgical procedures
8 in the operating room.

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

12 8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly
13 declarations under penalty of perjury on forms provided by the Board, stating whether there has
14 been compliance with all the conditions of probation.

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

17 9. GENERAL PROBATION REQUIREMENTS.

18 Compliance with Probation Unit

19 Respondent shall comply with the Board's probation unit and all terms and conditions of
20 this Decision.

21 Address Changes

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

27 Place of Practice

28 Respondent shall not engage in the practice of medicine in Respondent's or patient's place

1 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
2 facility.

3 License Renewal

4 Respondent shall maintain a current and renewed California physician's and surgeon's
5 license.

6 Travel or Residence Outside California

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

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

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

16 11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the
17 Board or its designee in writing within 15 calendar days of any periods of non-practice lasting
18 more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-
19 practice is defined as any period of time Respondent is not practicing medicine in California as
20 defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a
21 calendar month in direct patient care, clinical activity or teaching, or other activity as approved by
22 the Board. All time spent in an intensive training program which has been approved by the Board
23 or its designee shall not be considered non-practice. Practicing medicine in another state of the
24 United States or Federal jurisdiction while on probation with the medical licensing authority of
25 that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of
26 practice shall not be considered as a period of non-practice.

27 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
28 months, Respondent shall successfully complete a clinical training program that meets the criteria

1 of Condition 18 of the current version of the Board’s “Manual of Model Disciplinary Orders and
2 Disciplinary Guidelines” prior to resuming the practice of medicine.

3 Respondent’s period of non-practice while on probation shall not exceed two (2) years.

4 Periods of non-practice will not apply to the reduction of the probationary term.

5 Periods of non-practice will relieve Respondent of the responsibility to comply with the
6 probationary terms and conditions with the exception of this condition and the following terms
7 and conditions of probation: Obey All Laws; and General Probation Requirements.

8 12. COMPLETION OF PROBATION. Respondent shall comply with all
9 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to
10 the completion of probation. Upon successful completion of probation, Respondent’s certificate
11 shall be fully restored.

12 13. VIOLATION OF PROBATION. Failure to fully comply with any term or
13 condition of probation is a violation of probation. If Respondent violates probation in any
14 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
15 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to
16 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
17 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
18 shall be extended until the matter is final.

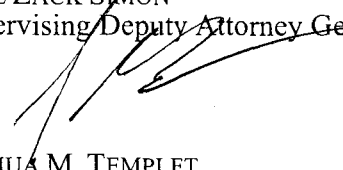
19 14. LICENSE SURRENDER. Following the effective date of this Decision, if
20 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
21 the terms and conditions of probation, Respondent may request to surrender his or her license.
22 The Board reserves the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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 5, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General



JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

SF2016400036
Stipulation.rtf

Exhibit A

Accusation No. 12-2013-234662

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5529
6 Facsimile: (415) 703-5480
E-mail: Joshua.Templet@doj.ca.gov
7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *Feb 29 20 16*
BY *[Signature]* ANALYST

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:

Case No. 12-2013-234662

12 **Brian Marcel Cable, M.D.**
13 **4877 Black Bart Trail**
Redwood Valley, CA 95470-9410

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate**
15 **No. G80508,**

16 Respondent.

17
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 (Board).

23 2. On January 11, 1995, the Board issued Physician's and Surgeon's Certificate Number
24 G80508 to Brian Marcel Cable, M.D. (Respondent). The certificate was in full force and effect at
25 all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

26 **JURISDICTION**

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 provides that the Board shall have the responsibility for the
2 enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

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

7 6. Section 2234 of the Code states:

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

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

12 (b) Gross negligence.

13 (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts
14 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.

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

17 (2) When the standard of care requires a change in the diagnosis, act, or omission
18 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
19 departs from the applicable standard of care, each departure constitutes a separate and
distinct breach of the standard of care.

20

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

23

24 7. Section 2261 of the Code states:

25 Knowingly making or signing any certificate or other document directly or indirectly
26 related to the practice of medicine . . . which falsely represents the existence or
27 nonexistence of a state of facts, constitutes unprofessional conduct.

28 8. Section 2266 of the Code provides that the failure of a physician and surgeon to
maintain adequate and accurate records relating to the provision of patient services constitutes
unprofessional conduct.

1 FIRST CAUSE FOR DISCIPLINE

2 **(Wrong Site Surgery on Patient J.L: Gross Negligence, Repeated Negligent Acts,**
3 **Dishonesty/Corruption, False Documents, Inadequate Records)**

4 9. On or about January 11, 2013, Patient J.L.¹ presented to Respondent with a history of
5 several years of increasing pain in his left ring finger. This history was documented by J.L.'s
6 previous physician, and the suspected source of the pain had been confirmed by magnetic
7 resonance imaging.

8 10. On February 27, 2013, Respondent documented a history and physical of J.L.,
9 recommending his hospital admission for surgery to excise a soft-tissue tumor in his left ring
10 finger. The admission note confirmed the patient's history of pain in his left distal ring finger. J.L.
11 then signed a consent form for an excision of the soft tissue tumor on his left ring finger.

12 11. On February 28, 2013, Respondent operated on J.L.'s hand. Rather than remove the
13 soft tissue mass in the patient's left ring finger, Respondent instead operated on his little finger,
14 and removed a soft tissue mass from that finger.

15 12. J.L. required a subsequent second surgery to his ring finger.

16 13. The only records reflecting any discussion about a mass in the little finger are
17 Respondent's chart notes, which bear no date of their transcription. These chart notes by
18 Respondent purport to document Respondent's discussion with J.L. of the possibility of a mass in
19 both his ring finger and little finger. In fact, Respondent had no such discussion with his patient,
20 and the content of Respondent's chart notes conflicts with all prior documentation of the source
21 of J.L.'s pain, none of which discusses a problem in his little finger.

22 14. Respondent's chart notes, which bear no date of transcription and contradict all other
23 documentation of J.L.'s operation, constitute Respondent's falsification of his patient's medical
24 records, an extreme departure from the standard of care and unprofessional conduct.

25 15. In an investigational interview by the Medical Board regarding his operations on J.L.,
26 Respondent denied having operated on the wrong finger of J.L. Instead, Respondent claimed that

27 ¹ Patient names are abbreviated to protect patient privacy. Respondent will have the
28 opportunity to identify the patient and to obtain the records of the investigation during discovery.

1 he had anticipated J.L.'s surgery to possibly include both fingers. When asked why he did not
2 perform surgeries on both fingers as he claimed that he had intended, Respondent stated that he
3 made an intra-operation decision to operate only on the little finger, because he could not find
4 anything on which to operate in the ring finger.

5 16. Respondent's false and dishonest representations of his medical care during his
6 investigational interview by the Medical Board constitute an extreme departure from the standard
7 of care and unprofessional conduct.

8 17. Respondent's conduct is cause for discipline pursuant to section 2234, subdivision (a)
9 (violation of Medical Practice Act), subdivision (b) (gross negligence), subdivision (c) (repeated
10 negligent acts), subdivision (e) (dishonesty/corruption), section 2261 (false documents), and
11 section 2266 (inadequate and inaccurate records).

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Failure to Secure Medical Records and Loss of Medical Records of Patient E.M.: Repeated**
14 **Negligent Acts, Inadequate Records)**

15 18. In December 2012, Patient E.M. presented to Respondent with a history of trauma to
16 his finger. Respondent performed a surgical correction of E.M.'s finger on December 20, 2012.

17 19. Following the surgery, E.M. requested his medical records from Respondent.
18 Respondent informed E.M. that his records were not available, and Respondent never produced
19 the requested records to his patient.

20 20. At one point, Respondent had maintained E.M.'s medical records at a private home, a
21 former residence of his.

22 21. Respondent's maintenance of patient records at an unsecured location, his failure to
23 secure the records, and his presumed loss of the records constitutes a simple departure from the
24 standard of care and unprofessional conduct.

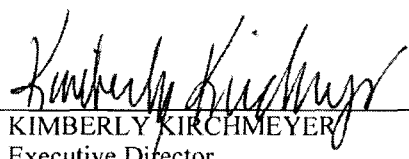
25 22. Respondent's inability to produce patient medical records upon the request of his
26 patient and/or upon the request of the Medical Board constitutes a simple departure from the
27 standard of care.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. Ordering Brian Marcel Cable, 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: February 29, 2016



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

SF2016400036
12111087.doc