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

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California. She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Lawrence Mercer.

2. Respondent Lauren Battat Gerson, M.D. is represented in this matter by her attorneys Mitchell J. Green and Nossaman LLP, 50 California Street, 34th Floor, San Francisco, CA 94111.

3. On or about October 22, 1991, the Medical Board of California issued Physician’s and Surgeon’s Certificate Number G72756 to Lauren Battat Gerson, M.D. (Respondent). The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2019, unless renewed.
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\textit{prima facie} case with respect to the charges and allegations contained in Accusation No. 03-2012-
226597 and that she has thereby subjected her Physician’s and Surgeon’s Certificate to disciplinary action. Respondent further agrees to be bound by the Board’s imposition of discipline as set forth in the Disciplinary Order below.

**CONTINGENCY**

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

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including electronic PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

**DISCIPLINARY ORDER**

A. **PUBLIC REPRIMAND**

**IT IS HEREBY ORDERED:** that Respondent Lauren Battat Gerson, M.D., Physician’s and Surgeon’s Certificate No. G72756, shall be and is hereby publicly reprimanded pursuant to
California Business and Professions Code § 2227(a)(4). This Public Reprimand, which is issued in connection with Respondent’s actions as set forth in Accusation No. 03-2012-226597, is as follows:

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

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

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

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

ACCEPTANCE

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

Dated:

[Signature]

LAUREN B. GERSON, M.D.

I have read and fully discussed with Respondent LAUREN B. GERSON, 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:

[Signature]

NOSSAMAN, LLP

MITCHELL GRISH
Attorneys for Respondent
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
BEFORE THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Case No. 03-2012-226597
LAUREN BATTAT GERSON, M.D.
2340 Clay St., Fl. 6
San Francisco, CA 94115-1932

Physician and Surgeon's Certificate
No. G 72756

Respondent.

Complainant alleges:

PARTIES

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

2. On or about October 22, 1991, the Medical Board of California issued Physician and Surgeon's Certificate Number G 72756 to Lauren Battat Gerson, M.D. (Respondent). The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2017, unless renewed.
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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FIRST CAUSE FOR DISCIPLINE

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

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

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

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

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

2 In esophageal scleroderma, the muscles in the lower esophagus cease to move, resulting in severe gastroesophageal reflux.
Sedation was to be administered by a registered nurse. Respondent listed Airway as Class 2 and ASA Level (American Society of Anesthesiologists physical status classification system) as 3 (severe systemic disease).

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

11. T.G. was transferred from the endoscopy procedure room to the recovery area under the care of a registered nurse. The nurse noted that T.G. was unresponsive to verbal and painful stimuli, with blood pressure 108/70, heart rate 86, and 02 saturation 89% on 2 liters delivered by nasal cannula. A face mask was applied at 10 liters 02, and oxygen saturation went up to 97%.

When Respondent was notified, she ordered reversal medications: Flumazenil 0.2 mg. IVP over 15 seconds and Narcan 0.4 mg. IVP at 3:40 p.m., and T.G. was still unresponsive. A second dose of Flumazenil 0.2 mg. IVP was given at 3:43 p.m., and the patient became responsive at 3:44 p.m.

Once T.G. was responsive, Respondent performed the esophageal manometry procedure. No time is entered in the medical record for this procedure although Respondent acknowledges that it was done, and the results are recorded.

12. Respondent was later notified by nursing staff of concerns with T.G.’s breath sounds, and Respondent noted stridor at 4:26 p.m. She was notified at 5:19 p.m. that T.G.’s 02 saturation was 89% on 5 liters oxygen delivered by nasal cannula. At 5:20 p.m., Respondent ordered a chest X-ray due to the inability to wean T.G. off oxygen after the endoscopy. A face mask was applied at 10 liters oxygen at 5:21 p.m., and O2 saturation went up to 93%. The chest X-ray indicated “a dense retrocardiac opacity and a left pleural effusion” and a “volume loss in the left lung with mild shift of the mediastinum towards the left.”
13. After the manometry procedure in the recovery room, T.G.'s O2 saturation was monitored, and when the O2 saturation remained above 90% for 30 minutes on room air, T.G. met endoscopy discharge criteria, and so the patient was discharged home with instructions concerning any complications that might arise. Respondent avers that she arranged to admit T.G. to the hospital, but the patient left against medical advice (AMA). No notation of this or a signed AMA release is in the record. Pathology results of the EGD was gastritis, and the manometry procedure revealed a condition consistent with esophageal scleroderma.

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

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

A. Respondent failed to provide an accurate analysis of T.G.'s suitability for the endoscopic and manometry procedures. She classified T.G. as an ASA Level 3, which denotes an individual with stable multiple system disease that limits daily activity without immediate danger of death. At the time of the EGD and manometry done by Respondent, T.G. had just been released from another hospital, where he had been treated for aspiration pneumonia and discharged on antibiotics and home oxygen. By reason of T.G.’s recent aspiration pneumonia and the necessity for home oxygen administration, his ongoing scleroderma renal crisis which necessitated hemodialysis, his persistent interstitial lung disease, and his frequent bleeding and cauterizations for GAVE, his condition was not stable, and elective procedures at this time were contraindicated. T.G.’s classification was clearly ASA Level 4, which denotes an individual with
severe, incapacitating disease, poorly controlled or end stage, at risk for death due to organ failure. T.G. was a patient with severe systemic disease that was a constant threat to life.

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

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

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

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

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

SECOND CAUSE FOR DISCIPLINE

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

17. Patient W.Z., a 56 year-old female, underwent a colonoscopic examination performed by Respondent on November 17, 2011. W.Z. had undergone a bone marrow transplant (BMT) for chronic lymphocytic leukemia (CLL). After the procedure, W.Z. complained of nausea, vomiting,
and epigastric pain. An endoscopy was performed the previous day to rule out graft versus host
disease (GVHD) or cytomegalovirus (CMV) infection, and the colonoscopy was part of that
procedure.
18. Respondent performed the colonoscopy to the terminal ileum. W.Z. was sedated with
midazolam 8 mg. IV, fentanyl 175 micrograms IV, diphenhydramine 50 mg. IV, in divided doses
as the patient exhibited any signs of discomfort. Biopsies and cultures were obtained and
submitted for evaluation; pathology results indicated apoptosis of the ileum and right colon, but
negative findings for CMV.
19. During the course of the colonoscopic procedure, full sedation was not achieved.
W.Z. became drowsy, but she became fully awake during the procedure more than once,
complained of pain, and asked that the procedure be stopped. Respondent continued and
completed the procedure, despite the patient’s urgent requests.
20. Respondent is subject to discipline under section 2234(c) in conjunction with the
allegations of paragraph 15, above and/or section 2234(d) and/or section 2234 (general
unprofessional conduct).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
and that following the hearing, the Medical Board of California issue a decision:
1. Revoking or suspending Physician and Surgeon’s Certificate Number G 72756, issued
to Lauren Battat Gerson, M.D.
2. Revoking, suspending or denying approval of Lauren Battat Gerson, M.D.’s authority
to supervise physician assistants, pursuant to section 3527 of the Code;
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