

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

In the Matter of the Accusation Against:)
)
)
DARYL WESTERBACK, M.D.) Case No. 05-2013-231041
)
Physician's and Surgeon's)
Certificate No. A 72712)
)
Respondent.)
_____)

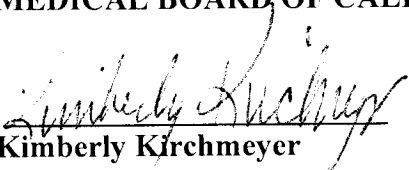
DECISION

The attached Stipulated Surrender of License and 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, 2014.

IT IS SO ORDERED December 9, 2014.

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TRINA L. SAUNDERS
California Department of Justice
4 Deputy Attorney General
State Bar No. 207764
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 620-2193
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 05-2013-231041

12 DARYL WESTERBACK, M.D.
509 Marin St., Suite 233
13 Thousand Oaks, CA 91360
Physician's and Surgeon's Certificate No. A
14 72712

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

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

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
21 of California. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Trina L. Saunders,
23 Deputy Attorney General.

24 2. Daryl Westerback, M.D. (Respondent) is represented in this proceeding by attorney
25 Joel Douglas, whose address is 3699 Wilshire Boulevard, 10th Floor, Los Angeles, California
26 90010-2719.

27 3. On or about July 27, 2000, the Medical Board of California issued Physician's and
28 Surgeon's Certificate No. A 72712 to Daryl Westerback, M.D. (Respondent). The Physician's and

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 05-2013-231041 and expired on May 31, 2014, and has not been renewed.

3
4 JURISDICTION

5 4. Accusation No. 05-2013-231041 was filed before the Medical Board of California
6 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 July 22, 2014. A copy of Accusation No. 05-2013-231041 is attached as Exhibit A and
9 incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 05-2013-231041. Respondent also has carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
14 and Order.

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

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

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 05-2013-231041, agrees that cause exists for an action pursuant to section 822 and hereby
27 surrenders his Physician's and Surgeon's Certificate No. A 72712 for the Board's formal
28 acceptance.

1 9. Respondent understands that by signing this stipulation he enables the Board to issue
2 an order accepting the surrender of his Physician's and Surgeon's Certificate without further
3 process.

4 CONTINGENCY

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

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

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

20
21 ORDER

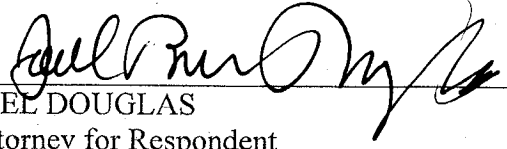
22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 72712, issued
23 to Respondent Daryl Westerback, M.D., is surrendered and accepted by the Medical Board of
24 California.

25 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
26 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
27 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
28 of Respondent's license history with the Medical Board of California.

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I have read and fully discussed with Respondent DARYL WESTERBACK, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: N/19M
 9/15/14

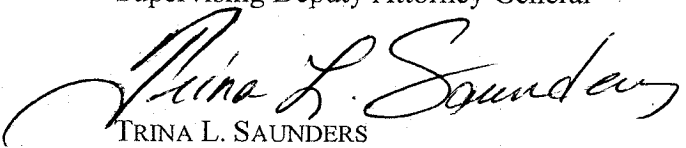

JOEL DOUGLAS
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 10/24/14

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General


TRINA L. SAUNDERS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 05-2013-231041

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 TRINA L. SAUNDERS
Deputy Attorney General
4 State Bar No. 207764
California Department of Justice
5 300 South Spring Street, Suite 1702
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 22, 2014
BY: J. [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:
12 DARYL WESTERBACK, M.D.
13 509 Marin Street, Suite 233
14 Thousand Oaks, California 91360
15 Physician's and Surgeon's Certificate A 72712,
16 Respondent.

Case No. 05-2013-231041

ACCUSATION

17
18 Complainant alleges:

19 PARTIES

- 20 1. The Complainant, Kimberly Kirchmeyer, brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California ("Board").
22 2. On July 27, 2000, the Board issued Physician's and Surgeon's Certificate number A
23 72712 to Daryl Westerback, M.D. ("Respondent"). That license has been in full force and effect
24 at all times relevant to the charges brought herein and expired on May 31, 2014, due to
25 Respondent's failure to renew his certificate.

26 JURISDICTION
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JURISDICTION

1
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 ("Code") unless otherwise
4 indicated.

5 4. Section 2227 of the Code states:

6 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
7 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
8 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
9 action with the board, may, in accordance with the provisions of this chapter:

10 "(1) Have his or her license revoked upon order of the board.

11 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
12 order of the board.

13 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
14 order of the board.

15 "(4) Be publicly reprimanded by the board. The public reprimand may include a
16 requirement that the licensee complete relevant educational courses approved by the board.

17 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
18 the board or an administrative law judge may deem proper.

19 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
20 review or advisory conferences, professional competency examinations, continuing education
21 activities, and cost reimbursement associated therewith that are agreed to with the board and
22 successfully completed by the licensee, or other matters made confidential or privileged by
23 existing law, is deemed public, and shall be made available to the public by the board pursuant to
24 Section 803.1."

25 5. Section 2234 of the Code, states:

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

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

3 "(b) Gross negligence.

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

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

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

14 "(d) Incompetence.

15 "(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 "(f) Any action or conduct which would have warranted the denial of a certificate.

18 "(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview scheduled by the mutual agreement of the certificate holder and the
24 board. This subdivision shall only apply to a certificate holder who is the subject of an
25 investigation by the board."

26 6. Code section 822 states:

27
28

1 "If a licensing agency determines that its licentiate's ability to practice his or her
2 profession safely is impaired because the licentiate is mentally ill, or physically ill affecting
3 competency, the licensing agency may take action by any one of the following methods:

4 "(a) Revoking the licentiate's certificate or license.

5 "(b) Suspending the licentiate's right to practice.

6 "(c) Placing the licentiate on probation.

7 "(d) Taking such other action in relation to the licentiate as the licensing agency in its
8 discretion deems proper.

9 "The licensing section shall not reinstate a revoked or suspended certificate or license until
10 it has received competent evidence of the absence or control of the condition which caused its
11 action and until it is satisfied that with due regard for the public health and safety the person's
12 right to practice his or her profession may be safely reinstated."

13 CAUSE FOR DISCIPLINE

14 (Ability to Practice Medicine Safely Impaired Due to Mental Illness)

15 7. Respondent is subject to disciplinary action under section 822 of the Code in that his
16 ability to practice medicine is impaired due to mental illness. The circumstances are as follows:

17 8. On January 22, 2014, while being interviewed by Medical Board personnel,
18 Respondent revealed that he had closed his medical practice, given up his Drug Enforcement
19 Administration license, and was under the care of a physician. It became apparent to the Medical
20 Board personnel present that Respondent might be suffering from a mental impairment that would
21 impact his ability to practice medicine safely. Respondent was asked to voluntarily provide his
22 medical treatment records to the Board and he agreed.

23 9. On February 27, 2014, the Board received Respondent's medical treatment records.
24 The records revealed that Respondent is unable to practice medicine safely due to mental
25 impairment.

26 10. On June 6, 2014, Respondent's treating physician provided the Board with a letter
27 confirming that Respondent has a mental impairment that renders him unfit to practice medicine
28 safely.

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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's and Surgeon's Certificate Number A 72712, issued to Daryl Westerback, M.D..

Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;

2. If placed on probation, ordering him to pay the costs of probation monitoring to the Medical Board;

3. Taking such other and further action as deemed necessary and proper.

DATED: July 22, 2014



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

Complainant

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