

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

In the Matter of the Accusation)	
Against:)	
)	
MARK ZWEIFACH, M.D.)	Case No. 10-2007-188130
)	
Physician's and Surgeon's)	
Certificate No. G 48626)	
)	
Respondent)	
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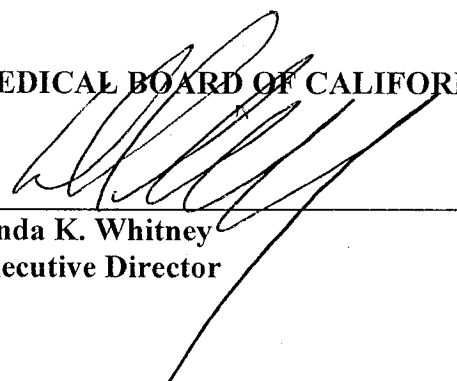
DECISION

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 13, 2011 .

IT IS SO ORDERED December 6, 2011 .

MEDICAL BOARD OF CALIFORNIA

By: 

Linda K. Whitney
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 HEIDI R. WEISBAUM
Deputy Attorney General
4 State Bar No. 101489
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2098
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 10-2007-188130

13 MARK B. ZWEIFACH, M.D.
8811 Nottingham Place
14 La Jolla, CA 92037

OAH No. 2011010427

15 Physician's and Surgeon's
16 Certificate No. G 48626

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

17 Respondent.

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding, that the following matters are true:

20 PARTIES

21 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of
22 California (Board). She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Heidi R.
24 Weisbaum, Deputy Attorney General.

25 2. Mark B. Zweifach, M.D. (Respondent) is represented in this proceeding by attorney
26 David M. Balfour, Esq., of DiCaro, Coppo & Popcke, 2780 Gateway Road, Carlsbad, CA 92009.

27 3. On or about August 9, 1982, the Board issued Physician's and Surgeon's Certificate
28 No. G 48626 to Respondent Mark B. Zweifach, M.D. The Physician's and Surgeon's Certificate

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 10-
2 2007-188130 and will expire on December 31, 2011, unless renewed.

3 JURISDICTION

4 4. On or about November 24, 2010, Accusation No. 10-2007-188130 was filed before
5 the Board, was properly served on Respondent with all other statutorily required documents, and
6 is currently pending against Respondent. Respondent timely filed his Notice of Defense
7 contesting Accusation No. 10-2007-188130. A true and correct copy of Accusation No. 10-2007-
8 188130 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent carefully read, fully discussed with counsel, and understands the charges
11 and allegations in Accusation No. 10-2007-188130. Respondent also carefully read, fully
12 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
13 Disciplinary Order.

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

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

22 CULPABILITY

23 8. Respondent does not contest that, at an administrative hearing, Complainant could
24 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
25 No. 10-2007-188130, and that he has thereby subjected his Physician's and Surgeon's Certificate
26 No. G 48626 to disciplinary action.

27 9. Respondent agrees that if he ever petitions for reinstatement of his Physician's and
28 Surgeon's Certificate No. G 48626, all of the charges and allegations contained in Accusation No.

1 10-2007-188130 shall be deemed true, correct and fully admitted by him for purposes of the
2 reinstatement proceeding or any other licensing proceeding involving Respondent in the State of
3 California, only, and shall have no force or effect in any other proceeding.

4 10. Respondent understands that by signing this stipulation he is enabling the Board to
5 issue an order accepting the surrender of his Physician's and Surgeon's Certificate No. G 48626,
6 without further process.

7 CONTINGENCY

8 11. This Stipulated Surrender of License and Disciplinary Order shall be subject to
9 approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated
10 Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her
11 consideration in the above-entitled matter and, further, that the Executive Director shall have a
12 reasonable period of time in which to consider and act on this Stipulated Surrender of License and
13 Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands
14 and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the
15 time the Executive Director, on behalf of the Board, considers and acts upon it.

16 12. The parties agree that this Stipulated Surrender of License and Disciplinary Order
17 shall be null and void and not binding upon the parties unless approved and adopted by the
18 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full
19 force and effect. Respondent fully understands and agrees that in deciding whether or not to
20 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive
21 Director and/or the Board may receive oral and written communications from its staff and/or the
22 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
23 Executive Director, the Board, any member thereof, and/or any other person from future
24 participation in this or any other matter affecting or involving respondent. In the event that the
25 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this
26 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
27 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
28 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees

1 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
2 by the Executive Director on behalf of the Board, Respondent will assert no claim that the
3 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
4 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
5 of any matter or matters related hereto.

6 ADDITIONAL PROVISIONS

7 13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
8 herein to be an integrated writing representing the complete, final and exclusive embodiment of
9 the agreements of the parties in the above-entitled matter.

10 14. The parties agree that facsimile copies of this Stipulated Surrender of License and
11 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original
12 documents and signatures and, further, that facsimile copies shall have the same force and effect
13 as originals.

14 15. In consideration of the foregoing admissions and stipulations, the parties agree the
15 Executive Director of the Board may, without further notice to or opportunity to be heard by
16 Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

17 DISCIPLINARY ORDER

18 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 48626, issued
19 to Respondent Mark B. Zweifach, M.D., is surrendered and accepted by the Medical Board of
20 California.

21 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G 48626
22 and the acceptance of the surrendered license by the Board shall constitute the imposition of
23 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
24 become a part of Respondent's license history with the Board.

25 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
26 California as of the effective date of the Board's Decision and Order.

27 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
28 issued, his wall certificate on or before the effective date of the Decision and Order.

1 4. If Respondent ever files an application for licensure or a petition for reinstatement in
2 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
3 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
4 effect at the time the petition is filed, and all of the charges and allegations contained in
5 Accusation No. 10-2007-188130 shall be deemed to be true, correct and fully admitted by
6 Respondent when the Board determines whether to grant or deny the petition.

7 5. If Respondent should ever apply or reapply for a new license or certification, or
8 petition for reinstatement of a license, by any other health care licensing agency in the State of
9 California, all of the charges and allegations contained in Accusation, No. 10-2007-188130 shall
10 be deemed to be true, correct, and fully admitted by Respondent for the purpose of any Statement
11 of Issues or any other proceeding seeking to deny or restrict licensure.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
14 have fully discussed it with my attorney, David M. Balfour, Esq. I understand the stipulation and
15 the effect it will have on my Physician's and Surgeon's Certificate No. G 48626. I enter into this
16 Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently,
17 and agree to be bound by the Decision and Order of the Medical Board of California.

18 DATED: 10/27/11 Mark B. Zweifach
19 MARK B. ZWEIFACH, M.D.
20 Respondent

21 I have read and fully discussed with Respondent MARK B. ZWEIFACH, M.D., the terms
22 and conditions and other matters contained in this Stipulated Surrender of License and
23 Disciplinary Order. I approve its form and content.

24 DATED: 10/27/11 David M. Balfour
25 DAVID M. BALFOUR, ESQ.
26 DICARO, COPPO & POPCKE
Attorneys for Respondent

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ENDORSEMENT

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

DATED: *Oct 31*, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General



HEIDI R. WEISBAUM
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 10-2007-188130

1 EDMUND G. BROWN JR.
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 HEIDI R. WEISBAUM
Deputy Attorney General
4 State Bar No. 101489
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2098
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case Nos. 10-07-188130

13 **MARK B. ZWEIFACH, M.D.**
8811 Nottingham Place
14 La Jolla, CA 92037

ACCUSATION

15 Physician's and Surgeon's
16 Certificate No. G48626

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as Executive Director of the Medical Board of California, Department of Consumer Affairs.

22 2. On or about August 9, 1982, the Medical Board of California issued Physician's and
23 Surgeon's Certificate No. G48626, to Mark B. Zweifach, M.D. (Respondent). The Physician's
24 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein. The Certificate shall expire on December 31, 2011, unless renewed.

26 3. On or about September 16, 2008, Respondent stipulated to a voluntary suspension of
27 his Physician's and Surgeon's Certificate No. G48626.

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1 **JURISDICTION**

2 4. This Accusation is brought before the Medical Board of California (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 5. Section 118, subdivision (b) of the Code provides, in part, that the suspension or
6 expiration of a license “shall not, during any period in which it may be renewed, restored,
7 reissued, or reinstated, deprive the Board of its authority to institute or continue a disciplinary
8 proceeding against the licensee upon any ground provided by law or to enter an order suspending
9 or revoking the license or otherwise taking disciplinary action against the licensee on any such
10 ground.”

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

16 7. Section 2234 of the Code provides in part that the Board “shall take action against
17 any licensee charged with unprofessional conduct. . . .” Unprofessional conduct under section
18 2234 includes conduct that breaches the rules or ethical code of the medical profession, or
19 conduct that is unbecoming to a member in good standing of the medical profession, and which
20 demonstrates an unfitness to practice medicine.¹

21 8. California Code of Regulations (CCR), title 16, section 1360, states:

22 “For the purposes of denial, suspension or revocation of a license, . . . a crime or act shall
23 be considered to be substantially related to the qualifications, functions or duties of a person
24 holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it
25 evidences present or potential unfitness of a person holding a license, certificate or permit to
26 perform the functions authorized by the license, certificate or permit in a manner consistent with

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28 ¹ *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
2 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
3 violation of, or conspiring to violate any provision of the Medical Practice Act.”

4 **CAUSE FOR DISCIPLINE**

5 **(General Unprofessional Conduct)**

6 9. Respondent is subject to disciplinary action under Code sections 2227 and 2234, as
7 defined by section 2234 and CCR title 16, section 1360, in that he engaged in conduct that
8 breaches the rules or ethical code of the medical profession, or conduct that is unbecoming to a
9 member in good standing of the medical profession, and that demonstrates an unfitness to practice
10 medicine. The circumstances are as follows:

11 10. In about July, August and September 2007, Respondent, a physician with Kaiser
12 Permanente in San Diego, California, used his Kaiser Permanente assigned computer in his office
13 in the Kaiser Permanente Bostonia Medical Office building, located in El Cajon, California, to
14 access suspected child pornography websites on the internet. When confronted by Kaiser
15 Permanente investigators, Respondent admitted accessing the websites at work, and further
16 admitted an addiction to internet pornography.

17 **PRAYER**

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

20 1. Revoking, suspending, or imposing probationary conditions on Physician's and
21 Surgeon's Certificate No. G48626, issued to Respondent Mark B. Zweifach, M.D.;

22 2. Revoking, suspending or denying approval of Respondent Mark B. Zweifach, M.D.'s
23 authority to supervise physician assistants, pursuant to section 3527 of the Code;

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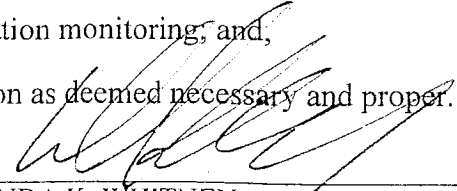
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3. Ordering Respondent Mark B. Zweifach, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and,

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

DATED: November 24, 2010



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant