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

In the Matter of the Accusation Against: )
UMESH C. SHAH, M.D. ) Case No. 18-2013-230891
) )
Physician's and Surgeon's )
Certificate No. A34147 )
) )
Respondent. )

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order for Public
Reprimand is hereby adopted by the Medical Board of California, Department of
Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on April 7, 2017.

IT IS SO ORDERED March 9, 2017.

MEDICAL BOARD OF CALIFORNIA

By: Michelle Anne Bholat, M.D., Chair
Panel B
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

UMESH C. SHAH, M.D.
12540 10th Street, Suite B
Chino, California 91710

Physician's and Surgeon's Certificate
No. A 34147,

Respondent.

Case No. 18-2013-230891
OAH No. 2016070792

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

PARTIES

1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
Board of California ("Board"). She brought this action solely in her official capacity and is
represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
Chris Leong, Deputy Attorney General.

2. Respondent Umesh C. Shah, M.D. ("Respondent") is represented in this proceeding
by attorneys Dennis K. Ames, Esq. and Zarah B. Maginot, Esq. whose address is: 2677 N. Main
Street, Suite 901, Santa Ana, CA 92705.

3. On or about June 23, 1979, the Board issued Physician's and Surgeon's Certificate
No. A 34147 to Umesh C. Shah, M.D. The Physician's and Surgeon's Certificate was in full force
and effect at all times relevant to the charges brought in Accusation No. 18-2013-230891 and
will expire on December 31, 2018, unless renewed.

**JURISDICTION**

4. Accusation No. 18-2013-230891 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 2, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 18-2013-230891 is attached as Exhibit A and is incorporated herein by reference.

**ADVISEMENT AND WAIVERS**

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 18-2013-230891. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

**CULPABILITY**

9. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 18-2013-230891 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's disciplinary terms as set forth in the
Disciplinary Order below.

11. Respondent agrees that if the Board ever takes action pursuant to paragraph 5 of the Order below, all of the charges and allegations contained in Accusation No. 18-2013-230891, shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. 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 his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 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.

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

15. 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:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 34147 issued to Respondent Umesh C. Shah, M.D. is publicly reprimanded pursuant to Business and Professions Code section 2227, as more specifically set forth below.

1. PUBLIC REPRIMAND. Respondent is publicly reprimanded as follows:

   "This Public Reprimand is issued pursuant to Business and Professions Code (Code) section 2227 as a result of the conduct by respondent as set forth in the Accusation alleging gross negligence, repeated negligent acts, and failure to maintain adequate and accurate records pursuant to Code sections 2234(b), 2234(c), and 2266, relating to the care and treatment of one patient."

IT IS FURTHER ORDERED that Respondent comply with the following:

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

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

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

3. **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 an
educational program(s) or course(s) which shall not be less than 40 hours for one year. The
educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or
knowledge, including the administration and monitoring of conscious sedation (moderate
sedation) or monitored anesthesia care, and shall be Category I certified. 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 40
hours of CME in satisfaction of this condition.

4. **PROFESSIONALISM PROGRAM (ETHICS COURSE).** Within 60 calendar days of
the effective date of this Decision, Respondent shall enroll in a professionalism program, that
meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.
Respondent shall participate in and successfully complete that program. Respondent shall
provide any information and documents that the program may deem pertinent. Respondent shall
successfully complete the classroom component of the program not later than six (6) months after
Respondent’s initial enrollment, and the longitudinal component of the program not later than the
time specified by the program, but no later than one (1) year after attending the classroom
component. The professionalism program shall be at Respondent’s expense and shall be in
addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the
Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
or its designee, be accepted towards the fulfillment of this condition if the program would have
been approved by the Board or its designee had the program been taken after the effective date of
this Decision.
Respondent shall submit a certification of successful completion to the Board or its
designee not later than 15 calendar days after successfully completing the program or not later
than 15 calendar days after the effective date of the Decision, whichever is later.

5. VIOLATION OF THIS AGREEMENT. Failure to fully comply with any term or
condition of this agreement is unprofessional conduct.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
discussed it with my attorneys, Dennis K. Ames, Esq. and Zarah B. Maginot, Esq. I understand
the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into
this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 1-18-17
UMESH C. SHAH, M.D.
Respondent

I have read and fully discussed with Respondent Umesh C. Shah, 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: 1/20/2017
DENNIS K. AMES
Attorney for Respondent

DATED: January 20, 2017
ZARA B. MAGINOT
Attorney for Respondent
ENDORSEMENT

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

Dated: 1/20/17

Respectfully submitted,

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

CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant
Exhibit A

Accusation No. 18-2013-230891
Before the Medical Board of California
Department of Consumer Affairs
State of California

In the Matter of the Accusation Against:

Umesh C. Shah, M.D.,
12540 10th Street #B,
Chino, California 91710

Physician's and Surgeon's Certificate
No. A 34147,

Respondent.

Complainant alleges:

PARTIES

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

2. On or about June 23, 1979, the Board issued Physician's and Surgeon's Certificate No. A 34147 to Umesh C. Shah, M.D. (“Respondent”). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and, unless renewed, expires on December 31, 2016.

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Accusation No. (18-2013-230891)
JURISDICTION

3. This Accusation is brought before the Board under the authority of the
following sections of the Business and Professions Code (Code), Government Code, and Health
and Safety Code.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon
certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in
subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code states:

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

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

"(2) Have his or her right to practice suspended for a period not to exceed one year upon
order of the board.
"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

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

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

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

6. Section 2234 of the Code, states:

"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.

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

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

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

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent is subject to disciplinary action under Code section 2234, subdivision (b), in that he was grossly negligent in the care and treatment of a patient. The circumstances are as follows:

9. A preoperative evaluation described patient S.W.1 as a 54-year-old female who had nausea and stomach pains and was found to have gallstones, a normal sized bile duct and abnormal liver function tests. Her physical exam by Respondent noted, in addition to the gallstones in the gallbladder and a suspected stone in the bile duct that the patient was obese and had high blood pressure. There was no mention of the patient’s markedly elevated

1 The names of patients are kept confidential to protect their privacy rights, and, though known to Respondent, will be revealed to him upon receipt of a timely request for discovery.
Body Mass Index (BMI) (45) nor was there any note regarding the presence or absence of sleep apnea. Additionally, the history of mental illness treatment, including a possible diagnosis of schizophrenia, was not mentioned. Further, Respondent did not document an examination of the patient’s mouth, tongue or throat.

10. On or about March 4, 2011, Respondent performed an endoscopic retrograde cholangiopancreatography procedure (ERCP) with sphincterotomy of the common bile duct. Patient S.W. was given moderate sedation for the exam. The patient was placed in a left lateral position from the prone position that she was originally placed, as the patient seemed to be agitated and restless and uncomfortable. The common bile duct was eventually entered and a sphincterotomy of the common bile duct was performed. At that time of the sphincterotomy, Respondent became aware of deterioration in the patient's condition and she was described as being "extremely unresponsive." Respondent noted that the oxygen saturation varied during the procedure between 80% and 100% and there was no question of malfunction of the equipment. He also notes that "as soon as her respiratory compromise and non-responsive state" were noted she was given reversal drugs of Romazicon, and Narcan. A code blue was called and the patient was intubated. Her vital signs improved after the resuscitation, but she remained unresponsive to verbal and painful stimuli.

11. The procedure started at 2:51 p.m. and probably terminated at 4:00 p.m. The patient received her last sedation dose at 3:49 p.m. (Fentanyl 12.5 mg). At 3:45 p.m. her respiratory rate dropped to 8 and continued to drop up to the time that the code blue was called. At 3:55 p.m. she was noted to be unresponsive, apneic, and not able to move all four extremities. The code blue was called between 4:02 p.m. and about 4:04 p.m., as best determined from the moderate sedation record. The code blue was initiated at 4:05 p.m. Narcan was administered at 4:06 p.m. and Romazicon was administered at 4:07 p.m., 4:10 p.m. and 4:22 p.m. in hopes of reversing the sedation effects. The March 4, 2011, procedure resulted in an anoxic episode that caused the patient permanent brain damage and left the patient in a persistent vegetative state.

12. The patient remained in the hospital until discharged on April 19, 2011. She was determined to have anoxic brain injury and to be in a persistent vegetative state.

ACCUSATION NO. (18-2013-230891)
13. This patient endured at least five minutes of sustained hypoxia that left her in a vegetative state due to anoxic brain damage. The records suggest that she was noted to be non-responsive, not breathing, and not moving extremities at 3:55 p.m. The code blue and reversal drugs were not started until at least seven minutes later.

14. Additionally when the respiratory rate was noted to be decreasing and when it dropped to 8 per minute at 3:45 p.m. the respiratory problem should have been noted and additional Fentanyl should not have been given at 3:49 p.m. Her restlessness was likely due to hypoxia. Respondent failed to recognize and act promptly in the face of the significant drop in patient’s respiratory rate. This procedure requires continued observation of the video monitor by the endoscopist.

15. Respondent’s conduct, as described above, constitutes unprofessional conduct and represents extreme departures from the standard of care in the treatment of Patient S.W. as follows:

A. Respondent failed to properly monitor the patient’s status, to recognize the presence of prolonged hypoxia, and to take the proper measures to immediately correct the hypoxia.

B. Respondent inappropriately provided the patient Fentanyl in the face of the significant drop in the patient’s respiratory rate.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

16. Respondent is subject to disciplinary action under Code section 2234, subdivision (c), in that he was repeatedly negligent in the care and treatment of a patient. The facts and circumstances alleged above in the First Cause for Discipline are incorporated here as if fully set forth.

17. On or about March 4, 2011, Respondent performed an incomplete assessment of patient S.W. prior to the ERCP with respect to the choice of anesthetic administration. Respondent failed to properly evaluate the nature of the procedure and the risk
factors related to the patient’s overall status, including her morbid obesity, hypertension, history
of treatment with psychiatric drugs and unclear status regarding sleep apnea.

18. Respondent’s conduct, as described above, constitutes repeated acts of
negligence and simple departures from the standard of care in the treatment of Patient S.W. as
follows:

A. Respondent failed to properly monitor the patient’s status, to recognize
the presence of prolonged hypoxia, and to take the proper measures to immediately correct the
hypoxia.

B. Respondent inappropriately provided the patient Fentanyl in the face of
the significant drop in the patient’s respiratory rate.

C. Respondent failed to completely document the evaluation for anesthesia
choice prior to the endoscopic procedure.

D. Respondent failed to perform a complete assessment of the patient prior
to the endoscopic procedure with respect to the choice of anesthetic administration.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

19. Respondent is subject to disciplinary action under Code section 2266 in
that he failed to maintain adequate and accurate records relating to the provision of medical
services to Patient S.W. The fact and circumstances alleged above in paragraphs 8 through 18,
are incorporated here as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent is subject to disciplinary action under Code section 2234 in
that he engaged in unprofessional conduct in care and treatment of Patients S.W. The facts and
circumstances alleged above in paragraphs 8 through 19 are incorporated here as if fully set forth.

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PRAYER

WHEREFORE, Complainant request 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 34147, issued to UMESH C. SHAH, M.D.;

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

3. Ordering him to pay the Medical Board of California, if placed on probation, the cost of probation monitoring; and

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

DATED: March 2, 2016

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

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ACCUSATION NO. (18-2013-230891)