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

In the Matter of the Accusation  
Against:  

Theodore Affue, M.D.  

Physician's and Surgeon's  
Certificate No. G 85320  

Respondent  

File No. 800-2013-002203

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 April 28, 2017.

IT IS SO ORDERED March 30, 2017.

MEDICAL BOARD OF CALIFORNIA

By:  
Jamie Wright, J.D., Chair
Panel A
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THEODORE AFFUE, M.D.
2926 Lenrey Court
El Centro, CA 92243

Physician’s and Surgeon’s Certificate No.
G85320

Respondent.

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 Xavier Becerra, Attorney General of the State of California, by Martin W. Hagan, Deputy Attorney General.

2. Respondent Theodore Affue, M.D. (Respondent) is represented in this proceeding by William A. Miller, Esq., of Higgs Fletcher & Mack LLP, whose address is 401 West “A” Street, Suite 2600, San Diego, CA 92101-7913.
3. On or about July 1, 1999, the Board issued Physician’s and Surgeon’s Certificate No. G85320 to Respondent. The Physicians and Surgeon’s Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2013-002203, and will expire on September 30, 2018, unless renewed.

JURISDICTION

4. On March 1, 2016, Accusation No. 800-2013-002203 was filed before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 800-2013-002203 and all other statutorily required documents were properly served on Respondent on March 1, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2013-002203 is attached as Exhibit A and incorporated by reference as if fully set forth herein.

ADVIEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2013-002203. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. 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 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.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations contained in Accusation No. 800-2013-002203, and that he has thereby subjected his Physician’s and Surgeon’s Certificate No.
G85320 to disciplinary action. Respondent further agrees to be bound by the Board’s imposition
of discipline as set forth in the Disciplinary Order below.

9. Respondent agrees that if an accusation and/or petition to revoke probation is filed
against him before the Medical Board of California, or if he ever petitions for early termination or
modification of probation, in any proceeding before the Medical Board of California, all of the
charges and allegations contained in Accusation No. 800-2013-002203 shall be deemed true,
correct and fully admitted by respondent for purposes of any such proceeding or any other
licensing proceeding involving Respondent in the State of California.

CONTINGENCY

10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be
submitted to the Board for its consideration in the above-entitled matter and, further, that the
Board shall have a reasonable period of time in which to consider and act on this Stipulated
Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully
understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation
prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
and void and not binding upon the parties unless approved and adopted by the Board, except for
this paragraph, which shall remain in full force and effect. Respondent fully understands and
agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
Disciplinary Order, the Board may receive oral and written communications from its staff and/or
the Attorney General’s office. Communications pursuant to this paragraph shall not disqualify
the Board, any member thereof, and/or any other person from future participation in this or any
other matter affecting or involving respondent. In the event that the Board, in its discretion, does
not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of
this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and
shall not be relied upon or introduced in any disciplinary action by either party hereto.
Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary
Order for any reason, respondent will assert no claim that the Board, or any member thereof, was
prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
Disciplinary Order or of any matter or matters related hereto.

**ADDITIONAL PROVISIONS**

12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
be an integrated writing representing the complete, final and exclusive embodiment of the
agreements of the parties in the above-entitled matter.

13. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
including copies of the signatures of the parties, may be used in lieu of original documents and
signatures and, further, that such copies and signatures shall have the same force and effect as
originals.

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

**DISCIPLINARY ORDER**

A. **PUBLIC REPRIMAND**

   IT IS HEREBY ORDERED that Respondent Theodore Affue, M.D., Physician’s and
Surgeon’s Certificate No. G85320, shall be and is hereby Publicly Reprimanded pursuant to
California Business and Professions Code section 2227, subdivision (a)(4). This Public
Reprimand, which is issued in connection with Respondent’s care and treatment of patients C.N.
and E.S., as set forth in Accusation No. 800-2013-002203, is as follows:

   You are hereby publicly reprimanded in regard to the care and treatment
   you provided to patients C.N. and E.S., as more fully set forth in Accusation No.
   800-2013-002203, a true and correct copy of which is attached hereto as Exhibit A
   and incorporated by reference as if fully set forth herein.

B. **EDUCATION PROGRAM**

   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 40 hours. The educational program or course(s) shall be aimed at correcting any
areas of deficient practice or knowledge 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 65
hours of CME of which 40 hours were in satisfaction of this condition. Failure to participate in
and successfully complete the education program requirements as outlined above shall constitute
unprofessional conduct and be grounds for further disciplinary action.

C. **CLINICAL TRAINING PROGRAM**

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a
clinical training or educational program equivalent to the Physician Assessment and Clinical
Education Program (PACE) offered at the University of California - San Diego School of
Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6)
months after Respondent's initial enrollment unless the Board or its designee agrees in writing to
an extension of that time.

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

Respondent shall pay all expenses associated with the clinical training program.

Based on Respondent's performance and test results in the assessment and clinical
education, the Program will advise the Board or its designee of its recommendation(s) for the
scope and length of any additional educational or clinical training, treatment for any medical
condition, treatment for any psychological condition, or anything else affecting Respondent's
practice of medicine. Respondent shall comply with Program recommendations.
At the completion of any additional educational or clinical training, Respondent shall submit to and pass an examination. Determination as to whether Respondent successfully completed the examination or successfully completed the program is solely within the program’s jurisdiction.

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

Failure to participate in and successfully complete all phases of the clinical training program as outlined above shall constitute unprofessional conduct and be grounds for further disciplinary action.

ACCEPTANCE

I have carefully read the above 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. G85320. 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 publicly reprimanded by the Board and shall be required to comply with all of 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 will subject my Physician’s and Surgeon’s Certificate No. G85320 to further
disciplinary action.

DATED: 2/8/17

THEODORE AFFUE, M.D.
Respondent

I have read and fully discussed with Respondent Theodore Affue, 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: 2/9/17

WILLIAM A. MILLER, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: 2/9/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California

MATTHEW M. DAVIS
Supervising Deputy Attorney General

MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant
Exhibit A

Accusation No. 800-2013-002203
BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Case No. 800-2013-002203
THEODORE AFFUE, M.D.
2926 Lenrey Court
El Centro, CA 92243

Physician’s and Surgeon’s Certificate
No. G85320,

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 (Board).

2. On or about July 1, 1999, the Board issued Physician’s and Surgeon’s Certificate No.
G85320 to Theodore Affue, M.D. (respondent). The Physician’s and Surgeon’s Certificate was in
full force and effect at all times relevant to the charges brought herein and will expire on
September 30, 2016, unless renewed.
3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states, in pertinent part:

“(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 division, 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.

“…”

5. 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:

“…”

“(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.

"...

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

6. Respondent has subjected his Physician’s and Surgeon’s Certificate No. G85320 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that respondent committed gross negligence in his care and treatment of patient C.N., as more particularly alleged hereinafter:

PATIENT C.N.

(a) Sometime around 2000, patient C.N., a then seventy-seven (77) year old male, presented to respondent, a board certified urologist, for treatment for hematuria and benign prostatic hyperplasia.\(^1\) Between in or around 2000 and in or around 2008, patient C.N. continued to receive treatment from respondent for various medical problems, which included but was not limited to, a right radical nephrectomy\(^2\) for cancer in 2001, a history of

\(^{1}\) Benign prostatic hyperplasia is an enlarged prostate gland.

\(^{2}\) Nephrectomy is a surgical procedure to remove all or part of a kidney.
bladder cancer recurrence requiring transurethral resection and instillation of BCG (immune therapy) into the bladder, approximately twenty-five (25) cystoscopies, and high grade prostate cancer treated with radiation and androgen deprivation in 2008.

(b) On or about December 18, 2009, then eighty-six (86) year old patient C.N. presented to respondent with complaints of gross hematuria,\(^3\) with clots for one week. At that time, respondent ordered a CT scan of patient C.N.'s abdomen and pelvis.

(c) On or about December 22, 2009, respondent underwent a CT scan, which revealed a 5.7 cm mass in the upper pole cortex consistent with renal cell carcinoma.

(d) On or about December 29, 2009, respondent saw patient C.N. for a follow-up visit. Having reviewed the CT scan results, respondent considered various options for treatment, including watchful waiting versus nephrectomy versus nephrectomy/cystectomy. Respondent did not consider a partial nephrectomy.

(e) On or about January 6, 2010, respondent performed an uneventful total left nephrectomy, total cystoprostatectomy,\(^4\) and urinary diversion. The pathology report showed a 6 cm clear cell cancer of the left kidney, nuclear grade 4/4, and the renal vein and renal sinus were not involved. The bladder showed papillary transitional cell high grade multifocal carcinoma in situ.\(^5\) No tumor invasion was present into the bladder wall.

(f) On or about January 9, 2010, patient C.N. had developed some hypertension and was noted to have some greenish discharge from his surgical wound. Patient C.N. was returned to surgery for an emergent laparotomy,\(^6\) performed by respondent and co-surgeon, Dr. E.G. During the laparotomy, it was discovered that patient C.N. had small bowel

\(^3\) Gross hematuria is blood in the urine.

\(^4\) Cystoprostatectomy is a surgical procedure involving the removal of the urinary bladder and prostate.

\(^5\) An in situ tumor is one that is confined to its site of origin and has not invaded neighboring tissue or gone elsewhere in the body.

\(^6\) Laparotomy is a surgical procedure involving a large incision through the abdominal wall to gain access into the abdominal cavity.
perforations secondary to extensive bowel ischemia. During the surgery, a bowel resection, end jejunostomy, and double barrel colostomy was performed. At the conclusion of the procedure, patient C.N had a cardiac arrest and died.

(g) Respondent committed gross negligence in his care and treatment of patient C.N. which included, but was not limited to, performing a radical total nephrectomy in a very elderly man with comorbidities when less aggressive options were available.

SECOND CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

7. Respondent has further subjected his Physician’s and Surgeon’s Certificate No. G85320 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of patients C.N. and E.S., as more particularly alleged hereinafter:

(a) Paragraph 6, above, is incorporated by reference and realleged as if fully set forth herein.

PATIENT E.S.

(b) On or about December 8, 2011, Dr. J.M. performed a left inguinal hernia repair on patient E.S., a then seventy-eight (78) year old male. In the weeks following the surgery, patient E.S. experienced swelling of his left testicle.

(c) On or about January 5, 2012, patient E.S. presented to Dr. J.M. for follow-up. Patient E.S. complained of no pain, and although the swelling had decreased, his left testicle remained swollen. Dr. J.M. then referred patient E.S. for an ultrasound of the scrotum.

(d) On or about January 10, 2012, an ultrasound of patient E.S.’s scrotum revealed a solid mass in the left testicle approximately 2.6 x 2 cm.

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7 Bowel ischemia is an inadequate blood supply to the bowel.

8 End jejunostomy involves the removal of the colon, ileum and some of the jejunum.
(e) On or about January 18, 2012, patient E.S.'s left testicle remained swollen, and Dr. J.M. referred patient E.S. to respondent.

(f) On or about January 18, 2012, patient E.S., presented to respondent for treatment for the left testicular mass. Following a physical examination, review of the ultrasound and subsequent lab work, respondent diagnosed patient E.S. with a neoplasm of uncertain behavior of the testis, and recommended an immediate left radical orchiectomy. Respondent did not consider further diagnostic study and did not order or review the records from Dr. J.M. prior to scheduling the surgery.

(g) On or about January 20, 2012, respondent performed a left radical orchiectomy and another repair of the hernia on patient E.S. The pathology report revealed testicle orchiectomy with partial infarction, vascular congestion, thrombosis, fibrosis, and hemosiderin deposition. No cancer was found.

(h) Respondent committed repeated negligent acts in his care and treatment of patients C.N. and E.S., which included, but was not limited to:

(1) Performing a radical total nephrectomy on patient C.N., a very elderly man with comorbidities, when less aggressive options were available; and

(2) Failing to adequately consider the differential diagnoses for patient E.S.'s left testis mass, before operating so quickly on a postoperative complication of the patient's hernia repair.

**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 No. G85320, issued to respondent Theodore Affue, M.D.;

2. Revoking, suspending or denying approval of respondent Theodore Affue, M.D.’s authority to supervise physician assistants, pursuant to section 3527 of the Code;

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9 Radical orchiectomy involves the surgical removal of the testicle and spermatic cord to identify and treat cancers localized in the testes.
3. Ordering respondent Theodore Affue, 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: March 1, 2016

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

SD2015802906