

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

In the Matter of the Accusation)	
Against:)	
)	
)	
Randolph Harvey Noble, M.D.)	File No. 09-2012-220578
)	
Physician's and Surgeon's)	
Certificate No. A 26017)	
)	
Respondent)	
_____)	


DECISION

The attached Stipulated Settlement and Disciplinary Order for Public Reprimand 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 1, 2015.

IT IS SO ORDERED March 2, 2015.

MEDICAL BOARD OF CALIFORNIA

By: 
**Dev Gnanadev, M.D., Chair
Panel B**

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

10
11 In the Matter of the Amended Accusation
Against:

12 **RANDOLPH HARVEY NOBLE, M.D.**
13 **Physician's and Surgeon's Certificate**
14 **Number A 26017,**

Respondent.

Case Number 09-2012-220578
OAH Number 2014040012

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPRIMAND**

(Bus. & Prof. Code, § 2233)

15
16
17
18 IT IS STIPULATED AND AGREED by and between the parties to the above-entitled
19 proceedings that the following matters are true:

20 **PARTIES**

21 1. Complainant Kimberly Kirchmeyer is the Executive Director of the Medical Board
22 of California (Board), Department of Consumer Affairs. She brought this action solely in her
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, and by Gregory Tuss, Deputy Attorney General.

25 2. Respondent Randolph Harvey Noble, M.D., is represented in this proceeding by
26 attorneys Carlo Coppo and David Balfour, whose address is 2780 Gateway Road, Carlsbad,
27 California 92009.

28 ///

1 CULPABILITY

2 8. Respondent agrees that, at an administrative hearing, complainant could establish a
3 prima facie case that the allegations in Amended Accusation Number 09-2012-220578 constitute
4 a violation of Business and Professions Code section 2234, subdivision (e), and that he therefore
5 has subjected his Physician's and Surgeon's Certificate Number A 26017 to discipline.
6 Respondent further agrees to be bound by the Disciplinary Order below.

7 9. Respondent agrees that if, at any future date, an accusation is filed against him
8 before the Board or any other licensing agency in California, all of the charges and allegations
9 contained in Amended Accusation Number 09-2012-220578 shall be deemed true, correct, and
10 fully admitted by respondent for purposes of any such proceeding before the Board or any other
11 licensing agency in California.

12 CONTINGENCY

13 10. The parties agree that this Stipulated Settlement and Disciplinary Order for Public
14 Reprimand shall be submitted to the Board for its consideration in this matter and that the Board
15 shall have a reasonable period of time in which to consider and act on this Stipulated Settlement
16 and Disciplinary Order for Public Reprimand after receiving it.

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

1 Board reject this Stipulated Settlement and Disciplinary Order for Public Reprimand for any
2 reason, respondent will assert no claim that the Board, or any member thereof, was prejudiced by
3 its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary
4 Order for Public Reprimand or of any matter or matters related.

5 **ADDITIONAL PROVISIONS**

6 12. This Stipulated Settlement and Disciplinary Order for Public Reprimand is
7 intended by the parties to be an integrated writing representing the complete, final, and exclusive
8 embodiment of the agreements of the parties in this matter.

9 13. The parties understand and agree that Portable Document Format (PDF) and
10 facsimile copies of this Stipulated Settlement and Disciplinary Order for Public Reprimand,
11 including PDF and facsimile signatures, shall have the same force and effect as the originals.

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

15 **DISCIPLINARY ORDER**

16 IT IS ORDERED that respondent Randolph Harvey Noble, M.D., Physician's and
17 Surgeon's Certificate Number A 26017, shall be and is publicly reprimanded under Business and
18 Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in
19 connection with respondent's conduct as set forth in Amended Accusation Number 09-2012-
20 220578 as follows:

21 On November 19, 2011, respondent testified at a hearing as a medical expert witness
22 without disclosing on direct examination, even though he had not been asked, that he previously
23 had filed harassment allegations and a whistleblower action against a person aligned with the
24 opposing party on the case. On cross-examination, he admitted to previously filing the
25 harassment allegations and whistleblower action.

26 Respondent further testified at the hearing that he did in fact allow his previous experience
27 with that person to influence his medical expert testimony. He also testified that he believed,
28 notwithstanding that influence, that he could provide a neutral and professional expert opinion in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

regard to that case.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reprimand and have fully discussed it with my attorneys, Carlo Coppo and David Balfour. 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 for Public Reprimand voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 2/13/15 *Randolph Harvey Noble*
RANDOLPH HARVEY NOBLE, M.D.
Respondent

I have read and fully discussed with respondent Randolph Harvey Noble, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reprimand. I approve its form and content.

DATED: 2/13/2015 *David M Balfour*
CARLO COPPO
DAVID BALFOUR
Attorneys for Respondent

///

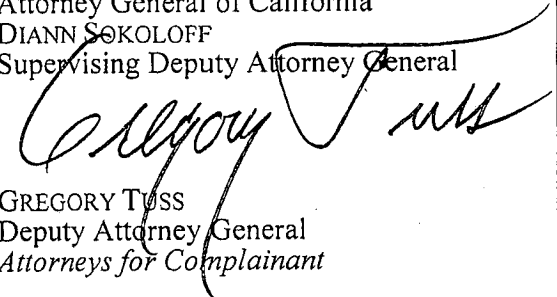
1 **ENDORSEMENT**

2 This Stipulated Settlement and Disciplinary Order for Public Reprimand is respectfully
3 submitted for consideration by the Medical Board of California of the Department of Consumer
4 Affairs.

5 Dated: 2-19-15

6 Respectfully submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 DIANN SOKOLOFF
10 Supervising Deputy Attorney General

11 
12 GREGORY TUSS
13 Deputy Attorney General
14 *Attorneys for Complainant*

15 SF2013610010
16 90476253.docx

Exhibit 1

Amended Accusation Number 09-2012-220578

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 2020 15
BY D. Richards ANALYST

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

2015 JAN 28 PM 4:40 DEL

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

11 In the Matter of the First Amended Accusation
Against:

Case Number 09-2012-220578

12 **RANDOLPH HARVEY NOBLE, M.D.**

**FIRST AMENDED
ACCUSATION**

13 16060 Ventura Boulevard, #190
14 Encino, California 91436

15 Physician's and Surgeon's Certificate Number
A 26017,

16 Respondent.

17
18 Complainant Kimberly Kirchmeyer alleges:

19 **PARTIES**

20 1. Complainant brings this first amended accusation solely in her official capacity as
21 the Executive Director of the Medical Board of California (Board), Department of Consumer
22 Affairs.

23 2. On or about June 28, 1974, the Board issued Physician's and Surgeon's Certificate
24 Number A 26017 to respondent Randolph Harvey Noble, M.D. This physician's and surgeon's
25 certificate was in full force and effect at all times relevant to the charges brought in this first
26 amended accusation and will expire on June 30, 2015, unless renewed.

27 **JURISDICTION**

28 3. This first amended accusation is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code unless
2 otherwise indicated.

3 4. Section 2220 states in part:

4 "Except as otherwise provided by law, the board may take action against all persons guilty
5 of violating this chapter."

6 5. Section 2227, subdivision (a), states in part:

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

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

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

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

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

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

20 6. Section 3527 states in part:

21 "(c) The Medical Board of California may order the denial of an application for, or the
22 issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition
23 of probationary conditions upon, an approval to supervise a physician assistant, after a hearing as
24 required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a
25 violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations
26 adopted by the board or the Medical Board of California.

27 "(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Medical
28 Board of California, in conjunction with an action it has commenced against a physician and

1 surgeon, may, in its own discretion and without the concurrence of the Medical Board of
2 California, order the suspension or revocation of, or the imposition of probationary conditions
3 upon, an approval to supervise a physician assistant, after a hearing as required in Section 3528,
4 for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a
5 violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the
6 Medical Board of California.”

7 **STATUTORY AND ADVISORY PROVISIONS**

8 7. Section 2234 states in part:

9 “The board shall take action against any licensee who is charged with unprofessional
10 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
11 limited to, the following:

12 . . .

13 “(e) The commission of any act involving dishonesty or corruption that is substantially
14 related to the qualifications, functions, or duties of a physician and surgeon.”

15 8. American Medical Association Code of Medical Ethics, Opinion 9.07, states in
16 part:

17 “In various legal and administrative proceedings, medical evidence is critical. As citizens
18 and as professionals with specialized knowledge and experience, physicians have an obligation to
19 assist in the administration of justice.

20 . . .

21 “Physicians who serve as fact witnesses must deliver honest testimony. This requires that
22 they engage in continuous self-examination to ensure that their testimony represents the facts of
23 the case. . . .

24 “When physicians choose to provide expert testimony, they should have recent and
25 substantive experience or knowledge in the area in which they testify, and be committed to
26 evaluating cases objectively and to providing an independent opinion. . . .

27 “All physicians must accurately represent their qualifications and must testify honestly. . . .

28 “Organized medicine, including state and specialty societies, and medical licensing boards

1 can help maintain high standards for medical witnesses by assessing claims of false or misleading
2 testimony and issuing disciplinary sanctions as appropriate.”

3 **FACTUAL BACKGROUND**

4 9. Respondent was employed by the Board as a District Medical Consultant from
5 1995 to 2003. He also served as a Central Complaint Consultant for the Board in 2004.

6 10. As a District Medical Consultant for the Board, respondent’s duties included
7 writing reports used by the Board to determine whether a subject physician was practicing below
8 the standard of care and was a danger to the public. These reports also detailed any unresolved
9 issues to be evaluated by outside medical experts.

10 11. The reports drafted by District Medical Consultants are intended to be written so
11 as not to influence or bias the outside medical expert. They are not to include any inflammatory
12 comments, any comments concerning the credibility of witnesses, or any conclusory comments.
13 The supervising investigator is responsible for ensuring that any offending language is removed
14 from the report before the report is forwarded to the outside medical expert. Normally, the
15 District Office Supervisor would first confer with the District Medical Consultant before editing a
16 report, but any necessary editing is routinely done without such consultation if the District
17 Medical Consultant is unavailable. The ultimate decision of case direction rests with the District
18 Office Supervisor.

19 12. In 2002, Laura Sweet became the District Officer Supervisor responsible for
20 supervising respondent. After being assigned, Ms. Sweet periodically edited respondent’s reports
21 to remove biasing or conclusory comments before the report was referred to an outside medical
22 expert. Respondent claimed that Ms. Sweet changed his reports without his knowledge or
23 consent, and that there was no written policy which permitted such changes.

24 13. In December 2002, Dr. Noble was informed that he was being removed from the
25 Glendale office. Dr. Noble was given the option of remaining employed with the Board in a
26 reduced capacity in the Quality of Care Section of the Central Complaint unit. Dr. Noble
27 transferred to the Central Complaint unit in 2004.

28 14. In March 2003, Dr. Noble filed a whistleblower retaliation complaint with the

1 State Personnel Board (SPB) pursuant to Government Code section 19683 and the California
2 Whistleblower Protection Act, Government Code section 8547 et seq., alleging that the Board,
3 Ms. Sweet, and others subjected him to harassing and retaliatory actions, including termination
4 from the Glendale office, after he complained about alterations to his reports that were being
5 made without his knowledge or consent.

6 15. On March 3, 2004, the SPB issued a Notice of Findings concluding that
7 respondent failed to state a prima facie case of whistleblower retaliation. The SPB also denied
8 respondent's petition for rehearing of his complaint.

9 16. In 2009, respondent was retained as a medical expert witness by another Board
10 investigator in his medical retirement case before the Board of Administration of the California
11 Public Employees' Retirement System. Ms. Sweet and another Board supervisor had determined
12 that the investigator was not fit for duty because of his erratic workplace behavior. Five other
13 experts evaluated the investigator and had determined that he was not fit for duty unless he
14 received further psychological counseling. Respondent evaluated the investigator and prepared a
15 34-page report. His report did not mention his prior negative history with the Board, including
16 the whistleblower complaint or his harassment allegations against Ms. Sweet, other Board
17 employees, or the Board itself.

18 17. On November 17, 2011, respondent testified on the investigator's behalf at the
19 administrative hearing. Respondent said that the investigator told him he had been harassed and
20 bullied, and had experienced significant work stress. Respondent opined that respondent's
21 symptoms would resolve if he was removed from the stressful situation of being under two
22 supervisors that had a history of intimidating and bullying him. Respondent testified that he
23 believed that the investigator had been harassed by his supervisors. He believed that the
24 investigator had no emotional or psychiatric conditions that were significant and that he had no
25 cognitive function that would interfere with his job, especially if he was removed from his current
26 line of supervision.

27 18. Respondent did not testify during direct examination that he had previously been
28 supervised by Ms. Sweet, had accused her and other Board employees of harassment, or that he

1 had filed a whistleblower complaint against her, other Board employees, and the Board itself.

2 19. On cross examination, respondent admitted that before preparing the report or
3 testifying at the hearing he had not disclosed to the investigator's attorney that he had filed the
4 whistleblower complaint. He testified that he still believed that Ms. Sweet was the type of person
5 who would engage in unlawful retaliation, and that his personal opinions about her and other
6 Board employees had some influence in his evaluation of, and testimony for, the investigator.
7 Notwithstanding his negative experiences and negative feelings, he initially testified he believed
8 that he was able to evaluate the investigator's problems from a neutral standpoint without bias.
9 He later testified, however, that his previous history with the Board had in fact influenced him.
10 He said that he disclosed his negative feelings and his whistleblower complaint to the
11 investigator, but admitted the he did not disclose them to the investigator's attorney or to anyone
12 involved in the investigator's fitness for duty hearing. He also admitted that it would have been
13 more professional to include his past history with the Board in his report.

14 20. Respondent ultimately did not conclude his testimony at the hearing. Instead, the
15 investigator's attorney withdrew respondent's testimony.

16 **CAUSES FOR DISCIPLINE**

17 **FIRST CAUSE FOR DISCIPLINE**
18 **Unprofessional Conduct**
Business & Professions Code section 2234

19 21. The allegations of paragraphs 9-20 are realleged and incorporated by reference as
20 if fully set forth.

21 22. Respondent has subjected his physician's and surgeon's certificate to discipline for
22 unprofessional conduct (Bus. & Prof. Code, § 2234). Respondent testified as a medical expert
23 witness in a civil case against the Board without disclosing in his expert report that he had a prior
24 negative history with the Board, including filing harassment allegations and a whistleblower
25 action against Board personnel. Before testifying, he did not inform the attorney in the civil case
26 that he had filed a whistleblower action against Board personnel. Moreover, he stated at the
27 hearing that he allowed his previous experience with that person to influence his medical expert
28 testimony.

SECOND CAUSE FOR DISCIPLINE
Unprofessional Conduct – Dishonesty
Business and Professions Code section 2234, subdivision (e)

23. The allegations of paragraphs 9-20 are realleged and incorporated by reference as if fully set forth.

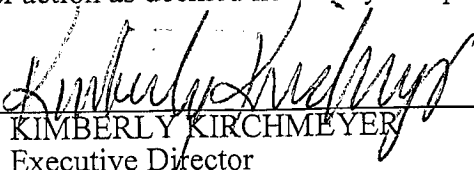
24. Respondent has subjected his physician's and surgeon's certificate to discipline for the unprofessional conduct of dishonest conduct as a medical expert witness (Bus. & Prof. Code, § 2234, subd. (e)). Respondent testified as a medical expert witness in a civil case against the Board without disclosing in his expert report that he had a prior negative history with the Board, including filing harassment allegations and a whistleblower action against Board personnel. Before testifying, he did not inform the attorney in the civil case that he had filed a whistleblower action against Board personnel. Moreover, he stated at the hearing that he allowed his previous experience with that person to influence his medical expert testimony.

PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this first amended accusation, and that following the hearing, the Medical Board of California issues a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 26017 issued to respondent Randolph Harvey Noble, M.D.;
2. Revoking, suspending, or denying approval of the authority of respondent Randolph Harvey Noble, M.D., to supervise physician assistants pursuant to section 3527;
3. If placed on probation, ordering respondent Randolph Harvey Noble, M.D., to pay the costs of probation monitoring under Business and Professions Code section 2227; and
4. Taking such other and further action as deemed necessary and proper.

DATED: January 20, 2015


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

SF2013610010
90470061.doc

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28