

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

In the Matter of the Accusation)
Against:)
)
)
KERMIT DALE JOHNSON, M.D.)
)
Physician's and Surgeon's)
Certificate No. G45056)
)
Respondent)
_____)

Case No. 800-2015-016497

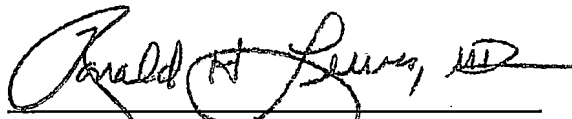
DECISION

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 May 31, 2019.

IT IS SO ORDERED: May 3, 2019.

MEDICAL BOARD OF CALIFORNIA



**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
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5 San Francisco, CA 94102-7004
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Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 800-2015-016497

13 **KERMIT DALE JOHNSON, M.D.**

OAH No. 2018080834

14 43575 Mission Blvd
15 Suite 417
16 Fremont, CA 94539

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 Physician's and Surgeon's Certificate No. G
18 45056

Respondent.

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Alice W. Wong,
26 Deputy Attorney General.
27
28

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 800-2015-016497.

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

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Medical Board of California.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

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

21 13. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 DISCIPLINARY ORDER

25 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 45056 issued
26 to Respondent Kermit Dale Johnson, M.D. is revoked. However, the revocation is stayed and
27 Respondent is placed on probation for five (5) years on the following terms and conditions.

28 1. EDUCATION COURSE. Within 60 calendar days of the effective date of this

1 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
2 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
3 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
4 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
5 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to
6 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
7 completion of each course, the Board or its designee may administer an examination to test
8 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65
9 hours of CME of which 40 hours were in satisfaction of this condition.

10 2. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
11 the effective date of this Decision, Respondent shall enroll in a professionalism program, that
12 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.
13 Respondent shall participate in and successfully complete that program. Respondent shall
14 provide any information and documents that the program may deem pertinent. Respondent shall
15 successfully complete the classroom component of the program not later than six (6) months after
16 Respondent's initial enrollment, and the longitudinal component of the program not later than the
17 time specified by the program, but no later than one (1) year after attending the classroom
18 component. The professionalism program shall be at Respondent's expense and shall be in
19 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

20 A professionalism program taken after the acts that gave rise to the charges in the
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
22 or its designee, be accepted towards the fulfillment of this condition if the program would have
23 been approved by the Board or its designee had the program been taken after the effective date of
24 this Decision.

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

28 3. PROFESSIONAL BOUNDARIES PROGRAM. Within 60 calendar days from the

1 effective date of this Decision, Respondent shall enroll in a professional boundaries program
2 approved in advance by the Board or its designee. Respondent, at the program's discretion, shall
3 undergo and complete the program's assessment of Respondent's competency, mental health
4 and/or neuropsychological performance, and at minimum, a 24 hour program of interactive
5 education and training in the area of boundaries, which takes into account data obtained from the
6 assessment and from the Decision(s), Accusation(s) and any other information that the Board or
7 its designee deems relevant. The program shall evaluate Respondent at the end of the training
8 and the program shall provide any data from the assessment and training as well as the results of
9 the evaluation to the Board or its designee.

10 Failure to complete the entire program not later than six (6) months after Respondent's
11 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
12 in writing to a later time for completion. Based on Respondent's performance in and evaluations
13 from the assessment, education, and training, the program shall advise the Board or its designee
14 of its recommendation(s) for additional education, training, psychotherapy and other measures
15 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
16 program recommendations. At the completion of the program, Respondent shall submit to a final
17 evaluation. The program shall provide the results of the evaluation to the Board or its designee.
18 The professional boundaries program shall be at Respondent's expense and shall be in addition to
19 the Continuing Medical Education (CME) requirements for renewal of licensure.

20 The program has the authority to determine whether or not Respondent successfully
21 completed the program.

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

27 4. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of
28 this Decision, and on whatever periodic basis thereafter may be required by the Board or its

1 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
2 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall
3 consider any information provided by the Board or designee and any other information the
4 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its
5 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not
6 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all
7 psychiatric evaluations and psychological testing.

8 Respondent shall comply with all restrictions or conditions recommended by the evaluating
9 psychiatrist within 15 calendar days after being notified by the Board or its designee.

10 5. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this Decision,
11 Respondent shall submit to the Board or its designee for prior approval the name and
12 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
13 has a doctoral degree in psychology and at least five years of postgraduate experience in the
14 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
15 undergo and continue psychotherapy treatment, including any modifications to the frequency of
16 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

17 The psychotherapist shall consider any information provided by the Board or its designee
18 and any other information the psychotherapist deems relevant and shall furnish a written
19 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
20 psychotherapist with any information and documents that the psychotherapist may deem
21 pertinent.

22 Respondent shall have the treating psychotherapist submit quarterly status reports to the
23 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric
24 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of
25 probation, Respondent is found to be mentally unfit to resume the practice of medicine without
26 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the
27 period of probation shall be extended until the Board determines that Respondent is mentally fit
28 to resume the practice of medicine without restrictions.

1 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

2 6. MONITORING - PRACTICE. A practice monitor will not be required if Respondent
3 maintains his current employment at Contra Costa Adult Mental Health. Within 30 calendar days
4 after Respondent is no longer employed at Contra Costa Adult Mental Health, Respondent shall
5 submit to the Board or its designee for prior approval as a practice monitor(s), the name and
6 qualifications of one or more licensed physicians and surgeons whose licenses are valid and in
7 good standing, and who are preferably American Board of Medical Specialties (ABMS) certified.
8 A monitor shall have no prior or current business or personal relationship with Respondent, or
9 other relationship that could reasonably be expected to compromise the ability of the monitor to
10 render fair and unbiased reports to the Board, including but not limited to any form of bartering,
11 shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor.
12 Respondent shall pay all monitoring costs.

13 The Board or its designee shall provide the approved monitor with copies of the Decision
14 and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the
15 Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement
16 that the monitor has read the Decision and Accusation, fully understands the role of a monitor,
17 and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the
18 proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed
19 statement for approval by the Board or its designee.

20 Within 60 calendar days after Respondent is no longer employed at Contra Costa Adult
21 Mental Health, and continuing throughout the remainder of Respondent's probation,
22 Respondent's practice shall be monitored by the approved monitor. Respondent shall make all
23 records available for immediate inspection and copying on the premises by the monitor at all
24 times during business hours and shall retain the records for the entire term of probation.

25 If Respondent fails to obtain approval of a monitor within 60 calendar days after
26 Respondent is no longer employed at Contra Costa Adult Mental Health, Respondent shall
27 receive a notification from the Board or its designee to cease the practice of medicine within three
28 (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a

1 monitor is approved to provide monitoring responsibility.

2 The monitor shall submit a quarterly written report to the Board or its designee which
3 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
4 are within the standards of practice of medicine, and whether Respondent is practicing medicine
5 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the
6 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
7 preceding quarter.

8 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
9 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
10 name and qualifications of a replacement monitor who will be assuming that responsibility within
11 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
12 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
13 notification from the Board or its designee to cease the practice of medicine within three (3)
14 calendar days after being so notified. Respondent shall cease the practice of medicine until a
15 replacement monitor is approved and assumes monitoring responsibility.

16 In lieu of a monitor, Respondent may participate in a professional enhancement program
17 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
18 review, semi-annual practice assessment, and semi-annual review of professional growth and
19 education. Respondent shall participate in the professional enhancement program at Respondent's
20 expense during the term of probation.

21 7. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the
22 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice
23 where: 1) Respondent merely shares office space with another physician but is not affiliated for
24 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that
25 location.

26 If Respondent fails to establish a practice with another physician or secure employment in
27 an appropriate practice setting within 60 calendar days of the effective date of this Decision,
28 Respondent shall receive a notification from the Board or its designee to cease the practice of

1 medicine within three (3) calendar days after being so notified. The Respondent shall not resume
2 practice until an appropriate practice setting is established.

3 If, during the course of the probation, the Respondent's practice setting changes and the
4 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent
5 shall notify the Board or its designee within five (5) calendar days of the practice setting change.
6 If Respondent fails to establish a practice with another physician or secure employment in an
7 appropriate practice setting within 60 calendar days of the practice setting change, Respondent
8 shall receive a notification from the Board or its designee to cease the practice of medicine within
9 three (3) calendar days after being so notified. The Respondent shall not resume practice until an
10 appropriate practice setting is established.

11 8. PROHIBITED PRACTICE. During probation, Respondent is prohibited from (1)
12 practicing or attempting to practice hypnotherapy or hypnosis in any capacity and (2) treating
13 patients with any history of sexual abuse. Respondent agrees to screen all prospective patients to
14 determine if the patient has any history of sexual abuse for purpose of determining if the patient
15 can be seen by Respondent. If the patient discloses any history of sexual abuse, Respondent must
16 refer the patient to another provider. Respondent agrees to keep a written log of all prospective
17 patient screening and to provide the Board with the written log upon request. The log shall
18 contain the: 1) patient's name, address and phone number and 2) patient's medical record
19 number, if available. Respondent shall keep this log in a separate file or ledger, in chronological
20 order, shall make the log available for immediate inspection and copying on the premises at all
21 times during business hours by the Board or its designee, and shall retain the log for the entire
22 term of probation.

23 9. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the
24 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
25 Chief Executive Officer at every hospital where privileges or membership are extended to
26 Respondent, at any other facility where Respondent engages in the practice of medicine,
27 including all physician and locum tenens registries or other similar agencies, and to the Chief
28

1 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
2 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15
3 calendar days.

4 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5 10. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
6 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
7 advanced practice nurses.

8 11. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
9 governing the practice of medicine in California and remain in full compliance with any court
10 ordered criminal probation, payments, and other orders.

11 12. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
12 under penalty of perjury on forms provided by the Board, stating whether there has been
13 compliance with all the conditions of probation.

14 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
15 of the preceding quarter.

16 13. GENERAL PROBATION REQUIREMENTS.

17 Compliance with Probation Unit

18 Respondent shall comply with the Board's probation unit.

19 Address Changes

20 Respondent shall, at all times, keep the Board informed of Respondent's business and
21 residence addresses, email address (if available), and telephone number. Changes of such
22 addresses shall be immediately communicated in writing to the Board or its designee. Under no
23 circumstances shall a post office box serve as an address of record, except as allowed by Business
24 and Professions Code section 2021(b).

25 Place of Practice

26 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
27 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
28 facility.

1 License Renewal

2 Respondent shall maintain a current and renewed California physician's and surgeon's
3 license.

4 Travel or Residence Outside California

5 Respondent shall immediately inform the Board or its designee, in writing, of travel to any
6 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty
7 (30) calendar days.

8 In the event Respondent should leave the State of California to reside or to practice,
9 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
10 departure and return.

11 14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
12 available in person upon request for interviews either at Respondent's place of business or at the
13 probation unit office, with or without prior notice throughout the term of probation.

14 15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or
15 its designee in writing within 15 calendar days of any periods of non-practice lasting more than
16 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is
17 defined as any period of time Respondent is not practicing medicine as defined in Business and
18 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct
19 patient care, clinical activity or teaching, or other activity as approved by the Board. If
20 Respondent resides in California and is considered to be in non-practice, Respondent shall
21 comply with all terms and conditions of probation. All time spent in an intensive training
22 program which has been approved by the Board or its designee shall not be considered non-
23 practice and does not relieve Respondent from complying with all the terms and conditions of
24 probation. Practicing medicine in another state of the United States or Federal jurisdiction while
25 on probation with the medical licensing authority of that state or jurisdiction shall not be
26 considered non-practice. A Board-ordered suspension of practice shall not be considered as a
27 period of non-practice.

28 In the event Respondent's period of non-practice while on probation exceeds 18 calendar

1 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
2 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
3 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
4 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

5 Respondent's period of non-practice while on probation shall not exceed two (2) years.

6 Periods of non-practice will not apply to the reduction of the probationary term.

7 Periods of non-practice for a Respondent residing outside of California will relieve
8 Respondent of the responsibility to comply with the probationary terms and conditions with the
9 exception of this condition and the following terms and conditions of probation: Obey All Laws;
10 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or
11 Controlled Substances; and Biological Fluid Testing.

12 16. COMPLETION OF PROBATION. Respondent shall comply with all financial
13 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the
14 completion of probation. Upon successful completion of probation, Respondent's certificate shall
15 be fully restored.

16 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition
17 of probation is a violation of probation. If Respondent violates probation in any respect, the
18 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and
19 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,
20 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have
21 continuing jurisdiction until the matter is final, and the period of probation shall be extended until
22 the matter is final.

23 18. LICENSE SURRENDER. Following the effective date of this Decision, if
24 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
25 the terms and conditions of probation, Respondent may request to surrender his or her license.
26 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
27 determining whether or not to grant the request, or to take any other action deemed appropriate
28 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent

1 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
2 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
3 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
4 application shall be treated as a petition for reinstatement of a revoked certificate.


5 19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated
6 with probation monitoring each and every year of probation, as designated by the Board, which
7 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of
8 California and delivered to the Board or its designee no later than January 31 of each calendar
9 year.

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, John L. Fleer. I understand the stipulation and the effect it will
13 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
14 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
15 Decision and Order of the Medical Board of California.

16
17 DATED: Nov 16, 2018 
18 KERMIT DALE JOHNSON, M.D.
Respondent

19 I have read and fully discussed with Respondent Kermit Dale Johnson, M.D. the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22 DATED: Nov 16, 2018 
23 JOHN L. FLEER
Attorney for Respondent

24
25 ///
26 ///
27 ///
28 ///

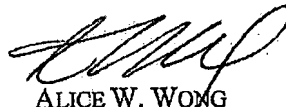
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ENDORSEMENT

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

Dated: 11/21/2018

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General


ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2018400584
FINAL Stipulated Settlement and Disciplinary Order (Johnson).docx

Exhibit A

Accusation No. 800-2015-016497

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 8 2018
BY [Signature] ANALYST

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:	Case No. 800-2015-016497
11 Kermit Dale Johnson, M.D.	OAH No. 2018031156
12 1420 Willow Pass Road, Ste. 200	
13 Concord, CA 94520	
14 Physician's and Surgeon's Certificate	A C C U S A T I O N
15 No. G 45056,	
16 Respondent.	

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 1, 1981, the Medical Board issued Physician's and Surgeon's
23 Certificate Number G 45056 to Kermit Dale Johnson, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate will expire on January 31, 2019, unless renewed. On March 29, 2018,
25 Stipulation and Partial Interim Suspension Order was entered by an Administrative Law Judge,
26 prohibiting Respondent from practicing or attempting to practice hypnotherapy or hypnosis and
27 treating patients with any history of sexual abuse.

1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2004 of the Code states:

5 "The board shall have the responsibility for the following:

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

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

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

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

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

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

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

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

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

20 5. Section 2227 of the Code provides that a licensee who is found guilty under the
21 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
22 one year, placed on probation and required to pay the costs of probation monitoring, or such other
23 action taken in relation to discipline as the Board deems proper:

24 6. Section 2234 of the Code, states:

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

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

3 “(b) Gross negligence.

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

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

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

14 “(d) Incompetence.

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

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

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

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

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

28

1 FACTS

2 8. At all times relevant to this matter, Respondent was a licensed psychiatrist employed
3 at the Schuman-Liles Clinic in Fremont, California.

4 9. Respondent treated Patient A,¹ a 28 year old female, between August 2014 and July
5 2015 for depression, anxiety, insomnia, and mood instability.

6 10. On August 26, 2014, Patient A was first seen by Respondent for various complaints,
7 including depression, anxiety, insomnia, and panic attacks. Patient A disclosed childhood sexual
8 abuse at this first visit. Patient A provided Respondent with the names of her current
9 psychotherapist and past mental health provider.

10 11. Respondent diagnosed Patient A with Panic Disorder and Unspecified Mood
11 Disorder. Respondent did not obtain any symptom history, information on the nature of
12 concurrent psychotherapy, or any prior or concurrent treatment records to support his diagnoses.

13 12. Respondent did not diagnose complex Post Traumatic Stress Disorder (PTSD).²

14 13. Patient A was seen next by Respondent on September 25, 2014. The medical notes
15 for this visit are nearly identical to the August 26, 2014 medical notes with the same "cut and
16 paste" grammar and spelling errors.

17 14. Respondent saw Patient A again on January 22, 2015, March 31, 2015 and finally on
18 July 14, 2015. The medical notes for these visits again contain the same identical medical notes
19 with the grammar and spelling errors contained in the first visit. Minimal new patient
20 information was added to subsequent visits.

21 15. Respondent's treatment plan consisted solely of psychotropic medications as the
22 intervention.

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26 ¹ The patient is designated in this document as Patient A to protect the patient's privacy.
27 Respondent knows the name of the patient and can confirm the patient's identity through
28 discovery.

² Even though Respondent did not diagnose Patient A with PTSD, Respondent later
treated Patient A with hypnotherapy for PTSD on July 14, 2015. (See paragraph 16.)

- 1 E. Respondent did not provide Patient A with any information regarding his training,
2 experience, or qualifications to perform hypnotherapy and/or sexualized
3 hypnotherapy.
4 F. Respondent violated sexual boundaries in the manner in which he conducted the
5 sexualized hypnotherapy.
6 G. Respondent failed to collaborate with Patient A's current psychotherapist before
7 engaging in sexualized hypnotherapy.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Inadequate Record Keeping)**

10 22. Respondent is guilty of unprofessional conduct and subject to disciplinary action
11 under section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct
12 described above including, but not limited to, the following:

- 13 A. Respondent's cut and paste medical notes from Patient A's first medical visit are used
14 in all subsequent visits with minimal new information.
15 B. Respondent did not document the July 14, 2015 hypnotherapy in Patient A's medical
16 records at Schuman-Liles Clinic.
17 C. Respondent kept "off the books" personal handwritten notes of the July 14, 2015
18 hypnotherapy which are illegible and incoherent.
19 C. There is no documentation of a PTSD diagnosis for which Respondent based his
20 rationale for treatment of Patient A with sexualized hypnotherapy.

21 **PRAYER**

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

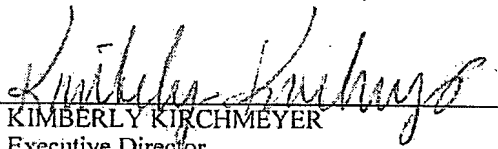
- 24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 45056,
25 issued to Kermit Dale Johnson, M.D.;
26 2. Revoking, suspending or denying approval of Kermit Dale Johnson, M.D.'s authority
27 to supervise physician assistants and advanced practice nurses;
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3. Ordering Kermit Dale Johnson, 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: May 8, 2018



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

SF2018400584