

1 KAMALA D. HARRIS
Attorney General of California
2 GAIL M. HEPELL
Supervising Deputy Attorney General
3 MIA PEREZ-CASTILLE
Deputy Attorney General
4 State Bar No. 203178
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0762
Facsimile: (916) 327-2247
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **EFRAIN DIEGO GONZALEZ, M.D.**
13 **3910 Mariella Ct.**
Rocklin, CA 95765
14 **Physician's and Surgeon's Certificate No.**
15 **C 52340**
16 Respondent.

Case No. 12-2010-206925

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

- 19 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Director of the Medical Board of California.
- 21 2. On or about May 24, 2006, the Medical Board of California issued Physician and
22 Surgeon Certificate Number C 52340 to Efrain Diego Gonzalez, M.D. (Respondent). The
23 Physician and Surgeon Certificate was in full force and effect at all times relevant to the charges
24 brought herein and will expire on March 31, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board¹ under the authority of the following laws. All section references are to the California Business and Professions Code (“B&P Code”) unless otherwise indicated.

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

5. Section 2234 of the Code states:

“The Division of Medical Quality 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 [Chapter 5, the Medical Practice Act].

“(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

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term “Board” as used in the State Medical Practice Act (Bus. & Prof. Code § 2000, et seq.) means the “Medical Board of California,” and references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 applicable standard of care, each departure constitutes a separate and distinct breach of the
2 standard of care.

3 "(d) Incompetence.

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

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

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

10 FIRST CAUSE FOR DISCIPLINE

11 (Gross Negligence)

12 [B&P Code § 2234(b)]

13 7. Respondent is subject to disciplinary action under section 2234, subdivision (b), of
14 the Code in that he was grossly negligent in the care and treatment of a patient.² The
15 circumstances are as follows:

16 8. On or about February 24, 2010, patient K.M. presented to Respondent for breast
17 rejuvenation at his clinic, Advanced Medical Spa, in Rocklin. Her significant past history dates
18 back to 2005 when she underwent a bilateral breast augmentation with saline breast implants, by
19 board-certified plastic surgeon, Terry Zimmerman, M.D. Patient K.M. complained that her skin
20 was rippling at the outside of her breasts, in addition to the size being too small. She requested
21 that Respondent replace the saline implants with larger, high-profile silicone implants.
22 Respondent offered patient K.M. a discount and said he would remove the saline implants
23 through her areola, through the scars from her first breast augmentation, and insert the new
24 silicone implants through the incisions. When Respondent's assistant questioned whether the
25 larger implants would fit through the incision, he explained that the alternative would be to insert

26 ²In this Accusation, the patient will be referred to by her initials. The full name of the patient
27 will be disclosed to Respondent when discovery is provided pursuant to Government Code
28 section 11507.6.

1 the implants through an incision in the crease of the underside of each breast. Respondent did not
2 request or review any medical records or information from Dr. Zimmerman regarding patient
3 K.M.'s 2005 breast augmentation.

4 9. On about March 23, 2010, Respondent performed the surgery which included
5 removal of the saline implants as well as what he described as a partial bilateral capsulectomy³
6 and placement of larger, mid-projection smooth silicone implants. Identifying information for
7 the implants used was not documented in the patient's chart.

8 10. On or about March 24, 2010, patient K.M. saw Respondent for a follow-up
9 appointment. Upon his removal of the medical tape from her breasts, patient K.M. immediately
10 voiced her concern to Respondent that her breasts appeared deformed. Respondent stated that the
11 appearance of the breasts would improve with healing and that in the meantime, she was to
12 continue wearing a support bra for the next several weeks to help in the "shaping" of the breasts.
13 No post-operative photographs were taken of patient K.M.'s breasts.

14 11. On or about March 29, 2010, patient K.M. met with Respondent for an appointment.
15 She expressed her concern that although she had requested high-profile, narrow implants,
16 Respondent had instead inserted mid-profile, round implants. Respondent blamed the mistake on
17 his assistant and said, "I just do what my assistant tells me." He explained that prior to the
18 surgery, his assistant told him that they did not have any high-profile implants and that he was
19 aware they were inserting the wrong size. Respondent further denied that there was any
20 deformity and ascribed the appearance entirely to the postoperative state of the breasts which
21 would simply require further healing and the "reshaping" bra. When patient K.M. explained that
22 Dr. Zimmerman corroborated her concerns, Respondent offered to refund his surgical fees in
23 exchange for patient K.M. signing a release guaranteeing that she would take no legal action
24 against him. Patient K.M. initially agreed but never signed the release. Instead, she underwent
25 corrective surgery by Dr. Zimmerman during which he conducted bilateral capsulorrhaphies⁴ and

26 ³ A capsulectomy is a procedure in which the entire "capsule" of scar tissue surrounding a breast
implant is surgically removed.

27 ⁴ A capsulorrhaphy is the suturing of the capsule.

1 silicone implant replacement with high-profile implants, as well as placement of a cellular dermal
2 matrix to reduce rippling and wrinkling.

3 12. The standard of care is to review the specifics of a prospective procedure with a
4 patient to include all alternatives and pros and cons thereof of each type of procedure, as well as
5 review any previous patient records involving surgeries.

6 13. The standard of care for breast implantation revision with a patient who has
7 significant rippling status following a prior implant would be to consider: (1) replacing the saline
8 implant with silicone; (2) placing a dermal matrix "patch" to increase the thickness of the
9 involved areas; (3) a smaller implantation so as to take the tension off of the skin envelope; and
10 (4) a capsulorrhaphy where indicated to help in equally redistributing the tensions of the implant
11 skin envelope interface.

12 14. The standard of care for postoperative treatment of a patient entails careful listening
13 and honest consideration of the patient's complaints as well as the taking of pictures to document
14 the present state of the operative result so that a plan of action to address all issues could be
15 designed.

16 15. The standard of care for breast implantation is to clearly document which implant was
17 used, including serial numbers or other specific identifying information in the patient's chart for
18 future reference.

19 16. Respondent has engaged in extreme departures from the standard of care, both
20 singularly and collectively, in his care and treatment of patient K.M. as follows:

- 21 a. By delegating the primary decision making regarding the particular size and type of
22 breast implant to his assistant;
- 23 b. By performing a capsulectomy in attempts to reduce the rippling of the skin allowing
24 for expansion of the existing implant pocket in order to place an even larger implant;
- 25 c. By denying that there was any problem with the breast shape and ascribing the
26 deformity to the early postoperative state of the breasts;
- 27 d. By assuming that the use of a support bra would correct the deformity;
- 28 e. By failing to provide patient K.M. with alternative corrective options; and

1 f. By failing to clearly document the type of implant used and serial number in patient
2 K.M.'s chart for future reference;

3 SECOND CAUSE FOR DISCIPLINE

4 (Incompetence)

5 [B&P Code § 2234(d)]

6 17. Respondent is subject to disciplinary action under Section 2234, subdivision (d) of
7 the Code in that he was incompetent in the care and treatment of a patient. The circumstances are
8 as follows:

9 18. The facts and circumstances alleged in paragraphs 8 through 15 inclusive are
10 incorporated herein by reference.

11 THIRD CAUSE FOR DISCIPLINE

12 (Dishonest or Corrupt Acts)

13 [B&P Code § 2234(e)]

14 19. Respondent is subject to disciplinary action under Section 2234, subdivision (e) of the
15 Code in that he was dishonest in the care and treatment of a patient by not truthfully assessing the
16 obvious deformity resulting from the cosmetic surgery. The circumstances are as follows:

17 20. The facts and circumstances alleged in paragraphs 8 through 15 inclusive are
18 incorporated herein by reference.

19 FOURTH CAUSE FOR DISCIPLINE

20 (Failure to Maintain Adequate Records)

21 [B&P Code § 2266]

22 21. Respondent is subject to disciplinary action under Section 2266 of the Code in that he
23 failed to maintain adequate records of a patient. The circumstances are as follows:

24 22. The facts and circumstances alleged in paragraphs 8 through 15 inclusive are
25 incorporated herein by reference.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 [B&P Code § 2234]

4 23. Respondent is subject to disciplinary action under Section 2234 of the Code in that he
5 engaged in multiple acts of unprofessional conduct in the care and treatment of a patient. The
6 circumstances are as follows

7 24. The facts and circumstances alleged in paragraphs 8 through 15 inclusive are
8 incorporated herein by reference.

9 PRAYER

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

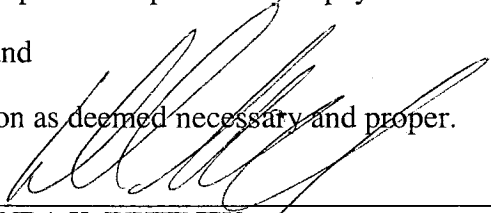
12 1. Revoking or suspending Physician and Surgeon Certificate Number C 52340, issued
13 to Efrain Diego Gonzalez, M.D.

14 2. Revoking, suspending or denying approval of Efrain Gonzalez, M.D.'s authority to
15 supervise physician assistants, pursuant to section 3527 of the Code;

16 3. Ordering Efrain Gonzalez, M.D., if placed on probation, to pay the Medical Board of
17 California the costs of probation monitoring; and

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

19 DATED: September 9, 2011


20 LINDA K. WHITNEY
21 Executive Director
22 Medical Board of California
23 State of California
24 Complainant

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