

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

In the Matter of the First Amended)

Accusation Against:)

DAN ORVILLE HARPER, M.D.)

Case No. 11-2012-223668

**Physician's and Surgeon's
Certificate No. C 51231**)

Respondent)

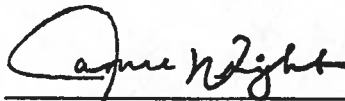
DECISION

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 March 3, 2017.

IT IS SO ORDERED: February 2, 2017.

MEDICAL BOARD OF CALIFORNIA



**Jamie Wright, JD, Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 TESSA L. HEUNIS
Deputy Attorney General
4 State Bar No. 241559
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9403
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

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

12 In the Matter of the First Amended Accusation
13 Against:

14 **DAN ORVILLE HARPER, M.D.,**
15 **509 South Cedros Avenue, Suite B**
Solana Beach, CA 92075

16 **Physician's and Surgeon's**
17 **Certificate No. C51231**

18 *Brian*

Respondent.

Case No. 11-2012-223668

OAH No. 2016030948

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Kamala D. Harris, Attorney General of the State of California, by Tessa L. Heunis,
25 Deputy Attorney General.

26 2. Respondent Dan Orville Harper, M.D. (Respondent) is represented in this proceeding
27 by attorney Daniel Deuprey, whose address is: Daniel Deuprey, Esq., 1901 First Ave, Suite 330
28 San Diego, CA 92101.

1 3. On or about July 1, 2003, the Board issued Physician's and Surgeon's Certificate No.
2 C51231 to respondent. The Physician's and Surgeon's Certificate was in full force and effect at
3 all times relevant to the charges and allegations brought in First Amended Accusation No. 11-
4 2012-223668, and will expire on July 31, 2017, unless renewed.

5 **JURISDICTION**

6 4. On or about May 19, 2015, Accusation No. 11-2012-223668 was filed before the
7 Board. A true and correct copy of the Accusation and all other statutorily required documents
8 were properly served on respondent on or about May 19, 2015. Respondent timely filed his
9 Notice of Defense, contesting the charges in the Accusation.

10 5. On or about October 11, 2016, First Amended Accusation No. 11-2012-223668 was
11 filed before the Board, and is currently pending against respondent. A true and correct copy of
12 the First Amended Accusation and all other statutorily required documents were properly served
13 on respondent on or about October 11, 2016. All new charges contained in the First Amended
14 Accusation were properly deemed controverted by respondent without any further pleading being
15 filed by him or on his behalf. A true and correct copy of the First Amended Accusation No. 11-
16 2012-223668 is attached as Exhibit A and hereby incorporated herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 6. Respondent has carefully read, fully discussed with counsel, and fully understands the
19 charges and allegations in First Amended Accusation No. 11-2012-223668. Respondent has also
20 carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated
21 Settlement and Disciplinary Order.

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

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

3 **CULPABILITY**

4 9. Respondent does not contest that, at an administrative hearing, complainant could
5 establish a *prima facie* case with respect to the charges and allegations contained in First
6 Amended Accusation No. 11-2012-223668 and that he has thereby subjected his Physician's and
7 Surgeon's Certificate No. C51231 to disciplinary action.

8 10. Respondent agrees that if he ever petitions for early termination or modification of
9 probation, or if an accusation and/or petition to revoke probation is filed against him before the
10 Medical Board of California, all of the charges and allegations contained in First Amended
11 Accusation 11-2012-223668 shall be deemed true, correct and fully admitted by respondent for
12 purposes of any such proceeding or any other licensing proceeding involving respondent in the
13 State of California.

14 11. Respondent agrees that his Physician's and Surgeon's Certificate No. C51231 is
15 subject to discipline, and he agrees to be bound by the Board's imposition of discipline as set
16 forth in the Disciplinary Order below.

17 **RESERVATION OF RIGHTS**

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

21 **CONTINGENCY**

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

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

16 **ADDITIONAL PROVISIONS**

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

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

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

26 ////

27 ////

28 ////

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C51231 issued
3 to respondent Dan Orville Harper, M.D., is revoked. However, the revocation is stayed and
4 respondent is placed on probation for three (3) years from the effective date of the Decision on
5 the following terms and conditions:

6 1. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
7 Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee
8 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
9 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
10 correcting any areas of deficient practice or knowledge and shall be Category I certified. The
11 educational program(s) or course(s) shall be at respondent's expense and shall be in addition to
12 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the
13 completion of each course, the Board or its designee may administer an examination to test
14 respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours
15 of CME of which 40 hours were in satisfaction of this condition.

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

27 A medical record keeping course taken after the acts that gave rise to the charges in the
28 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board

1 or its designee, be accepted towards the fulfillment of this condition if the course would have
2 been approved by the Board or its designee had the course been taken after the effective date of
3 this Decision.

4 Respondent shall submit a certification of successful completion to the Board or its
5 designee not later than 15 calendar days after successfully completing the course, or not later than
6 15 calendar days after the effective date of the Decision, whichever is later.

7 3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of
8 the effective date of this Decision, respondent shall enroll in a professionalism program, that
9 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.

10 Respondent shall participate in and successfully complete that program. Respondent shall
11 provide any information and documents that the program may deem pertinent. Respondent shall
12 successfully complete the classroom component of the program not later than six (6) months after
13 respondent's initial enrollment, and the longitudinal component of the program not later than the
14 time specified by the program, but no later than one (1) year after attending the classroom
15 component. The professionalism program shall be at respondent's expense and shall be in
16 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

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

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

25 4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
26 Decision, respondent shall submit to the Board or its designee for prior approval as a practice
27 monitor, the name and qualifications of one or more licensed physicians and surgeons whose
28 licenses are valid and in good standing, and who are preferably American Board of Medical

1 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
2 relationship with respondent, or other relationship that could reasonably be expected to
3 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
4 but not limited to any form of bartering, shall be in respondent's field of practice, and must agree
5 to serve as respondent's monitor. Respondent shall pay all monitoring costs.

6 The Board or its designee shall provide the approved monitor with copies of the Decision
7 and First Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of
8 receipt of the Decision, First Amended Accusation, and proposed monitoring plan, the monitor
9 shall submit a signed statement that the monitor has read the Decision and First Amended
10 Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed
11 monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall
12 submit a revised monitoring plan with the signed statement for approval by the Board or its
13 designee.

14 Within 60 calendar days of the effective date of this Decision, and continuing throughout
15 probation, respondent's practice shall be monitored by the approved monitor. Respondent shall
16 make all records available for immediate inspection and copying on the premises by the monitor
17 at all times during business hours and shall retain the records for the entire term of probation.

18 If respondent fails to obtain approval of a monitor within 60 calendar days of the effective
19 date of this Decision, respondent shall receive a notification from the Board or its designee to
20 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
21 shall cease the practice of medicine until a monitor is approved to provide monitoring
22 responsibility.

23 The monitor shall submit a quarterly written report to the Board or its designee which
24 includes an evaluation of respondent's performance, indicating whether respondent's practices are
25 within the standards of practice of medicine, and whether respondent is practicing medicine
26 safely. It shall be the sole responsibility of respondent to ensure that the monitor submits the
27 quarterly written reports to the Board or its designee within 10 calendar days after the end of the
28 preceding quarter.

1 If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of
2 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
3 name and qualifications of a replacement monitor who will be assuming that responsibility within
4 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60
5 calendar days of the resignation or unavailability of the monitor, respondent shall receive a
6 notification from the Board or its designee to cease the practice of medicine within three (3)
7 calendar days after being so notified respondent shall cease the practice of medicine until a
8 replacement monitor is approved and assumes monitoring responsibility.

9 In lieu of a monitor, respondent may participate in a professional enhancement program
10 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the
11 University of California, San Diego School of Medicine, that includes, at minimum, quarterly
12 chart review, semi-annual practice assessment, and semi-annual review of professional growth
13 and education. Respondent shall participate in the professional enhancement program at
14 respondent's expense during the term of probation.

15 5. PROHIBITED PRACTICE. During probation, respondent is prohibited from using,
16 creating or administering ozone in the care and treatment of his patients unless such use is
17 accompanied by the simultaneous use of a destructor unit within the same room. After the
18 effective date of this Decision, all patients being treated with ozone therapy by respondent shall
19 be notified that respondent is prohibited from creating, using, or administering ozone without the
20 simultaneous use of a destructor unit within the same room. Any new patients who will be
21 receiving ozone therapy at respondent's practice must be provided this notification before
22 receiving or being administered ozone therapy for the first time.

23 Respondent shall maintain a log of all patients to whom the required oral notification was
24 made. The log shall contain the: 1) patient's name, address and phone number; patient's medical
25 record number, if available; 3) the full name of the person making the notification; 4) the date the
26 notification was made; and 5) a description of the notification given. Respondent shall keep this
27 log in a separate file or ledger, in chronological order, shall make the log available for immediate
28 inspection and copying on the premises at all times during business hours by the Board or its

1 designee, and shall retain the log for the entire term of probation.

2 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision,
3 respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the
4 Chief Executive Officer at every hospital where privileges or membership are extended to
5 respondent, at any other facility where respondent engages in the practice of medicine, including
6 all physician and *locum tenens* registries or other similar agencies, and to the Chief Executive
7 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.
8 Respondent shall submit proof of compliance to the Board or its designee within 15 calendar
9 days.

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

11 7. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, respondent is
12 prohibited from supervising physician assistants.

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

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

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

21 10. GENERAL PROBATION REQUIREMENTS.

22 Compliance with Probation Unit

23 Respondent shall comply with the Board's probation unit and all terms and conditions of
24 this Decision.

25 Address Changes

26 Respondent shall, at all times, keep the Board informed of respondent's business and
27 residence addresses, email address (if available), and telephone number. Changes of such
28 addresses shall be immediately communicated in writing to the Board or its designee. Under no

1 circumstances shall a post office box serve as an address of record, except as allowed by Business
2 and Professions Code section 2021(b).

3 Place of Practice

4 Respondent shall not engage in the practice of medicine in respondent's or patient's place
5 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
6 facility.

7 License Renewal

8 Respondent shall maintain a current and renewed California physician's and surgeon's
9 license.

10 Travel or Residence Outside California

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

14 In the event respondent should leave the State of California to reside or to practice,
15 respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
16 departure and return.

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

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

1 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall
2 not be considered as a period of non-practice.

3 In the event respondent's period of non-practice while on probation exceeds 18 calendar
4 months, respondent shall successfully complete a clinical training program that meets the criteria
5 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
6 Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

9 Periods of non-practice will relieve respondent of the responsibility to comply with the
10 probationary terms and conditions with the exception of this condition and the following terms
11 and conditions of probation: Obey All Laws; and General Probation Requirements.

12 13. 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 14. 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
20 Probation, or an Interim Suspension Order is filed against respondent during probation, the Board
21 shall have continuing jurisdiction until the matter is final, and the period of probation shall be
22 extended until the matter is final.

23 15. 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. The
26 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

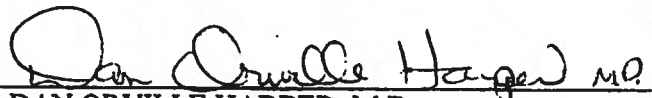
1 shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its
2 designee and Respondent shall no longer practice medicine. respondent will no longer be subject
3 to the terms and conditions of probation. If respondent re-applies for a medical license, the
4 application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

5 16. 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

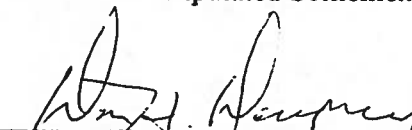
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Daniel Deuprey. I fully understand the stipulation and the effect it
13 will have on my Physician's and Surgeon's Certificate No. C51231. I enter into this Stipulated
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
15 bound by the Decision and Order of the Medical Board of California.

16
17 DATED: 0-31-16


DAN ORVILLE HARPER, M.D.
Respondent

19 I have read and fully discussed with respondent Dan Orville Harper, 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: 10-31-16


DANIEL DEUPREY, ESQ.
Attorney for Respondent

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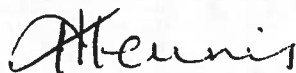
ENDORSEMENT

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

Dated: November 1, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant