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10
11 **BEFORE THE**
OFFICE OF ADMINISTRATIVE HEARINGS
12 **STATE OF CALIFORNIA**

13
14 In the Matter of the Petition for Interim Order
of Suspension Against:

Case No. 18-2008-192748

15
16 **LINDA K. WHITNEY**,
Executive Director,
17 Medical Board of California,
Department of Consumer Affairs,
18 State of California,

**STIPULATION RE INTERIM
ORDER OF SUSPENSION AND
INTERIM ORDER OF
SUSPENSION**

(Gov. Code, § 11529.)

19 Petitioner,

20 v.

21 **DONALD JAMES KURTH, JR., M.D.**
9695 Baseline Road
22 Rancho Cucamonga, CA 91730

23 Physician's and Surgeon's
Certificate No. G 43963

24 Respondent.

25
26 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
27 entitled proceedings that the following matters are true:

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1 **PARTIES**

2 1. Petitioner Linda K. Whitney (Petitioner) is the Executive Director of the Medical
3 Board of California (Board) and is represented in the above-entitled matter by Kamala D. Harris,
4 Attorney General of the State of California, by Deputy Attorney General Sanford Feldman and
5 Deputy Attorney General Harinder K. Kapur.

6 2. Respondent Donald James Kurth, Jr., M.D., is represented in this matter by
7 Fenton/Nelson, LLP, by Benjamin Fenton, Esq.

8 **JURISDICTION**

9 3. On or about December 22, 1980, the Board issued Physician's and Surgeon's
10 Certificate No. G 43963 to Respondent Donald James Kurth, Jr., M.D. (hereinafter
11 "Respondent"). Physician's and Surgeon's Certificate No. G 43963 is in full force and effect and
12 will expire on April 30, 2012, unless renewed.

13 4. Pursuant to the provisions of California Government Code section 11529, an
14 administrative law judge of the Medical Quality Hearing Panel established pursuant to section
15 11371 may issue an interim order suspending a license, or imposing drug testing, continuing
16 education, supervision of procedures, or other license restrictions. Interim orders may be issued
17 only if the affidavits in support of the petition show that the licensee has engaged in, or is about to
18 engage in, acts or omissions constituting a violation of the Medical Practice Act or the
19 appropriate practice act governing each allied health profession, or is unable to practice safely due
20 to a mental or physical condition, and that permitting the licensee to continue to engage in the
21 profession for which the license was issued will endanger the public health, safety, or welfare.

22 **FACTUAL BASIS FOR INTERIM ORDER OF SUSPENSION**

23 5. The factual basis for this Interim Order of Suspension is fully described in the
24 Petition for Interim Order of Suspension, supporting Memorandum of Points and Authorities,
25 exhibits and declarations filed in the above-entitled matter with the Office of Administrative
26 Hearings in San Diego.

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1 identical to the discretion of a superior court judge to permit testimony at a hearing
2 conducted pursuant to Section 527 of the Code of Civil Procedure.

3 (d) To present oral argument.

4 10. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely and
5 voluntarily waives and gives up each and every one of the rights set forth and/or referenced in
6 paragraph 9, above.

7 11. Respondent is fully aware of all of his rights under Government Code section
8 11529, subdivisions (f) and (g), which state as follows:

9 “(f) In all cases where an interim order is issued, and an accusation is not
10 filed and served pursuant to Sections 11503 and 11505 within 15 days of the date
11 in which the parties to the hearing on the interim order have submitted the matter,
12 the order shall be dissolved. Upon service of the accusation the licensee shall
13 have, in addition to the rights granted by this section, all of the rights and
14 privileges available as specified in this chapter. If the licensee requests a hearing
15 on the accusation, the board shall provide the licensee with a hearing within 30
16 days of the request, unless the licensee stipulates to a later hearing, and a decision
17 within 15 days of the date the decision is received from the administrative law
18 judge, or the board shall nullify the interim order previously issued, unless good
19 cause can be shown by the Division of Medical Quality for a delay.”^{11/}

20 “(g) Where an interim order is issued, a written decision shall be prepared
21 within 15 days of the hearing, by the administrative law judge, including findings
22 of fact and a conclusion articulating the connection between the evidence produced
23 at the hearing and the decision reached.”

24 12. Having the benefit of counsel, Respondent hereby knowingly, intelligently, freely

25 ¹. California Business and Professions Code section 2002, as amended and effective January 1,
26 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical
27 Practice Act (Cal. Bus. & Prof. Code, §§2000, et. seq.) means the “Medical Board of California,” and
28 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 and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in
 2 paragraph 11, above, except that the parties agree an accusation shall be filed within 30 days of
 3 the date of the signing of the issuance of this Interim Order of Suspension.


4 **ADDITIONAL PROVISIONS**

5 13. The parties hereby stipulate that all proceedings in the above-entitled Interim
 6 Order of Suspension matter shall be conducted at the Office of Administrative Hearings located in
 7 San Diego, California. This stipulation does not apply to venue for the hearing on the Accusation
 8 matter.

9 14. The parties further stipulate that this Interim Order of Suspension may be served
 10 upon Respondent by facsimile transmission of the signed order to his counsel, Benjamin Fenton,
 11 Esq., which services shall occur within 48 hours of the issuance of this Interim Order of
 12 Suspension. Further, Respondent agrees that, within 48 hours of service of this Interim Order of
 13 Suspension, Respondent shall execute and provide to Petitioner written acknowledgment of
 14 receipt and review of this Interim Order of Suspension.

15 15. The parties further stipulate that facsimile copies of this "Stipulation of the Parties
 16 Re Interim Order of Suspension and Interim Order of Suspension," including any and all
 17 facsimile signatures appearing thereon, may be used in lieu of original documents and signatures
 18 and, further, that facsimile copies and signatures shall have the same force and effect as originals.

19 Dated: April 4, 2011, 2011.

20
 21 By: Donald James Kurth, Jr. 
 22 DONALD JAMES KURTH, JR., M.D.
 Respondent

23
 24 Dated: _____, 2011.

25
 26 By: _____
 27 BENJAMIN FENTON, ESQ.
 Attorney for Respondent

1 and voluntarily waives and gives up each and every one of the rights set forth and/or referenced in
2 paragraph 11. above, except that the parties agree an accusation shall be filed within 30 days of
3 the date of the signing of the issuance of this Interim Order of Suspension.

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17 facsimile signatures appearing thereon, may be used in lieu of original documents and signatures
18 and, further, that facsimile copies and signatures shall have the same force and effect as originals.

19 Dated: _____, 2011.

20
21 By: _____
22 DONA LD JAMES KURTII, JR., M.D.
23 Respondent

24 Dated: April 4, 2011.

25
26 By: 
27 BENJAMIN FENTON, ESQ.
28 Attorney for Respondent

1 Dated: April 4, 2011.

2 KAMALA D. HARRIS., Attorney General of The
3 State of California
4 THOMAS S. LAZAR,
5 Supervising Deputy Attorney General

6
7 By: Harinder Kapur
8 HARINDER K. KAPUR
9 Deputy Attorney General
10 Attorneys for Petitioner

11 **INTERIM ORDER OF SUSPENSION**

12 Based on the foregoing stipulations and agreements, an Interim Order of Suspension is
13 hereby issued immediately restricting Physician's and Surgeon's Certificate No. G 43963, issued
14 to Respondent DONALD JAMES KURTII, JR., M.D, as follows:

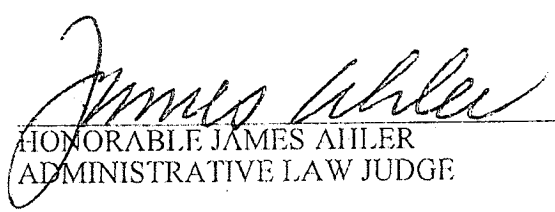
- 15 1. Respondent shall not supervise any physician assistant, nurse practitioner or any other
16 mid-level provider.
- 17 2. Respondent shall not employ or contract with any physician assistant, nurse
18 practitioner or other mid-level provider for the provision of medical services.
- 19 3. Respondent shall not practice medicine at or be associated in any way with a medical
20 practice at which physician assistants, nurse practitioners, or other mid-level
21 practitioners provide medical services. This restriction shall not apply to
22 Respondent's consultation services at drug treatment facilities or hospitals where
23 Respondent is on staff.
- 24 4. Respondent shall not allow medical assistants to perform technical support services
25 unless a currently licensed California physician and surgeon or osteopathic physician
26 and surgeon is physically present at the practice location when the services are being
27 performed.

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1 This Interim Order of Suspension shall remain in effect until further order of the Office of
2 Administrative Hearings or until issuance of a final decision by the Board on an accusation to be
3 filed within 30 days of the date of the issuance of this Interim Order of Suspension, whichever
4 first occurs. Any motion to vacate this Interim Order of Suspension shall be filed in accordance
5 with the provisions of Title 1, California Code of Regulations, sections 1006 and 1022. However,
6 no such motion may be heard on an *ex parte* basis and any motion to vacate this Interim Order of
7 Suspension shall be served on complainant's counsel and filed with the Office of Administrative
8 Hearings no less than thirty (30) business days prior to any hearing on the motion. Once served
9 and filed, no such motion shall be decided without first affording the parties the opportunity to
10 present oral argument.

11 IT IS SO ORDERED this 4 day of April, 2011.

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14 HONORABLE JAMES AHLER
15 ADMINISTRATIVE LAW JUDGE
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