

1 DANIEL E. LUNGREN, Attorney General
of the State of California

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3 California Department of Justice
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5 Attorneys for Complainant

6
7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 NICHOLAS G. BRAEMER, M.D.
13 3400 Lomita Boulevard, #301
Torrance, California 90505

14 Physician's and Surgeon's Certificate No.
A-21927,

15 Respondent.

NO. D-5411

OAH No. L-61594

STIPULATED SETTLEMENT
AND
DISCIPLINARY ORDER

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

20 1. An Accusation in case number D-5411 was filed with the Division
21 of Medical Quality of the Medical Board of California (the "Division") on September
22 16, 1993, and is currently pending against Nicholas G. Braemer, M.D. (the
23 "respondent").

24 2. The Accusation, together with all statutorily required documents,
25 was duly served on the respondent on or about September 16, 1993, and respondent
26 filed his Notice of Defense contesting the Accusation on or about September 23, 1993.
27 A copy of Accusation No. D-5411 is attached as Attachment "A" and hereby

1 incorporated by reference as if fully set forth.

2 3. The Complainant, Dixon Arnett, is the Executive Director of the
3 Medical Board of California and brought this action solely in his official capacity. The
4 Complainant is represented by the Attorney General of California, Daniel E. Lungren,
5 by and through Deputy Attorney General Robert McKim Bell.

6 4. The respondent is represented in this matter by Irving J. Levin,
7 Esq., Attorney-at-Law, 6744 Sepulveda Boulevard, Van Nuys, California 91411.

8 5. The respondent and his attorney have fully discussed the charges
9 contained in Accusation number D-5411, and the respondent has been fully advised
10 regarding his legal rights and the effects of this stipulation.

11 6. At all times relevant herein, respondent has been licensed by the
12 Medical Board of California under Physician's and Surgeon's Certificate No. A-21927.

13 7. Respondent understands the nature of the charges alleged in the
14 Accusation and that, if proven at hearing, the charges and allegations would constitute
15 cause for imposing discipline upon his Physician's and Surgeon's Certificate.

16 Respondent is fully aware of his right to a hearing on the charges contained in the
17 Accusation, his right to confront and cross-examine witnesses against him, his right to
18 the use of subpoenas to compel the attendance of witnesses and the production of
19 documents in both defense and mitigation of the charges, his right to reconsideration,
20 appeal and any and all other rights accorded by the California Administrative
21 Procedure Act and other applicable laws. Respondent knowingly, voluntarily and
22 irrevocably waives and give up each of these rights.

23 8. Respondent admits the truth of each and every allegation of the
24 Accusation No. D-5411, and agrees that respondent has thereby subjected his
25 Physician's and Surgeon's Certificate to disciplinary action. Respondent agrees to be
26 bound by the Division's Disciplinary Order as set out below.

27 9. Based on the foregoing admissions and stipulated matters, the

1 parties agree that the Division shall, without further notice or formal proceeding, issue
2 and enter the following order:

3
4 **DISCIPLINARY ORDER**

5 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate
6 number A-21927 issued to Nicholas G. Braemer, M.D. is revoked. However, the
7 revocation is stayed and respondent is placed on probation for five years on the
8 following terms and conditions:

9 1. **ACTUAL SUSPENSION** As part of probation, respondent is
10 suspended from the practice of medicine for 90 days beginning on November 1, 1994
11 or the effective date of this decision, whichever is later.

12 2. **EDUCATION COURSE** Within ninety (90) days of the effective date
13 of this decision, and on an annual basis thereafter, respondent shall submit to the
14 Division for its prior approval an educational program or course to be designated by
15 the Division, which shall not be less than 40 hours per year, for each year of probation.
16 This program shall be in addition to the Continuing Medical Education requirements
17 for re-licensure. Following the completion of each course, the Division or its designee
18 may administer an examination to test respondent's knowledge of the course.
19 Respondent shall provide proof of attendance for 65 hours of continuing medical
20 education of which 40 hours were in satisfaction of this condition and were approved in
21 advance by the Division or its designee.

22 3. **ETHICS** Within 90 days of the effective date of this decision,
23 respondent shall submit to the Division for its prior approval a course in Ethics, which
24 respondent shall successfully complete during the first year of probation.

25 4. **ORAL OR WRITTEN EXAM** Within 90 days of the effective date of
26 this decision, respondent shall take and pass an oral or written exam administered by
27 the Division or its designee to test for current professional medical knowledge of

1 obstetrics. If respondent fails this examination, respondent must take and pass a re-
2 examination (not exceeding 4 exams, total) consisting of a written as well as an oral
3 clinical examination. The waiting period between repeat examinations shall be at least
4 45 days until success is achieved. The respondent shall pay the cost of the first
5 examination and any subsequent re-examinations.

6 If respondent fails the first examination, respondent shall cease the
7 practice of obstetrics and gynecology until the re-examination has been successfully
8 passed, as evidenced by written notice to respondent from the Division. Failure to pass
9 the required examination no later than 100 days prior to the termination date of
10 probation shall constitute a violation of probation.

11 5. Monitoring. Within 30 days of the effective date of this decision,
12 Respondent shall submit to the Division for its prior approval the name of and
13 qualifications of one or more California licensed physicians whose license is clear and
14 current and who has agreed to serve as a practice monitor. Once approved, the
15 monitor shall submit to the Division a plan by which Respondent's medical practice
16 shall be monitored during probation. The monitor's education and experience shall be
17 in the field of obstetrics. The monitor shall submit written reports to the Division on a
18 quarterly basis verifying that monitoring has taken place and providing an evaluation of
19 Respondent's performance. It shall be Respondent's responsibility to assure that the
20 required reports are filed in a timely fashion. The Respondent shall provide access to
21 the monitor of his client records, including billings, and the monitor shall be permitted
22 to make direct contact with patients. Further, the monitor shall have no prior business,
23 professional, personal or other relationship with Respondent. Respondent shall execute
24 a release authorizing the monitor to divulge any information that the Division may
25 request. In exercising his or her role, it is understood and agreed that the monitor
26 shall be held harmless from liability for any communication of fact or of opinion made
27 in good faith to the Division or its designees regarding Respondent and/or his care of

1 patients.

2 If the monitor resigns or is no longer available, respondent shall, within
3 fifteen (15) days, move to have a new monitor appointed, through nomination by
4 respondent and approval by the Division. The period of monitoring shall be tolled
5 until a new monitor is approved. All costs of monitoring shall be borne by the
6 Respondent.

7 6. PROHIBITED PRACTICE During probation, respondent is prohibited
8 from performing third trimester abortions.

9 7. RESTRICTED PRACTICE During probation, Respondent shall
10 perform abortions only in a hospital approved by the Joint Commission on
11 Accreditation or in a practice setting approved in advance by the Division or its
12 designees. Within 30 days from the effective date of the Decision, respondent shall
13 submit to the Division for prior approval, a plan to implement this restriction.
14 Respondent shall submit proof satisfactory to the Board of compliance with this term
15 of probation.

16 8. OBEY ALL LAWS Respondent shall obey all federal, state, and local
17 laws, and all rules governing the practice of medicine in California.

18 9. QUARTERLY REPORTS Respondent shall submit quarterly
19 declarations under penalty of perjury on forms provided by the Division, stating
20 whether there has been compliance with all the conditions of probation.

21 10. SURVEILLANCE PROGRAM Respondent shall comply with the
22 Division's probation surveillance program.

23 11. INTERVIEW WITH MEDICAL CONSULTANT Respondent shall appear
24 in person for interviews with the Division's medical consultant upon request at various
25 intervals and with reasonable notice.

26 12. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE The period
27 of probation shall not run during the time respondent is residing or practicing outside

1 the jurisdiction of California. If, during probation, respondent moves out of the
2 jurisdiction of California to reside or practice elsewhere, whether temporarily or
3 permanently, respondent is required to immediately notify the Division in writing within
4 ten (10) days of the date of departure, and the date of return, if any.

5 13. COMPLETION OF PROBATION Upon successful completion of
6 probation, respondent's certificate will be fully restored.

7 14. VIOLATION OF PROBATION If respondent violates probation in any
8 respect, the Division, after giving respondent notice and the opportunity to be heard,
9 may revoke probation and carry out the disciplinary order that was stayed. If an
10 accusation or petition to revoke probation is filed against respondent during probation,
11 the Division shall have continuing jurisdiction until the matter is final, and the period
12 of probation shall be extended until the matter is final. No petition for modification or
13 termination of probation shall be considered while there is an accusation or petition to
14 revoke probation pending against respondent.

15 CONTINGENCY

16 This stipulation shall be subject to the approval of the Division. If the
17 Division fails to adopt this stipulation as its Order, the stipulation shall be of no force
18 or effect, and shall be inadmissible in any legal action between the parties.
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DATED: August 12, 1994.

Robert J. Lee

Attorneys for Complainant

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ATTACHMENT "A"
(COPY OF ACCUSATION)

DANIEL E. LUNGREN, Attorney General
of the State of California
ROBERT MCKIM BELL,
Deputy Attorney General
California Department of Justice
300 South Spring Street, 10th Floor
Los Angeles, California 90013
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Attorneys for Complainant

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

In the Matter of the Accusation
Against:

NO. D-5411

NICHOLAS G. BRAEMER, M.D.
3400 West Lomita Boulevard, #301
Torrance, California 90508

A C C U S A T I O N

Physician's and Surgeon's
Certificate No. A-21927,

Physician Assistant Supervisor
License No. SA-20332,

Respondent.

The Complainant alleges:

PARTIES

1. Complainant, Dixon Arnett, is the Executive Director of the California State Medical Board of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

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1 2. On or about March 17, 1966, Physician's and
2 Surgeon's Certificate No. A-21927 was issued by the Board to
3 Nicholas G. Braemer, M.D. (hereinafter "respondent"), and at all
4 times relevant to the charges herein brought, said license has
5 been in full force and effect.

6 3. In addition, respondent holds Physician Assistant
7 Supervisor License number SA-20332, issued by the Board.

8
9 JURISDICTION

10 4. This accusation is brought under the authority of
11 the following sections of the California Business and Professions
12 Code (hereinafter "Code"):

13 5. Section 2227 provides that the Board may revoke,
14 suspend for a period not to exceed one year, or place on
15 probation, the license of any licensee who has been found guilty
16 under the Medical Practice Act.

17 6. Section 2234 provides that unprofessional conduct
18 includes, but is not limited to, the following:

19 "(a) Violating or attempting to violate, directly or
20 indirectly, or assisting in or abetting the violation of, or
21 conspiring to violate, any provision of this chapter.

22 (b) Gross negligence.

23 (c) Repeated negligent acts.

24 (d) Incompetence.

25 (e) The commission of any act involving dishonesty or
26 corruption which is substantially related to the
27 qualifications, functions, or duties of a physician and

1 surgeon.

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

4 7. Section 3527(d) provides that the Division of
5 Medical Quality of the Medical Board of California, in
6 conjunction with an action it has commenced against a physician
7 and surgeon, may order the suspension or revocation of, or the
8 imposition of probationary conditions upon, an approval to
9 supervise a physician's assistant, after a hearing for
10 unprofessional conduct, which includes, but is not limited to, a
11 violation of Chapter 7.7 of Division 2 of the Business and
12 Professions Code, a violation of the Medical Practice Act, or a
13 violation of regulations.

14
15 FIRST CAUSE OF ACTION

16 8. Respondent Nicholas G. Braemer, M.D. is subject to
17 disciplinary action under section 2234(b) of the Business and
18 Professions Code in that he has committed gross negligence. The
19 circumstances are as follows:

20 A. On or about August 26, 1987, the respondent
21 performed an elective abortion by dilation and extraction on
22 "Z.A.," a twenty-seven year old female patient then
23 approximately 15 to 18 weeks pregnant with a viable female
24 fetus.

25 B. The abortion performed by respondent was
26 successful in removing only one arm of the fetus, and the
27 remainder was left behind. Through haste, inattention and

1 neglect of his professional medical responsibilities, the
2 respondent failed to notice that he had not removed the
3 entire fetus and failed adequately to explore his patient's
4 uterus at the end of the procedure to determine that it was
5 empty. The patient was sent home with antibiotics and told
6 to return in a week.

7 C. A day later, after experiencing labor-like pains
8 and fever, while at home, the patient miscarried a stillborn
9 fetus missing an arm.

10 D. On August 28, 1987, the patient was admitted to
11 Torrance Memorial Hospital for infection and completion of
12 the abortion by means of a vacuum suction curettage. She
13 was discharged on August 30, 1987.

14
15 SECOND CAUSE OF ACTION

16 9. By reason of the foregoing facts, respondent
17 Nicholas G. Braemer, M.D. is further subject to disciplinary
18 action under section 2234(c) of the Business and Professions Code
19 in that he has committed repeated negligent acts.

20
21 THIRD CAUSE OF ACTION

22 10. By reason of the foregoing facts, respondent
23 Nicholas G. Braemer, M.D. is further subject to disciplinary
24 action under section 2234(d) of the Business and Professions Code
25 for incompetence.

26 //

27 //

AGGRAVATION

11. Not as independent cause for disciplinary action, but in aggravation and as cause for augmentation of any penalty imposed as a result of this action, the complainant alleges that the respondent was previously disciplined by the board effective November 17, 1983. In that case, "Accusation Against Nicholas G. Braemer, M.D.," case number D-2962, the respondent's license was revoked, but the order of revocation stayed and the respondent placed upon probation for five years for violation of section 2236(a) of the Business and Professions Code (conviction of a substantially related crime).

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1 PRAYER

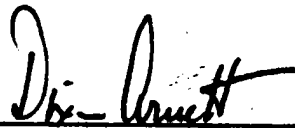
2 WHEREFORE, the complainant requests that a hearing be
3 held on the matters herein alleged, and that following said
4 hearing, the Board issue a decision:

5 1. Revoking or suspending Physician's and Surgeon's
6 Certificate Number A-21927, heretofore issued to respondent
7 Nicholas G. Braemer, M.D.;

8 2. Revoking or suspending Physician Assistant
9 Supervisor License No. SA-20332, heretofore issued to respondent
10 Nicholas G. Braemer, M.D.;

11 3. Taking such other and further action as the Board
12 deems proper.

13 DATED: September 16, 1993.

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16 _____
17 Dixon Arnett
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California

22 Complainant

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