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

In the Matter of the Accusation Against, **GEORGE E. KABACY, M.D.** **PHYSICIAN'S AND SURGEON'S CERTIFICATE NO. G13766** **RESPONDENT.**	16-2008-190969 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

On or about June 12, 2008, an employee of the Medical Board of California (hereinafter "Board") sent by certified mail a copy of Accusation No. 16-2008-190969, Statement to Respondent, Notice of Defense in blank, copies of the relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to George K. Kabacy, M.D. (hereinafter "respondent") at his address of record with the Board, 7439 Holmes IS Road SE, Lacey, WA 98503. The package was returned by the Post Office as "Undeliverable as Addressed." (The Accusation package, along with the proof of service and return notification, is attached hereto as Exhibit 1).

There was no response to the Accusation. On or about December 3, 2008, an employee of the Attorney General's Office sent by regular mail addressed to respondent at the address set forth above, a courtesy Notice of Default, advising respondent of the service of the Accusation, and providing him with an opportunity to request relief from default. (Attached hereto as Exhibit 2 is a copy of the Notice of Default and declaration of service thereof.) Respondent did not respond to the Notice of Default, and he has not filed a Notice of Defense. As a result, respondent has waived his right to a hearing on the merits to contest the allegations contained in the Accusation.

FINDINGS OF FACT

I.

Barbara Johnston is the Executive Director of the Board and the charges and allegations in the Accusation were brought and made solely in her official capacity.

II.

On or about August 14, 1967, Physician's and Surgeon's Certificate No. G13766 was issued by the Board to George E. Kabacy, M.D. The certificate is delinquent, with an expiration date of May 31, 2007, and is in SUSPENDED status by virtue of a May 15, 2008 order issued pursuant to Business and Professions Code §2310(a). (A copy of the license certification and print-out of Medical Board license status is attached hereto as Exhibit 3.)

III.

On or about June 12, 2008, respondent was served with an Accusation, alleging causes for discipline against respondent. The Accusation and accompanying documents were duly served on respondent. A courtesy Notice of Default was thereafter served on respondent. Respondent failed to file a Notice of Defense.

IV.

The allegations of the Accusation are true as follows:

On or about February 28, 2008, the Washington Medical Quality Assurance Commission issued a Stipulated Findings of Fact, Conclusions of Law and Agreed Order regarding respondent's license to practice medicine in Washington. The Washington Medical Quality Assurance Commission revoked respondent's license based on a November 30, 2007 conviction for possession of visual depictions of minors engaged in sexually explicit conduct. (A certified copy of the Stipulated Findings of Fact, Conclusions of Law and Agreed Order issued by the Washington Medical Quality Assurance Commission is attached to the Accusation, Exhibit 1 hereto.)

On or about November 30, 2007, respondent was convicted, in the United States District Court for the Western District of Washington, of Possession of Visual Depictions of

Minors Engaged in Sexually Explicit Conduct, in violation of 18 U.S.C. §§2252(a)(4)(B) and (b)(2). The statutory penalties for the offenses included imprisonment for up to ten years, and a term of supervision following release from prison for up to life. Respondent's guilty plea included an admission that he knowingly possessed more than eight thousand still digital images and additional digital video files, each of which depicted actual minors engaged in sexually explicit conduct. Respondent's conviction is one which requires registration as a sex offender.

DETERMINATION OF ISSUES

I.

Pursuant to the foregoing Findings of Fact, respondent's conduct and the action of the Washington Medical Quality Assurance Commission constitute cause for discipline within the meaning of Business and Professions Code sections 2305 and 141(a).

II.

Pursuant to the foregoing Findings of Fact, respondent's conduct and the criminal conviction requiring registration as a sex offender, respondent is subject to the provisions of Business and Professions Code section 2232, and his license must be revoked.

DISCIPLINARY ORDER

Physician's and Surgeon's certificate No. G13766 issued to George E. Kabacy, M.D. is hereby **REVOKED.**

Respondent shall not be deprived of making a request for relief from default as set forth in Government Code section 11520(c) for good cause shown. However, such showing must be made in writing by way of a motion to vacate the default decision and directed to the Division of Medical Quality, Medical Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven (7) days of the service of this Decision.

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This Decision will become effective on September 30, 2009, at 5 p.m.

It is so ORDERED August 31, 2009

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____ per
Barbara Johnston
Executive Director

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EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 12, 2008
BY

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

In the Matter of the Accusation Against:	**Case No. 16-2008-190969**
GEORGE E. KABACY, M.D. 7439 Holmes IS Road SE Lacey, WA 98503	**A C C U S A T I O N**
Physician's and Surgeon's Certificate No. G13766	
Respondent.	

The Complainant alleges:

PARTIES

1. Complainant Barbara Johnston is the Executive Director of the Medical Board of California (hereinafter the "Board") and brings this accusation solely in her official capacity.

2. On or about August 14, 1967, Physician's and Surgeon's Certificate No. G13766 was issued by the Board to George E. Kabacy, M.D. (hereinafter "respondent".) Respondent's certificate is delinquent, with an expiration date of May 31, 2007.

JURISDICTION

3. This accusation is brought before the Medical Board of California[1], Department of Consumer Affairs (hereinafter the "Board"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other relevant statutory enactment:

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period of not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of

B. Section 2305 of the Code provides, in part, that the revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license to practice medicine issued by that state, that would have been grounds for discipline in California under the Medical Practice Act, constitutes grounds for discipline for unprofessional conduct.

C. Section 141 of the Code

"(a) For any licensee holding a license issued by a board under the jurisdiction of a department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or by another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by the board that provides for discipline based upon a disciplinary action taken against the licensee by another state,

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1. As used herein, the term "board" means the Medical Board of California. As used herein, "Division of Medical Quality" shall also be deemed to refer to the board.

an agency of the federal government, or another country."

D. Section 2236 of the Code provides that the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct.

E. Section 2232 of the Code requires the revocation of the license of any physician and surgeon required to register as a sex offender pursuant to Penal Code section 290.

FIRST CAUSES FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Another State)

4. On or about February 28, 2008, the Washington Medical Quality Assurance Commission issued a Stipulated Findings of Fact, Conclusions of Law and Agreed Order regarding respondent's license to practice medicine in Washington. The Washington Commission revoked respondent's license based on a November 30, 2007 conviction for possession of visual depictions of minors engaged in sexually explicit conduct.

Attached hereto as Exhibit A is a true and correct copy of the Stipulated Findings of Fact, Conclusions of Law and Agreed Order issued by the Washington Medical Quality Assurance Commission.

5. Respondent's conduct and the action of the Washington Medical Quality Assurance Commission as set forth in paragraph 5, above, constitute unprofessional conduct within the meaning of section 2305 and conduct subject to discipline within the meaning of section 141(a).

SECOND CAUSES FOR DISCIPLINE

(Conviction of Crime; Registration as a Sex Offender)

6. On or about November 30, 2007, respondent was convicted, in the United States District Court for the Western District of Washington, of Possession of Visual Depictions of Minors Engaged in Sexually Explicit conduct, in violation of 18 U.S.C. §§2252(a)(4)(B) and (b)(2). The statutory penalties for the offense included imprisonment for up to ten years, a term

of supervision following release from prison for up to life. Respondent's guilty plea included an admission that he knowingly possessed more than eight thousand still digital images and additional digital video files, each of which depicted actual minors engaged in sexually explicit conduct.

7. The foregoing constitutes unprofessional conduct and the conviction of a crime substantially related to the qualifications, functions or duties of a physician and surgeon, and is cause for discipline pursuant to Business and Professions Code sections 2234 and/or 2236.

8. Respondent's conviction is one which requires registration as a sex offender. Respondent is therefore subject to the provisions of section 2232 of the Code, and his license must be revoked.

PRAYER

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

1. Revoking Physician and Surgeon's Certificate Number G13766, heretofore issued to respondent George E. Kabacy, M.D.;

2. Revoking respondent's authority to supervise physician assistants;

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

DATED: June 12, 2008

BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

40260641.wpd

Exhibit A

I Certify that this is a true and correct copy of the
document on file with the State of Washington, Department
of Health, Health Professions Quality Assurance Clerk Office
27 April 2008
Valerie Zandecki
Authorized Representative

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

RE: George E. Kabacy, MD
Master Case No.: M2008-59033
Docket No.: 07-12-A-1049MD
Document: Agreed Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

I Certify that this is a true and correct copy of the
document on file with the State of Washington. Department
of Health Adjudicative Clerk Office
Dated this 22 day of April, 2008
Valerie Tardiel
Authorized Representative

STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

RE: George E. Kabacy, MD
Docket No.: 07-12-A-1049MD
Document: Statement of Charges

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of **GEORGE E. KABACY, MD** Credential No. MD00030345 Respondent	**Docket No. 07-12-A-1049MD** **STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through James McLaughlin, Department of Health Staff Attorney, and Respondent, represented by counsel, Raegen N. Rasnic, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On January 31, 2008, the Commission issued a Statement of Charges against Respondent.

1.2 In the Statement of Charges, the Commission alleges that Respondent violated RCW 18.130.180(1) and (17)

1.3 Respondent understands that the State is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent understands that if the allegations are proven at a hearing, the Commission has the authority to impose sanctions pursuant to RCW 18.130.160.

1.5 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.6 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Commission accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order. (Agreed Order)

1.7 The parties agree to resolve this matter by means of this Agreed Order.

1.8 Respondent understands that this Agreed Order is not binding unless and until it is signed and accepted by the Commission.

1.9 If the Commission accepts this Agreed Order, it is subject to the federal reporting requirements pursuant to Section 1128E of the Social Security Act and 45 CFR Part 61, RCW 18.130.110 and any other applicable interstate/national reporting

requirements. It is a public document and will be available on the Department of Health web site.

1.10 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Program stipulate to the following facts:

2.1 On October 27, 1992, the state of Washington issued Respondent a credential to practice as a physician and surgeon. Respondent's credential expired on May 10, 2007.

2.2 On or about November 30, 2007, Respondent was convicted, in the United States District Court for the Western District of Washington, of Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2). The statutory penalties for this offense are imprisonment for up to ten (10) years, a term of supervision following release from prison of up to life, a fine of up to two hundred fifty thousand dollars ($250,000.00), and a one hundred dollar ($100.00) mandatory assessment.

2.3 Respondent's guilty plea to the charge that resulted in the above conviction included his admission that he knowingly possessed more than eight thousand (8,000) still digital images and additional digital video files, each of which depicted actual minors engaged in sexually explicit conduct.

3. CONCLUSIONS OF LAW

The State and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1) and (17).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

4.1 Respondent's credential to practice as a physician and surgeon in the state of Washington is hereby **REVOKED** with no right to seek reinstatement of his credential for a period of at least ten (10) years from the effective date of this Agreed Order.

4.2 The effective date of this Agreed Order is the date the Adjudicative Service Unit places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

5. ACCEPTANCE

I, GEORGE E. KABACY, MD, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.

George E. Kabacy MD
GEORGE E. KABACY, MD
RESPONDENT

2-8-08
DATE

RAEGEN N. RASNIC, WSBA#25480
ATTORNEY FOR RESPONDENT

2-12-08
DATE

6. ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED: Feb 28, 2008.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

Judith Tobin
PANEL CHAIR

PRESENTED BY:

Jim McLaughlin
JAMES MCLAUGHLIN, WSBA #27349
DEPARTMENT OF HEALTH STAFF ATTORNEY

2/28/08
DATE

FOR INTERNAL USE ONLY: PROGRAM NO. 2006-12-0058MD

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

FILED
JAN 31 2008
Adjudicative Clerk Office

In the Matter of **GEORGE E. KABACY, MD** Credential No. MD00030345 Respondent	**Docket No. 07-12-A-1049MD** **STATEMENT OF CHARGES**

The Health Services Consultant of the Medical Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by the evidence contained in program file number 2006-12-0058MD.

1. ALLEGED FACTS

1.1 On October 27, 1992, the state of Washington issued Respondent a credential to practice as a physician and surgeon. Respondent's credential expired on May 10, 2007.

1.2 On or about November 30, 2007, Respondent was convicted, in the United States District Court for the Western District of Washington, of Possession of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2252(a)(4)(B) and (b)(2). The statutory penalties for this offense are imprisonment for up to ten (10) years, a term of supervision following release from prison of up to life, a fine of up to two hundred fifty thousand dollars ($250,000.00), and a one hundred dollar ($100.00) mandatory assessment.

1.3 Respondent's guilty plea to the charge that resulted in the above conviction included his admission that he knowingly possessed more than eight thousand (8,000) still digital images and additional digital video files, each of which depicted actual minors engaged in sexually explicit conduct. Some of the images depicted sado-masochistic conduct, including bondage or bestiality involving minors, and some of the images depicted pre-pubescent minors and/or minors under the age of twelve (12) years. The guilty plea specifically described two (2) of the images. One (1) image is described in the guilty plea as depicting a child with an estimated age of three (3) to four (4) years, naked, with her legs spread, and an adult male penis

touching her vagina. The second described image depicted a very young girl, with no breast development, laying with her legs spread apart, and an adult male inserting his penis into her vagina.

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1) and (17), which provide:

> **RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:
>
> (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;
>
> ...
>
> (17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;
>
> ....

2.2 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

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3. NOTICE TO RESPONDENT

The charges in this document affect the public health, safety and welfare. The Health Services Consultant of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: January 31, 2008.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE
COMMISSION

ERIN OBENLAND
HEALTH SERVICES CONSULTANT

KRISTIN BREWER, WSBA # 38494
ASSISTANT ATTORNEY GENERAL

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