

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

In the Matter of the First Amended
Accusation Against:

Monte Winston Penner, M.D.

Physician's and Surgeon's
License No. G71997

Respondent

Case No. 800-2018-043730

DECISION


The attached Proposed Decision 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 10, 2021.

IT IS SO ORDERED: February 8, 2021.

MEDICAL BOARD OF CALIFORNIA

By:



Richard E. Thorp, M.D., Chair
Panel B

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 VERONICA VO
Deputy Attorney General
4 State Bar No. 230698
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8 *Attorneys for Complainant*

9

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

12

13

In the Matter of the First Amended Accusation
Against:

14

MONTE WINSTON PENNER, M.D.
PO Box 923
Weimar, CA 95736-0923

15

16

17

Physician's and Surgeon's Certificate
No. G 71997

18

19

Respondent.

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

22

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PARTIES

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1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
California (Board). He brought this action solely in his official capacity and is represented in this
matter by Xavier Becerra, Attorney General of the State of California, by Veronica Vo, Deputy
Attorney General.

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1 CULPABILITY

2 9. Respondent understands and agrees that, at an administrative hearing, complainant
3 could establish a *prima facie* case with respect to the charges and allegations contained in the
4 First Amended Accusation No. 800-2018-043730, a true and correct copy of which is attached as
5 Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G
6 71997 to disciplinary action.

7 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
8 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
9 Disciplinary Order below.

10 CONTINGENCY

11 11. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the
12 Medical Board of California. Respondent understands and agrees that counsel for Complainant
13 and the staff of the Medical Board of California may communicate directly with the Board
14 regarding this stipulation and settlement, without notice to or participation by Respondent or his
15 counsel. By signing the stipulation, Respondent understands and agrees that he may not
16 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
17 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
18 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
19 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
20 be disqualified from further action by having considered this matter.

21 12. Respondent agrees that if he ever petitions for early termination or modification of
22 probation, or if an accusation and/or petition to revoke probation is filed against him before the
23 Board, all of the charges and allegations contained in the First Amended Accusation No. 800-
24 2018-043730 shall be deemed true, correct and fully admitted by respondent for purposes of any
25 such proceeding or any other licensing proceeding involving Respondent in the State of
26 California.

1 later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

2 2. PROFESSIONAL BOUNDARIES PROGRAM.

3 Within sixty (60) calendar days from the effective date of this decision, Respondent shall
4 enroll in a professional boundaries program approved in advance by the Board or its designee.
5 Respondent, at the program's discretion, shall undergo and complete the program's assessment of
6 Respondent competency, mental health and/or neuropsychological performance, and at a
7 minimum, a 24 hour program of interactive education and training in the area of boundaries,
8 which takes into account data obtained from the assessment and from the Decision(s),
9 Accusation(s) and any other information that the Board or its designee deems relevant. The
10 program shall evaluate Respondent at the end of the training and the program shall provide any
11 data from the assessment and training as well as the results of the evaluation to the Board or its
12 designee.

13 Failure to complete the entire program not later than six (6) months after Respondent's
14 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
15 in writing to a later time for completion. Based on Respondent performance in and evaluations
16 from the assessment, education, and training, the program shall advise the Board or its designee
17 of its recommendation(s) for additional education, training, psychotherapy and other measures
18 necessary to ensure that Respondent can practice medicine safely. Respondent shall comply with
19 program recommendations. At the completion of the program, Respondent shall submit to a final
20 evaluation. The program shall provide the results of the evaluation to the Board or its designee.
21 The professional boundaries program shall be at Respondent's expense and shall be in addition to
22 the Continuing Medical Education (CME) requirements for renewal of licensure.

23 The program has the authority to determine whether or not Respondent successfully
24 completed the program.

25 A professional boundaries course taken after the acts that gave rise to the charges in the
26 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
27 or its designee, be accepted towards the fulfillment of this condition if the course would have
28 been approved by the Board or its designee had the course been taken after the effective date of

1 this Decision.

2 If Respondent fails to complete the program within the designated time period, Respondent
3 shall cease the practice of medicine within three (3) calendar days after being notified by the
4 Board or its designee that Respondent failed to complete the program.

5 3. THIRD PARTY CHAPERONE.

6 During probation, Respondent shall have a third party chaperone present while consulting,
7 examining or treating female patients. Respondent shall, within 30 calendar days of the effective
8 date of the Decision, submit to the Board or its designee for prior approval name(s) of persons
9 who will act as the third party chaperone.

10 If Respondent fails to obtain approval of a third party chaperone within 60 calendar days of
11 the effective date of this decision, Respondent shall receive a notification from the Board or its
12 designee to cease the practice of medicine within three (3) calendar days after being so notified.

13 Respondent shall cease the practice of medicine until a chaperone is approved to provide
14 monitoring responsibility.

15 Each third party chaperone shall sign (in ink or electronically) and date each patient
16 medical record at the time the chaperone's services are provided. Each third party chaperone shall
17 read the Decision(s) and the Accusation(s), and fully understand the role of the third party
18 chaperone.

19 Respondent shall maintain a log of all patients seen for whom a third party chaperone is
20 required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical
21 record number; and 3) date of service. Respondent shall keep this log in a separate file or ledger,
22 in chronological order, shall make the log available for immediate inspection and copying on the
23 premises at all times during business hours by the Board or its designee, and shall retain the log
24 for the entire term of probation.

25 Respondent is prohibited from terminating employment of a Board-approved third party
26 chaperone solely because that person provided information as required to the Board or its
27 designee.

28 If the third party chaperone resigns or is no longer available, Respondent shall, within five

1 (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for
2 prior approval, the name of the person(s) who will act as the third party chaperone. If Respondent
3 fails to obtain approval of a replacement chaperone within 30 calendar days of the resignation or
4 unavailability of the chaperone, Respondent shall receive a notification from the Board or its
5 designee to cease the practice of medicine within three (3) calendar days after being so notified.
6 Respondent shall cease the practice of medicine until a replacement chaperone is approved and
7 assumes monitoring responsibility.

8 4. NOTIFICATION.

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

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

17 5. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
18 NURSES.

19 During probation, Respondent is prohibited from supervising physician assistants and
20 advanced practice nurses.

21 6. OBEY ALL LAWS.

22 Respondent shall obey all federal, state and local laws, all rules governing the practice of
23 medicine in California and remain in full compliance with any court ordered criminal probation,
24 payments, and other orders.

25 7. QUARTERLY DECLARATIONS.

26 Respondent shall submit quarterly declarations under penalty of perjury on forms provided
27 by the Board, stating whether there has been compliance with all the conditions of probation.

28 Respondent shall submit quarterly declarations no later than 10 calendar days after the end

1 of the preceding quarter.

2 8. GENERAL PROBATION REQUIREMENTS.

3 Compliance with Probation Unit

4 Respondent shall comply with the Board's probation unit.

5 Address Changes

6 Respondent shall, at all times, keep the Board informed of Respondent's business and
7 residence addresses, email address (if available), and telephone number. Changes of such
8 addresses shall be immediately communicated in writing to the Board or its designee. Under no
9 circumstances shall a post office box serve as an address of record, except as allowed by Business
10 and Professions Code section 2021(b).

11 Place of Practice

12 Respondent shall not engage in the practice of medicine in Respondent's or patient's place
13 of residence, unless the patient resides in a skilled nursing facility or other similar licensed
14 facility.

15 License Renewal

16 Respondent shall maintain a current and renewed California physician's and surgeon's
17 license.

18 Travel or Residence Outside California

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

22 In the event Respondent should leave the State of California to reside or to practice,
23 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of
24 departure and return.

25 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE.

26 Respondent shall be available in person upon request for interviews either at Respondent's
27 place of business or at the probation unit office, with or without prior notice throughout the term
28 of probation.

1 10. NON-PRACTICE WHILE ON PROBATION.

2 Respondent shall notify the Board or its designee in writing within 15 calendar days of any
3 periods of non-practice lasting more than 30 calendar days and within 15 calendar days of
4 Respondent's return to practice. Non-practice is defined as any period of time Respondent is not
5 practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at
6 least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other
7 activity as approved by the Board. If Respondent resides in California and is considered to be in
8 non-practice, Respondent shall comply with all terms and conditions of probation. All time spent
9 in an intensive training program which has been approved by the Board or its designee shall not
10 be considered non-practice and does not relieve Respondent from complying with all the terms
11 and conditions of probation. Practicing medicine in another state of the United States or Federal
12 jurisdiction while on probation with the medical licensing authority of that state or jurisdiction
13 shall not be considered non-practice. A Board-ordered suspension of practice shall not be
14 considered as a period of non-practice.

15 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
16 months, Respondent shall successfully complete the Federation of State Medical Boards's Special
17 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program
18 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model
19 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

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

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

22 Periods of non-practice for a Respondent residing outside of California will relieve
23 Respondent of the responsibility to comply with the probationary terms and conditions with the
24 exception of this condition and the following terms and conditions of probation: Obey All Laws;
25 General Probation Requirements; and Quarterly Declarations.

26 11. COMPLETION OF PROBATION.

27 Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not
28 later than 120 calendar days prior to the completion of probation. Upon successful completion of

1 probation, Respondent's certificate shall be fully restored.

2 12. VIOLATION OF PROBATION.

3 Failure to fully comply with any term or condition of probation is a violation of probation.
4 If Respondent violates probation in any respect, the Board, after giving Respondent notice and the
5 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
6 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed
7 against Respondent during probation, the Board shall have continuing jurisdiction until the matter
8 is final, and the period of probation shall be extended until the matter is final.

9 13. LICENSE SURRENDER.

10 Following the effective date of this Decision, if Respondent ceases practicing due to
11 retirement or health reasons or is otherwise unable to satisfy the terms and conditions of
12 probation, Respondent may request to surrender his or her license. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion in determining whether or not to
14 grant the request, or to take any other action deemed appropriate and reasonable under the
15 circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar
16 days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent
17 shall no longer practice medicine. Respondent will no longer be subject to the terms and
18 conditions of probation. If Respondent re-applies for a medical license, the application shall be
19 treated as a petition for reinstatement of a revoked certificate.

20 14. PROBATION MONITORING COSTS.

21 Respondent shall pay the costs associated with probation monitoring each and every year of
22 probation, as designated by the Board, which may be adjusted on an annual basis. Such costs
23 shall be payable to the Medical Board of California and delivered to the Board or its designee no
24 later than January 31 of each calendar year.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Steven L. Simas. I understand the stipulation and the effect it will
4 have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Medical Board of California.

7
8 DATED: 12/28/2020 
9 MONTE WINSTON PENNER, M.D.
Respondent

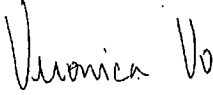
10 I have read and fully discussed with Respondent Monte Winston Penner, M.D. the terms
11 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
12 Order. I approve its form and content.

13 DATED: December 29, 2020 
14 STEVEN L. SIMAS
Attorney for Respondent

15
16 ENDORSEMENT

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

19
20 DATED: December 29, 2020

21 Respectfully submitted,
22 XAVIER BECERRA
23 Attorney General of California
24 STEVEN D. MUNI
25 Supervising Deputy Attorney General
26 
27 VERONICA VO
28 Deputy Attorney General
Attorneys for Complainant

27 SA2019300835
28 StipSettlement.docx

Exhibit A

Accusation No. 800-2018-043730

1 XAVIER BECERRA
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7 *Attorneys for Complainant*

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

13 In the Matter of the First Amended Accusation
Against:

14 **Monte Winston Penner, M.D.**
15 **PO Box 923**
Weimar, CA 95736-0923

16 **Physician's and Surgeon's Certificate**
17 **No. G 71997,**

18 Respondent.

Case No. 800-2018-043730

OAH No. 2020050376

FIRST AMENDED ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
23 official capacity as the Executive Director of the Medical Board of California, Department of
24 Consumer Affairs (Board).

25 2. On or about July 19, 1991, the Medical Board issued Physician's and Surgeon's
26 Certificate No. G 71997 to Monte Winston Penner, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on August 31, 2022, unless renewed.

JURISDICTION

1
2 3. This First Amended Accusation is brought before the Board, under the authority of
3 the following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

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

9 5. Section 2234 of the Code, states:

10 “The board shall take action against any licensee who is charged with
11 unprofessional conduct. In addition to other provisions of this article, unprofessional
12 conduct includes, but is not limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or
14 abetting the violation of, or conspiring to violate any provision of this chapter.

15 “(b) Gross negligence.

16 “(c) Repeated negligent acts. To be repeated, there must be two or more
17 negligent acts or omissions. An initial negligent act or omission followed by a
18 separate and distinct departure from the applicable standard of care shall constitute
19 repeated negligent acts.

20 “(1) An initial negligent diagnosis followed by an act or omission medically
21 appropriate for that negligent diagnosis of the patient shall constitute a single
22 negligent act.

23 “(2) When the standard of care requires a change in the diagnosis, act, or
24 omission that constitutes the negligent act described in paragraph (1), including, but
25 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
26 licensee’s conduct departs from the applicable standard of care, each departure
27 constitutes a separate and distinct breach of the standard of care.

28 “ . . . ”

1 believe in evolution. Respondent asked Patient A out multiple times and also asked for her email
2 address, which she declined each time. Finally, as Respondent gave a prescription sheet to Patient
3 A, he again asked if she would give him her email address. She provided her email address so that
4 the visit would end and she could go home to rest. Later that day, at approximately 5:15 p.m.,
5 Respondent emailed Patient A from his personal email account, stating, "Hello [Patient A], It was
6 interesting hearing about your PhD work in the Congo. Did this email reach you? Monte Penner,
7 MD." Patient A did not reply to Respondent's email.

8 10. Shortly thereafter, Patient A submitted a complaint to Human Resources at WSMC.
9 Internally, Respondent was asked to provide a response to Patient A's complaint. In his written
10 response, dated August 8, 2017, Respondent admitted that he told Patient A that "he would love
11 to sit down over dinner and debate the issue." In that same written response to Human Resources,
12 Respondent also admitted to "offer[ing] to meet with her if she wanted to" and asking Patient A
13 for her email address.

14 11. During an interview with a Board investigator on June 3, 2019, Respondent admitted
15 that he sent an email to Patient A from his personal email account, in reference to meeting and
16 talking about anthropology and Patient A's research in Africa. He admitted that was an unusual
17 request and, in retrospect, he may have crossed a boundary.

18 Patient B

19 12. On or about August 30, 2019, Patient B, then a 39-year-old female, visited WSMC
20 for a pre-employment physical examination. Respondent conducted a brief examination,
21 including vitals, a vision examination, and physical. At the end of the examination, Respondent
22 asked Patient B if she would like a pelvic examination. Patient B declined. Respondent
23 responded, "Well, you never know what else might be in the job description." Patient B believed
24 both statements to be sexual harassment, first by joking about needing a pelvic examination to do
25 her job as a physician, and second by insinuating that there may be sexual acts required in the job.

26 13. Within hours of the above incident, Patient B contacted WSMC's Chief Medical
27 Officer and described Respondent's conduct and statements during the pre-employment physical
28 examination.

1 14. The next morning, on or about August 31, 2019, Patient B submitted an online
2 complaint to the Board concerning the above incident.

3 15. On or about September 3, 2019, at the request of WSMC's Chief Executive Officer,
4 Respondent submitted a letter detailing his recollection of the incident. According to
5 Respondent's letter, after engaging in conversation for about 10 minutes, he examined Patient B's
6 eyes, mouth, neck, heart, lungs, and abdomen. The letter further states that, at the end of the
7 encounter, Respondent offered conducting a pelvic examination, which he "meant to be facetious
8 as no employer would EVER require a pelvic exam as part of a pre-employment PE."
9 Respondent's letter describes worry and regret concerning this "slip of the tongue."

10 16. During an interview with a Board investigator on February 4, 2020, Respondent
11 admitted that, in an attempt to "break the ice," he made the comment to Patient B offering to
12 conduct a pelvic examination. He again referred to it as a "slip of the tongue." He further stated
13 that a pelvic examination is not a regular part of the pre-employment physical examination.
14 Respondent, however, denied saying, "well, you never know what else might be in the job
15 description." Instead, Respondent thought he "said something about . . . the way California laws
16 are going, one never knows what might be required in the future."

17 SECOND CAUSE FOR DISCIPLINE

18 (General Unprofessional Conduct)

19 17. Respondent's license is subject to disciplinary action under Code sections 2227 and
20 2234, in that he has engaged in conduct which breaches the rules or ethical conduct of the
21 medical profession, or conduct which is unbecoming a member in good standing of the medical
22 profession, and which demonstrates an unfitness to practice medicine, as more particularly
23 alleged in paragraphs 8 through 16, above, which are hereby incorporated by reference as if fully
24 set forth herein.

25 DISCIPLINARY CONSIDERATIONS

26 18. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about November 1, 2010, in a prior disciplinary action titled *In the*
28 *Matter of the Accusation Against Monte W. Penner, M.D.*, before the Medical Board of

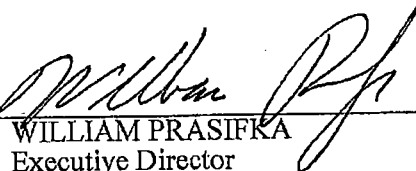
1 California, in Case No. 02-2007-183350, Respondent's license was publicly reprimanded as
2 follows: "From approximately January through March, 2007, [Respondent] failed to conduct
3 [him]self in a professional manner with colleagues, coworkers and fellow healthcare
4 professionals by displaying hostile, discourteous, and inappropriate behavior in the workplace as
5 more fully described in Accusation No. 02-2007-183350." That decision is now final and is
6 incorporated by reference as if fully set forth herein.

7 **PRAYER**

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

- 10 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 71997, issued
11 to Monte Winston Penner, M.D.;
- 12 2. Revoking, suspending or denying approval of Monte Winston Penner, M.D.'s
13 authority to supervise physician assistants and advanced practice nurses;
- 14 3. Ordering Monte Winston Penner, M.D., if placed on probation, to pay the Board the
15 costs of probation monitoring; and
- 16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: SEP 21 2020



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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