

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

In the Matter of the Accusation
Against:

Albert Joseph DiVittorio, Jr., M.D.

Case No. 800-2017-039416

Physician's and Surgeon's
Certificate No. C32238

Respondent

DECISION

The attached Stipulated Surrender of License and 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

FEB 18 2021

IT IS SO ORDERED FEB 11 2021

MEDICAL BOARD OF CALIFORNIA

By: 
William Prasifka
Executive Director

1 XAVIER BECERRA
Attorney General of California
2 STEVEN D. MUNI
Supervising Deputy Attorney General
3 JANNSEN TAN
Deputy Attorney General
4 State Bar No. 237826
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 800-2017-039416

13 **ALBERT JOSEPH DIVITTORIO, JR.,**
14 **M.D.**

OAH No.

14 **1008 Fowler Way Ste. A**
Placerville, CA 95667

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. C**
16 **32238**

17 Respondent.

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

22 **PARTIES**

23 1. William Prasifka (Complainant), is the Executive Director of the Medical Board of
24 California (Board). This action was brought by then Complainant Kimberly Kirchmeyer solely in
25 her official capacity. The Complainant is represented in this matter by Xavier Becerra, Attorney
26 General of the State of California, by Jannsen Tan, Deputy Attorney General.

27 2. Albert Joseph DiVittorio, Jr., M.D. (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1 3. On or about May 13, 1970, the Board issued Physician's and Surgeon's Certificate
2 No. C 32238 to Albert Joseph DiVittorio, Jr., M.D. (Respondent). The Physician's and Surgeon's
3 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
4 No. 800-2017-039416 and will expire on July 31, 2019, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 800-2017-039416 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on September 6, 2019. Respondent timely filed his Notice of
9 Defense contesting the Accusation. A copy of Accusation No. 800-2017-039416 is attached as
10 Exhibit A and incorporated by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, and understands the charges and allegations in
13 Accusation No. 800-2017-039416. Respondent also has carefully read, and understands the
14 effects of this Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 **CULPABILITY**

25 8. Respondent understands that the charges and allegations in Accusation No. 800-2017-
26 039416, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
27 Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2017-039416 and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent further agrees that if he ever petitions for reinstatement of his Physician's and Surgeon's Certificate No. C 32238, or if an accusation is filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 800-2017-039416 shall be deemed true, correct, and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California or elsewhere.

11. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

RESERVATION

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

CONTINGENCY

13. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this

1 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
2 be disqualified from further action by having considered this matter.

3 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
4 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
5 thereto, shall have the same force and effect as the originals.

6 15. In consideration of the foregoing admissions and stipulations, the parties agree that
7 the Board may, without further notice or formal proceeding, issue and enter the following Order:

8 **ORDER**

9 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 32238, issued
10 to Respondent Albert Joseph DiVittorio, Jr., M.D., is surrendered and accepted by the Board.

11 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
12 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
13 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
14 of Respondent's license history with the Board.

15 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
16 California as of the effective date of the Board's Decision and Order.

17 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
18 issued, his wall certificate on or before the effective date of the Decision and Order.

19 4. If Respondent ever files an application for licensure or a petition for reinstatement in
20 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
21 comply with all the laws, regulations and procedures for reinstatement of a revoked or
22 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
23 contained in Accusation No. 800-2017-039416 shall be deemed to be true, correct and admitted
24 by Respondent when the Board determines whether to grant or deny the petition.

25 5. If Respondent should ever apply or reapply for a new license or certification, or
26 petition for reinstatement of a license, by any other health care licensing agency in the State of
27 California, all of the charges and allegations contained in Accusation, No. 800-2017-039416 shall
28

1 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
2 Issues or any other proceeding seeking to deny or restrict licensure.

3 **ACCEPTANCE**

4 I have carefully read the Stipulated Surrender of License and Order. I understand the
5 stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into
6 this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and
7 agree to be bound by the Decision and Order of the Medical Board of California.

8
9 DATED: 1/21/2021

Albert J. Divittorio, Jr.
10 ALBERT JOSEPH DIVITTORIO, JR., M.D.
11 Respondent

12 **ENDORSEMENT**

13 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
14 for consideration by the Medical Board of California of the Department of Consumer Affairs.

15 DATED: 1/21/2021

Respectfully submitted,

16 XAVIER BECERRA
Attorney General of California
17 STEVEN D. MUNI
Supervising Deputy Attorney General

18 *Jay L. Tan*

19 JANNSEN TAN
20 Deputy Attorney General
21 Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-039416

1 XAVIER BECERRA
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept. 6 20 19
BY [Signature] ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 800-2017-039416

13 **ALBERT JOSEPH DIVITTORIO, JR.,**
14 **M.D.**
15 **1008 Fowler Way Ste. A**
Placerville, CA 95667

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. C 32238,**

18 Respondent.

19
20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about May 13, 1970, the Medical Board issued Physician's and Surgeon's
25 Certificate No. C 32238 to Albert Joseph DiVittorio, Jr., M.D. (Respondent). The Physician's
26 and Surgeon's Certificate was in full force and effect at all times to the charges brought herein.
27 Respondent's Physician's and Surgeon's Certificate expired on July 31, 2019, and is delinquent.

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

4 (2) When the standard of care requires a change in the diagnosis, act, or
5 omission that constitutes the negligent act described in paragraph (1), including, but
6 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
7 licensee's conduct departs from the applicable standard of care, each departure
8 constitutes a separate and distinct breach of the standard of care.

9 (d) Incompetence.

10 (e) The commission of any act involving dishonesty or corruption which is
11 substantially related to the qualifications, functions, or duties of a physician and
12 surgeon.

13 (f) Any action or conduct which would have warranted the denial of a
14 certificate.

15 (g) The practice of medicine from this state into another state or country
16 without meeting the legal requirements of that state or country for the practice of
17 medicine. Section 2314 shall not apply to this subdivision. This subdivision shall
18 become operative upon the implementation of the proposed registration program
19 described in Section 2052.5.

20 (h) The repeated failure by a certificate holder, in the absence of good cause, to
21 attend and participate in an interview by the board. This subdivision shall only apply
22 to a certificate holder who is the subject of an investigation by the board.

23 6. Section 2266 of the Code states: The failure of a physician and surgeon to maintain
24 adequate and accurate records relating to the provision of services to their patients constitutes
25 unprofessional conduct.

26 **FIRST CAUSE FOR DISCIPLINE**
27 **(Gross Negligence)**

28 7. Respondent has subjected his Physician's and Surgeon's Certificate No. C 32238 to
disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
the Code, in that Respondent committed gross negligence in his care and treatment of Patients A¹,
and B, as more particularly alleged hereinafter:

8. Respondent is a physician and surgeon who during the time alleged herein practiced
at Marshall Medical Center, Placerville, California.

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¹ To protect the privacy of the patients involved, the patient names have not been included
in this pleading.

1 **Patient A**

2 9. Patient A was a 65-year-old male who was initially seen in Marshall Medical Center
3 in November 2016. Patient A at the time, presented with acute non-ST elevation myocardial
4 infarction. He was transferred to Sutter Medical Center after initial medical stabilization and
5 underwent coronary angiography on November 9, 2016. He was noted to have an occluded mid
6 left anterior descending artery which was stented with a 2.5 x 20 mm Synergy drug-eluting stent.
7 He was placed on Brilinta² and aspirin after the stent placement. Patient A was obese, and had a
8 history of stroke and sleep apnea. He had a history of bariatric surgery and reversal. He had a
9 congenital absence of one kidney. He presented in February and June of 2017 with
10 gastrointestinal bleeding. In February of 2017, Patient A's CT scan revealed a pancreatic mass.

11 10. On or about May 22, 2017, Patient A was seen by another provider in Marshall
12 Medical Center. The plan, from the coronary artery stent point, was to continue the dual
13 antiplatelet therapy for at least 6 months, ideally one year. It was decided to wait until November
14 for surgical intervention of the pancreatic mass.

15 11. Respondent decided to move the surgery three months early. Respondent failed to
16 consult with Cardiology involving the surgery. Respondent failed to determine if it was
17 acceptable to stop the dual antiplatelet therapy. Respondent failed to document his justification as
18 to why surgery was needed to be performed earlier.

19 12. On or about August 10, 2017, Patient A was admitted in Marshall Medical Center.
20 Respondent documented that Patient A was admitted for resection of the pancreatic tumor.
21 Respondent's plan was to explore and resection the spleen and tail of the pancreas. The mass in
22 the tail of the pancreas was hypermetabolic and measured about 4.5 x 3.5 cm. Respondent
23 documented that Patient A understands and consents to the procedure.

24 13. On or about August 11, 2017, Patient A was put under anesthesia and Respondent
25 started the surgery. Respondent had to abort the procedure. Respondent documented that Patient
26 A had taken his anticoagulants so the surgery was postponed. Respondent documented that

27
28 ² Brilinta, generic name ticagrelor, is a blood thinner used to prevent stroke, heart attack
and other heart problems.

1 "[Patient A] was overall doing well. He is ambulatory. He is tolerating his diet. Dressing is
2 removed. The wound looks good. We will also remove his epidural today." Respondent failed to
3 determine whether the Brilinta had been stopped within an adequate time before surgery.

4 14. On or about August 13, 2017, Respondent documented that "[Patient A] was afebrile.
5 Vital signs are stable. He is ready for surgery tomorrow. His Brilinta has been discontinued 5
6 days."

7 15. On or about August 14, 2017, Respondent performed a distal pancreatectomy and
8 splenectomy procedure. The preoperative diagnosis was carcinoma of the pancreas. Patient A's
9 transverse colon was injured during surgery. Estimated blood loss was 1800 ml. Postoperatively,
10 Respondent documented that Patient A was returned to the intensive care unit. Patient A required
11 considerable amounts of fluid replacement including blood, platelets and frozen plasma. He had
12 low urine output, and his creatinine was elevated from 1.2 to 2.42. Respondent failed to consult
13 with cardiology. Respondent failed to obtain cardiac enzymes and an electrocardiogram.
14 Respondent failed to perform a cardiac workup the evening after surgery.

15 16. On or about August 15, 2017, Respondent documented that:

16 "[Patient A] has received extensive support throughout the night, and at this point is on both
17 Levophed and vasopressin without adequate blood pressure. He has had essentially no urine
18 output. Central venous pressure (CVP) was in the range of 16. His blood gases have shown
19 some degree of acidosis. The fluid from his drainage is essentially serous. It does have a high
20 amylase content. At this point it is my sense that this patient does not have the cardiac support to
21 get through this event. I have discussed that issue with his family and they are all in agreement
22 that further efforts to maintain will be futile and that withdrawal of support to minimize his
23 suffering is appropriate. On that basis, I will discontinue the pressors, have him extubated, and
24 allow him to pass quietly."

25 17. Respondent committed gross negligence in his care and treatment of Patient A which
26 included, but was not limited to the following:

27 A. Respondent performed surgery within one year of the coronary intervention without
28 obtaining cardiac clearance.

1 B. Respondent placed Patient A under general anesthesia and later aborted the
2 procedure, because he failed to determine whether Patient A had stopped Brilinta prior to the
3 procedure.

4 C. Respondent failed to perform a cardiac workup the evening after the surgery when
5 Patient A was not doing well, and failed to consult with cardiology.

6 **Patient B**

7 18. Patient B was an 82-year-old female who presented to Marshall Medical Center in
8 January 25, 2016. Patient B presented with weakness and abdominal discomfort. She
9 complained of upper abdominal pain for several days. She had a prior history of hypertension
10 (not on current therapy), diverticulosis, colonic polyps, polymyalgia rheumatica, hyperlipidemia,
11 benign paroxysmal positional vertigo, previous stroke, mild cognitive impairment, degenerative
12 disease of the hips and back, and a history of melanomas. At the time of admission, Patient B
13 was noted to have a hemoglobin of 6 g/dl and iron deficiency anemia. Subsequent evaluation
14 included a colonoscopy which demonstrated right sided colon cancer which was the cause of the
15 anemia.

16 19. On or about January 29, 2016, Respondent performed a right colon resection
17 procedure on Patient B. Respondent documented: "[Patient B] had a considerable amount of
18 adhesions from previous surgical procedures. Some time was taken taking down the adhesions."
19 Respondent palpated the tumor in the cecum. Respondent "selected a site about 6 inches
20 proximal to the ileocecal valve and cleared it of mesentery and fatty tissue with ILA stapling
21 device fired across it. The entire right colon was mobilized and a site for division was selected in
22 the area of the right transverse colon. The ILA stapling device was fired across it. At this point,
23 the intervening mesentery was systematically dissected free, clamped, divided and ligated." After
24 completing the right colectomy, Respondent documented that the patient tolerated the procedure
25 well.

26 20. On or about January 31, 2016, Respondent saw Patient B for a follow up after the
27 surgical procedure. In his progress note, Respondent documented that "Patient B's urine output
28 was low the previous night, and another physician was called who ordered a bolus." Respondent

1 also documented that "Patient B's white count was 19,000, and an x-ray revealed some decreased
2 ventilation and a fair amount of subdiaphragmatic air."

3 21. On or about February 1, 2016, Respondent documented that Patient B was afebrile.
4 Patient B still had poor urine output despite administration of fairly large amounts of fluid.
5 Respondent also documented "at this point, I do not think there is any problem with leakage or
6 sepsis, but I will continue to follow her closely."

7 22. On or about February 3, 2016, Respondent documented that Patient B was afebrile.
8 Respondent added that Patient B was obtunded. Despite a fairly large amount of fluids, she still
9 had limited urine output. Respondent failed to recognize a bowel leak. Respondent failed to
10 adequately document Patient B's abdominal examination.

11 23. On or about February 4, 2016, Patient B was afebrile and has significant tachycardia.
12 Patient B continued to have "low urine which was not consistent with the amount of fluid she has
13 on board."

14 24. On or about February 6, 2016, Respondent documented that Patient B remained in
15 guarded condition. Patient B had leukocytosis with a significant white count of 22,000. She
16 developed an ileus that required a nasogastric tube. Her x-ray revealed a significant amount of
17 free air. She was also jaundiced.

18 25. On or about February 7, 2016, Respondent documented that Patient B continued to
19 have significant respiratory distress and leukocytosis. A CT scan was ordered and revealed a
20 significant amount of intra-abdominal fluid and increased free air.

21 26. On or about February 7, 2016, Patient B was taken back to the operating room.
22 Respondent performed an exploratory laparotomy with small bowel resection and repair of
23 anastomic leak. There were areas of small bowel that had leaks where the adhesions had been
24 taken down. The anastomosis was also leaking and was repaired primarily. The small bowel
25 leaks were resected and the bowel was anastomosed.

26 27. In the following days, Patient B did poorly and had a progressive decline of her
27 respiratory, renal and neurologic function. She was extubated and subsequently died.

28 ///

1 28. Respondent committed gross negligence in his care and treatment of Patient A which
2 included, but was not limited to the following:

3 A. Respondent failed to identify the bowel leak.

4 B. Respondent failed to adequately document Patient B's abdominal exam.

5 **SECOND CAUSE FOR DISCIPLINE**
6 **(Repeated Negligent Acts)**

7 29. Respondent has further subjected his Physician's and Surgeon's Certificate No. C
8 32238 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
9 subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and
10 treatment of Patients A, B, and C, as more particularly alleged hereinafter. The circumstances are
11 set forth in paragraphs 7 through 28, above, which are hereby incorporated by reference and
12 realleged as if fully set forth herein. Additional circumstances are as follows:

13 **Patient C**

14 30. Patient C was a 60-year-old male with a history of paraplegia. He presented with a
15 decubitus ulcer. While he was admitted, he was found to have acute cholecystitis. He was taken
16 to surgery on April 13, 2017 for diverting colostomy and cholecystectomy. The cystic duct was
17 identified at the junction of the common bile duct. Postoperatively, he had an ileus and
18 developed jaundice. He had a hepatobiliary iminodiacetic acid (HIDA) scan and endoscopic
19 retrograde cholangiopancreatograph (ERCP) that confirmed a common bile duct injury. He was
20 subsequently transferred to UC Davis.

21 31. Respondent departed from the standard of care in that the common bile duct injury
22 was a result of dissection of the cystic duct, too close to the common duct.

23 **THIRD CAUSE FOR DISCIPLINE**
24 **(Failure to Maintain Adequate and Accurate Medical Records)**

25 32. Respondent has further subjected his Physician's and Surgeon's Certificate No. C
26 32238 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the
27 Code, in that he failed to maintain adequate and accurate medical records in the care and
28


1 treatment of Patient A, as more particularly alleged in paragraphs 7 through 31, above, which are
2 hereby incorporated by reference and realleged as if fully set forth herein.

3 **PRAYER**

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

- 6 1. Revoking or suspending Physician's and Surgeon's Certificate No. C 32238, issued to
7 Albert Joseph DiVittorio, Jr., M.D.;
- 8 2. Revoking, suspending or denying approval of Albert Joseph DiVittorio, Jr., M.D.'s
9 authority to supervise physician assistants and advanced practice nurses;
- 10 3. Ordering Albert Joseph DiVittorio, Jr., M.D., if placed on probation, to pay the Board
11 the costs of probation monitoring; and
- 12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: September 6, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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