

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

In the Matter of the First Amended
Accusation Against:

Kenny C. Win, M.D.

Physician's and Surgeon's
Certificate No. A 54498

Respondent.

Case No. 800-2018-044106

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 March 19, 2021.

IT IS SO ORDERED March 12, 2021.

MEDICAL BOARD OF CALIFORNIA



William Prasifka
Executive Director

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
Deputy Attorney General
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8 *Attorneys for Complainant*

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

13

In the Matter of the First Amended Accusation
Against:

Case No. 800-2018-044106

14

KENNY C. WIN, M.D.
5434 El Monte Avenue
Temple City, CA 91780

OAH No. 2020090842

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**Physician's and Surgeon's Certificate
No. A 54498,**

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

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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:

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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 LeAnna E. Shields,
Deputy Attorney General.

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1 and all other rights accorded by the California Administrative Procedure Act and other applicable
2 laws.

3 8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently
4 waives and gives up each and every right set forth above.

5 **CULPABILITY**

6 9. Respondent does not contest that, at an administrative hearing, Complainant could
7 establish a *prima facie* case with respect to each and every charge and allegation contained in
8 the First Amended Accusation No. 800-2018-044106, and agrees that he has thereby subjected his
9 Physician's and Surgeon's Certificate No. A 54498 to disciplinary action, and hereby surrenders
10 his Physician's and Surgeon's Certificate No. A 54498 for the Board's formal acceptance.

11 9. Respondent agrees that if he files a petition for reinstatement or relicensure, or an
12 accusation and/or petition to revoke probation is filed against him before the Medical Board of
13 California, all of the charges and allegations contained in the First Amended Accusation No. 800-
14 2018-044106 shall be deemed true, correct, and fully admitted by Respondent for purposes of any
15 such proceeding or any other licensing proceeding involving Respondent in the State of
16 California.

17 10. Respondent understands that by signing this stipulation he enables the Board to issue
18 an order accepting the surrender of his Physician's and Surgeon's Certificate No. A 54498
19 without notice to, or opportunity to be heard by, Respondent.

20 **CONTINGENCY**

21 12. Business and Professions Code section 2224, subdivision (b), provides, in pertinent
22 part, that the Medical Board "shall delegate to its executive director the authority to adopt a ...
23 stipulation for surrender of a license."

24 13. Respondent understands that, by signing this stipulation, he enables the Executive
25 Director of the Board to issue an order, on behalf of the Board, accepting the surrender of his
26 Physician's and Surgeon's Certificate No. A 54498, without further notice to, or opportunity to be
27 heard by, Respondent.

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1 14. This Stipulated Surrender of License and Disciplinary Order shall be subject to the
2 approval of the Executive Director on behalf of the Board. The parties agree that this Stipulated
3 Surrender of License and Disciplinary Order shall be submitted to the Executive Director for his
4 consideration in the above-entitled matter and, further, that the Executive Director shall have a
5 reasonable period of time in which to consider and act on this Stipulated Surrender of License and
6 Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands
7 and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the
8 time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

9 15. The parties agree that this Stipulated Surrender of License and Disciplinary Order
10 shall be null and void and not binding upon the parties unless approved and adopted by the
11 Executive Director on behalf of the Board, except for this paragraph, which shall remain in full
12 force and effect. Respondent fully understands and agrees that in deciding whether or not to
13 approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive
14 Director and/or the Board may receive oral and written communications from its staff and/or the
15 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the
16 Executive Director, the Board, any member thereof, and/or any other person from future
17 participation in this or any other matter affecting or involving Respondent. In the event that the
18 Executive Director on behalf of the Board does not, in his discretion, approve and adopt this
19 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
20 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
21 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
22 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
23 by the Executive Director on behalf of the Board, Respondent will assert no claim that the
24 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
25 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
26 of any matter or matters related hereto.

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1 **ADDITIONAL PROVISIONS**

2 16. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
3 herein to be an integrated writing representing the complete, final and exclusive embodiment of
4 the agreements of the parties in the above-entitled matter.

5 17. The parties agree that copies of this Stipulated Surrender of License and Disciplinary
6 Order, including copies of the signatures of the parties, may be used in lieu of original documents
7 and signatures and, further, that such copies shall have the same force and effect as originals.

8 18. In consideration of the foregoing admissions and stipulations, the parties agree the
9 Executive Director of the Board may, without further notice to or opportunity to be heard by
10 Respondent, issue and enter the following Disciplinary Order on behalf of the Board:

11 **ORDER**

12 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 54498 issued
13 to Respondent KENNY C. WIN, M.D., is hereby surrendered and accepted by the Board.

14 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 54498
15 and the acceptance of the surrendered license by the Board shall constitute the imposition of
16 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
17 become a part of Respondent's license history with the Board.

18 2. Respondent shall lose all rights and privileges as a physician and surgeon in
19 California as of the effective date of the Board's Decision and Order.

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

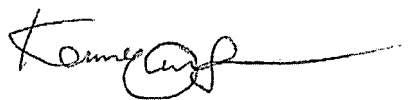
22 4. If Respondent ever files an application for licensure or a petition for reinstatement in
23 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
24 comply with all the laws, regulations and procedures for reinstatement of a revoked or
25 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
26 contained in the First Amended Accusation No. 800-2018-044106 shall be deemed to be true,
27 correct and fully admitted by Respondent when the Board determines whether to grant or deny
28 the petition.

1 5. If Respondent should ever apply or reapply for a new license or certification, or
2 petition for reinstatement of a license, by any other health care licensing agency in the State of
3 California, all of the charges and allegations contained in the First Amended Accusation, No.
4 800-2018-044106 shall be deemed to be true, correct, and fully admitted by Respondent for the
5 purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Surrender of License and Disciplinary Order and
8 have fully discussed it with my attorney, Kent T. Brandmeyer, Esq. I fully understand the
9 stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. A 54498. I
10 enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and
11 intelligently, and agree to be bound by the Decision and Order of the Medical Board of
12 California.

13
14 DATED: 03-05-2021

15 
KENNY C. WIN, M.D.
Respondent

16 I have read and fully discussed with Respondent Kenny C. Win, M.D., the terms and
17 conditions and other matters contained in the above Stipulated Surrender of License and
18 Disciplinary Order. I approve its form and content.

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20 DATED: 03/05/201

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KENT T. BRANDMEYER, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: March 5, 2021

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-044106

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Supervising Deputy Attorney General
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8 *Attorneys for Complainant*

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

13 In the Matter of the First Amended Accusation
14 Against:

Case No. 800-2018-044106

FIRST AMENDED ACCUSATION

15 **KENNY C. WIN, M.D.**
16 **5434 El Monte Avenue**
17 **Temple City, CA 91780-2829**

18 **Physician's and Surgeon's Certificate**
19 **No. A 54498,**

Respondent.

20 **PARTIES**

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

24 2. On or about August 9, 1995, the Medical Board issued Physician's and Surgeon's
25 Certificate No. A 54498 to Kenny C. Win, M.D. (Respondent). The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
27 expire on December 31, 2022, unless renewed.

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1 JURISDICTION

2 3. This First Amended Accusation, which supersedes the Accusation filed on July 28,
3 2020, is brought before the Board, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 2227 of the Code states:

6 (a) A licensee whose matter has been heard by an administrative law judge of
7 the Medical Quality Hearing Panel as designated in Section 11371 of the Government
8 Code, or whose default has been entered, and who is found guilty, or who has entered
9 into a stipulation for disciplinary action with the board, may, in accordance with the
10 provisions of this chapter:

11 (1) Have his or her license revoked upon order of the board.

12 (2) Have his or her right to practice suspended for a period not to exceed one
13 year upon order of the board.

14 (3) Be placed on probation and be required to pay the costs of probation
15 monitoring upon order of the board.

16 (4) Be publicly reprimanded by the board. The public reprimand may include a
17 requirement that the licensee complete relevant educational courses approved by the
18 board.

19 (5) Have any other action taken in relation to discipline as part of an order of
20 probation, as the board or an administrative law judge may deem proper.

21 (b) Any matter heard pursuant to subdivision (a), except for warning letters,
22 medical review or advisory conferences, professional competency examinations,
23 continuing education activities, and cost reimbursement associated therewith that are
24 agreed to with the board and successfully completed by the licensee, or other matters
25 made confidential or privileged by existing law, is deemed public, and shall be made
26 available to the public by the board pursuant to Section 803.1.

27 5. Section 2234 of the Code, states, in pertinent part:

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

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

(b) Gross negligence.

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

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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
negligent act.

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

6 ...

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Gross Negligence)**

9 6. Respondent has subjected his Physician's and Surgeon's Certificate No. A 54498 to
10 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of
11 the Code, in that he has committed gross negligence in his care and treatment of Patient A¹, as
12 more particularly alleged hereinafter.

13 7. On or about August 31, 2015, Patient A, a then 31-year old male, was admitted to
14 Patton State Hospital (PSH) after a determination was made that he was incompetent to stand
15 trial. Patient A's medical history was significant for, among other things, asthma, anxiety
16 disorder, and schizophrenia. Upon admission, Patient A's medications included, among other
17 things, Flovent², Singulair³, and Xopenex.⁴ Respondent was assigned as Patient A's medical
18 physician during his admission at PSH.

19 8. On or about September 1, 2015, Respondent performed an initial patient assessment
20 of Patient A. According to records, Respondent noted Patient A's medical history of asthma, but
21 documented Patient A's asthma as not active and documented no wheezing detected. Respondent
22

23 ¹ Patient identity has been withheld for patient privacy purposes. Respondent is aware of the
24 identity of the patient referred to herein.

25 ² Flovent, brand name for fluticasone, is a corticosteroid used for the long-term treatment of
asthma.

26 ³ Singulair, brand name for montelukast, is a leukotriene inhibitor, commonly used to treat asthma
27 by preventing asthma attacks.

28 ⁴ Xopenex, brand name for levalbuterol, is a short-acting bronchodilator used to increase the
airflow to the lungs, commonly used to treat or prevent bronchospasm.

1 then issued an order to continue Respondent's prescription for Xopenex, as needed. Respondent
2 did not issue a renewal prescription for Flovent or Singulair, which were due to expire on
3 September 7, 2015.

4 9. After the expiration of Patient A's prescriptions for Flovent and Singulair, PSH
5 documents show an increase in Patient A's daily requests for his Xopenex inhaler.

6 10. On or about January 4, 2016, Respondent performed a quarterly review and
7 assessment of Patient A. During this evaluation, Respondent documented Patient A had no
8 complaints, his lungs were clear, and no wheezing in his lungs. Respondent noted Patient A was
9 using his Xopenex inhaler daily, but documented the reason for the multiple requests was
10 Respondent's anxiety and reported shortness of breath. Respondent continued prescribing
11 Xopenex to Patient A, but did not add any other medications for asthma.

12 11. On or about January 24, 2016, Respondent evaluated Patient A, who presented with
13 complaints of shortness of breath and wheezing. Respondent documented no shortness of breath,
14 minimal inspiratory wheezing, and no expiratory wheezing. Respondent further documented no
15 acute bronchial asthma wheezing since admission, but Patient A still made daily requests for his
16 inhaler. Respondent then determined it was "mostly inhaler dependence."

17 12. On or about January 28, 2016, Respondent evaluated Patient A, who presented with
18 wheezing. Respondent documented wheezing at Patient A's larynx area, but none at his lungs.
19 Respondent documented a diagnosis of Acute Reactive Airway disease with signs of
20 bronchospasm and prescribed Xopenex inhaler.

21 13. From on or about August 31, 2015, through on or about February 14, 2016, Patient A
22 requested his Xopenex inhaler on a daily basis, multiple times per day. Patient A complained of
23 shortness of breath and wheezing, and reported improved breathing after taking several puffs of
24 his Xopenex inhaler.

25 14. At no time during Patient A's stay as PSH did Respondent issue a prescription to
26 Patient A for Flovent or Singulair, or any equivalent or similar prescription for Flovent or
27 Singulair, to renew these two medications for Patient A after their expiration on September 7,
28 2015.

1 15. At no time during Patient A's stay at PSH did Respondent order any objective testing
2 to determine Patient A's respiratory status or to confirm the validity of Patient A's repeated
3 requests for his Xopenex inhaler.

4 16. On or about February 14, 2016, Patient A complained of shortness of breath and by
5 approximately 7:40 A.M., he had already used his inhaler once. After using his inhaler, Patient A
6 continued to report feeling unable to breathe. Without performing an examination of Patient A,
7 Respondent attributed Patient A's condition to his anxiety and transferred the care of Patient A to
8 the incoming staff physician of the day, a psychiatrist, as Respondent's shift was ending. Later
9 that same morning, Patient A was pronounced dead. The cause of death was determined to be
10 acute and chronic bronchial asthma.

11 17. Respondent committed gross negligence in his care and treatment of Patient A, which
12 included, but is not limited to:

13 A. Paragraphs 6 through 16, above, are hereby incorporated by reference and
14 realleged as if fully set forth herein;

15 B. Respondent failed to recognize and/or properly manage Patient A's acute
16 asthma attack on February 14, 2016;

17 C. Respondent failed to take proper precautions in discontinuing Patient A's two
18 asthma maintenance medications, Flovent and Singulair, by discontinuing both
19 medications at the same time, and Respondent failed to restart Patient A's two asthma
20 maintenance medications, or their equivalent, when indicated by Patient A's
21 condition; and

22 D. Respondent failed to use step up therapy in the treatment and management of
23 Patient A's asthma.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 18. Respondent has further subjected his Physician's and Surgeon's Certificate No. A
4 54498 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
5 subdivision (c), of the Code, in that he has committed repeated negligent acts in his care and
6 treatment of Patient A, as more particularly alleged hereinafter.

7 A. Paragraphs 6 through 17, above, are hereby incorporated by reference and
8 realleged as if fully set forth herein;

9 B. Respondent failed to order objective testing to assess Patient A's asthma and
10 respiratory status, including but not limited to, peak expiratory flow rate and
11 pulmonary function testing; and

12 C. Respondent failed to consider and/or document the consideration of other
13 underlying causes of Patient A's anxiety other than mental illness, including the
14 possibility of Patient A's inability to breathe.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Violations of Provisions of the Medical Practice Act)**

17 19. Respondent has further subjected his Physician's and Surgeon's Certificate No. A
18 54498 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
19 subdivision (a), of the Code, in that he violated a provision or provisions of the Medical Practice
20 Act, as more particularly alleged in paragraphs 6 through 18, above, which are hereby
21 incorporated by reference and realleged as if fully set forth herein.

22 **PRAYER**

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

25 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 54498, issued
26 to Respondent Kenny C. Win, M.D.;

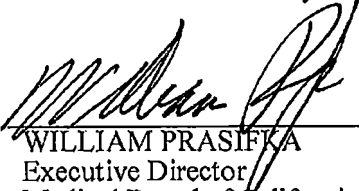
27 2. Revoking, suspending or denying approval of Respondent Kenny C. Win, M.D.'s
28 authority to supervise physician assistants and advanced practice nurses;

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3. Ordering Respondent Kenny C. Win, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: March 3, 2021



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

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