

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

**In the Matter of the Accusation
Against:**

Tuoc Khong Duong, M.D.

**Physician's and Surgeon's
Certificate No. A 88590**

Respondent.

Case No.: 800-2017-034849

DECISION

The attached Stipulated Settlement and Disciplinary 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 October 7, 2021.

IT IS SO ORDERED: September 7, 2021.

MEDICAL BOARD OF CALIFORNIA



**Laurie Rose Lubiano, J.D., Chair
Panel A**

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 JASON J. AHN
Deputy Attorney General
4 State Bar No. 253172
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5 San Diego, CA 92101
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6 San Diego, CA 92186-5266
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8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **TUOC KHONG DUONG, M.D.**
15 **9009 McFadden Avenue**
16 **Westminster, CA 92683**

17 **Physician's and Surgeon's**
Certificate No. A 88590

18 Respondent.

Case No. 800-2017-034849

OAH No. 2020080292

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

23 **PARTIES**

24 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
25 California (Board). He brought this action solely in his official capacity and is represented in this
26 matter by Rob Bonta, Attorney General of the State of California, by Jason J. Ahn, Deputy
27 Attorney General.

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2. Respondent Tuoc Khong Duong, M.D. (Respondent) is represented in this proceeding by attorney Robert K. Weinberg, Esq., whose address is: 19200 Von Karman Avenue, Suite 380 Irvine, CA 92612-85082.1. On or about August 18, 2004, the Board issued Physician's and Surgeon's Certificate No. A 88590 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-034849, and will expire on October 31, 2021, unless renewed.

JURISDICTION

3. On July 15, 2020, Accusation No. 800-2017-034849 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 15, 2020. Respondent timely filed his Notice of Defense contesting the Accusation.

4. A copy of Accusation No. 800-2017-034849 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-034849. Respondent has also carefully read, fully discussed with his counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

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1 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify
2 the Board, any member thereof, and/or any other person from future participation in this or any
3 other matter affecting or involving Respondent. In the event that the Board does not, in its
4 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
5 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
6 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
7 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
8 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
9 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
10 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

11 **ADDITIONAL PROVISIONS**

12 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein
13 to be an integrated writing representing the complete, final, and exclusive embodiment of the
14 agreements of the parties in the above-entitled matter.

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

18 16. In consideration of the foregoing admissions and stipulations, the parties agree the
19 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter
20 the following Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 88590 issued
23 to Respondent Tuoc Khong Duong, M.D. is revoked. However, the revocation is stayed and
24 Respondent is placed on probation for five (5) years on the following terms and conditions:

25 1. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE.** Respondent shall abstain
26 completely from the personal use or possession of controlled substances as defined in the
27 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and
28 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not

1 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide
2 illness or condition.

3 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
4 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
5 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
6 telephone number.

7 If Respondent has a confirmed positive biological fluid test for any substance (whether or
8 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall
9 receive a notification from the Board or its designee to immediately cease the practice of
10 medicine. The Respondent shall not resume the practice of medicine until the final decision on an
11 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to
12 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.
13 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the
14 Board shall provide the Respondent with a hearing within 30 days of the request, unless the
15 Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge
16 alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of
17 the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed
18 decision, the Board shall issue its Decision, unless good cause can be shown for the delay. If the
19 case is heard by the Board, the Board shall issue its decision within 15 days of submission of the
20 case, unless good cause can be shown for the delay. Good cause includes, but is not limited to,
21 non-adoption of the proposed decision, requests for reconsideration, remands and other
22 interlocutory orders issued by the Board. The cessation of practice shall not apply to the
23 reduction of the probationary time period.

24 If the Board does not file an accusation or petition to revoke probation within 30 days of the
25 issuance of the notification to cease practice or does not provide Respondent with a hearing
26 within 30 days of such a request, the notification of cease practice shall be dissolved.

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1 2. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the
2 use of products or beverages containing alcohol.

3 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
4 receive a notification from the Board or its designee to immediately cease the practice of
5 medicine. The Respondent shall not resume the practice of medicine until the final decision on an
6 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to
7 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.
8 If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the
9 Board shall provide the Respondent with a hearing within 30 days of the request, unless the
10 Respondent stipulates to a later hearing. The case is heard by an Administrative Law Judge
11 alone, he or she shall forward a Proposed Decision to the Board within 15 days of submission of
12 the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed
13 decision, the Board shall issues its Decision, unless good cause can be shown for the delay. If the
14 case is heard by the Board, the Board shall issue its decision within 15 days of submission of the
15 case, unless good cause can be shown for the delay. Good cause includes, but is not limited to,
16 non-adoption of the proposed decision, requests for reconsideration, remands and other
17 interlocutory orders issued by the Board. The cessation of practice shall not apply to the
18 reduction of the probationary time period.

19 If the Board does not file an accusation or petition to revoke probation within 30 days of the
20 issuance of the notification to cease practice or does not provide Respondent with a hearing
21 within 30 days of such a request, the notification of cease practice shall be dissolved.

22 3. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to
23 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
24 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
25 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
26 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
27 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
28 testing. The contract shall require results of the tests to be transmitted by the laboratory or

1 service directly to the Board or its designee within four hours of the results becoming available.
2 Respondent shall maintain this laboratory or service contract during the period of probation.

3 A certified copy of any laboratory test result may be received in evidence in any
4 proceedings between the Board and Respondent.

5 If Respondent fails to cooperate in a random biological fluid testing program within the
6 specified time frame, Respondent shall receive a notification from the Board or its designee to
7 immediately cease the practice of medicine. The Respondent shall not resume the practice of
8 medicine until the final decision on an accusation and/or a petition to revoke probation is
9 effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30
10 days of the notification to cease practice. If the Respondent requests a hearing on the accusation
11 and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within
12 30 days of the request, unless the Respondent stipulates to a later hearing. If the case is heard by
13 an Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board
14 within 15 days of submission of the matter. Within 15 days of receipt by the Board of the
15 Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good
16 cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its
17 decision within 15 days of submission of the case, unless good cause can be shown for the delay.
18 Good cause includes, but is not limited to, non-adoption of the proposed decision, requests for
19 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of
20 practice shall not apply to the reduction of the probationary time period.

21 If the Board does not file an accusation or petition to revoke probation within 15 days of the
22 issuance of the notification to cease practice or does not provide Respondent with a hearing
23 within 30 days of such a request, the notification of cease practice shall be dissolved.

24 4. EDUCATION COURSE. Within 60 calendar days of the effective date of this
25 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee
26 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours
27 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at
28 correcting any areas of deficient practice or knowledge and shall be Category I certified. The

educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

5. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

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1 6. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this
2 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice
3 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose
4 licenses are valid and in good standing, and who are preferably American Board of Medical
5 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal
6 relationship with Respondent, or other relationship that could reasonably be expected to
7 compromise the ability of the monitor to render fair and unbiased reports to the Board, including
8 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree
9 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

10 The Board or its designee shall provide the approved monitor with copies of the Decision(s)
11 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the
12 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed
13 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role
14 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees
15 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the
16 signed statement for approval by the Board or its designee.

17 Within 60 calendar days of the effective date of this Decision, and continuing throughout
18 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall
19 make all records available for immediate inspection and copying on the premises by the monitor
20 at all times during business hours and shall retain the records for the entire term of probation.

21 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective
22 date of this Decision, Respondent shall receive a notification from the Board or its designee to
23 cease the practice of medicine within three (3) calendar days after being so notified. Respondent
24 shall cease the practice of medicine until a monitor is approved to provide monitoring
25 responsibility.

26 The monitor(s) shall submit a quarterly written report to the Board or its designee which
27 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
28 are within the standards of practice of medicine, and whether Respondent is practicing medicine

1 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure
2 that the monitor submits the quarterly written reports to the Board or its designee within 10
3 calendar days after the end of the preceding quarter.

4 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of
5 such resignation or unavailability, submit to the Board or its designee, for prior approval, the
6 name and qualifications of a replacement monitor who will be assuming that responsibility within
7 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60
8 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a
9 notification from the Board or its designee to cease the practice of medicine within three (3)
10 calendar days after being so notified. Respondent shall cease the practice of medicine until a
11 replacement monitor is approved and assumes monitoring responsibility.

12 In lieu of a monitor, Respondent may participate in a professional enhancement program
13 approved in advance by the Board or its designee that includes, at minimum, quarterly chart
14 review, semi-annual practice assessment, and semi-annual review of professional growth and
15 education. Respondent shall participate in the professional enhancement program at Respondent's
16 expense during the term of probation.

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

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

26 8. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE
27 NURSES. During probation, Respondent is prohibited from supervising physician assistants and
28 advanced practice nurses.

1 9. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules
2 governing the practice of medicine in California and remain in full compliance with any court
3 ordered criminal probation, payments, and other orders.

4 10. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations
5 under penalty of perjury on forms provided by the Board, stating whether there has been
6 compliance with all the conditions of probation.

7 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
8 of the preceding quarter.

9 11. GENERAL PROBATION REQUIREMENTS.

10 Compliance with Probation Unit

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

12 Address Changes

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

18 Place of Practice

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

22 License Renewal

23 Respondent shall maintain a current and renewed California physician's and surgeon's
24 license.

25 Travel or Residence Outside California

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

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

4 12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be
5 available in person upon request for interviews either at Respondent's place of business or at the
6 probation unit office, with or without prior notice throughout the term of probation.

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

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

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

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

28 Periods of non-practice for a Respondent residing outside of California will relieve

Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and Controlled Substances; and Biological Fluid Testing.

14. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

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

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

17. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

1 California and delivered to the Board or its designee no later than January 31 of each calendar
2 year.

3 18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for
4 a new license or certification, or petition for reinstatement of a license, by any other health care
5 licensing action agency in the State of California, all of the charges and allegations contained in
6 Accusation No. 800-2017-034849 shall be deemed to be true, correct, and admitted by
7 Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or
8 restrict license.

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Robert K. Weinberg, Esq. I fully understand the stipulation and
12 the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and fully agree to be
14 bound by the Decision and Order of the Medical Board of California.

15
16 DATED: 6/29/21

17 
TUOC KHONG DUONG, M.D.
Respondent

18
19 I have read and fully discussed with Respondent Tuoc Khong Duong, M.D. the terms and
20 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
21 I approve its form and content.

22
23
24 DATED: 6/29/21

25 
ROBERT K. WEINBERG, ESQ.
Attorney for Respondent

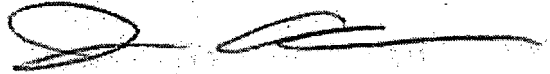
ENDORSEMENT

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

DATED: June 30, 2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



JASON J. AHN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2017-034849

1 XAVIER BECERRA
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2 MATTHEW M. DAVIS
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8 *Attorneys for Complainant*

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

14 In the Matter of the Accusation Against:

Case No. 800-2017-034849

15 **Tuoc Khong Duong, M.D.**
9009 McFadden Avenue
Westminster, CA 92683

A C C U S A T I O N

16 **Physician's and Surgeon's**
17 **Certificate No. A 88590,**

18 Respondent.

19
20 **PARTIES**

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

24 2. On or about August 18, 2004, the Medical Board issued Physician's and Surgeon's
25 Certificate No. A 88590 to Tuoc Khong Duong, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2021, unless renewed.

28 ///

JURISDICTION

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

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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

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.

///

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 6. Section 2236 of the Code states:

7 "(a) The conviction of any offense substantially related to the qualifications,
8 functions, or duties of a physician and surgeon constitutes unprofessional conduct within
the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction
shall be conclusive evidence only of the fact that the conviction occurred.

9 "...
10

11 "(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is
12 deemed to be a conviction within the meaning of this section and Section 2236.1. The
record of conviction shall be conclusive evidence of the fact that the conviction occurred."

13 7. California Code of Regulations, title 16, section 1360, states:

14 "For the purposes of denial, suspension or revocation of a license, certificate or
15 permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
or act shall be considered to be substantially related to the qualifications, functions or
16 duties of a person holding a license, certificate or permit under the Medical Practice
Act if to a substantial degree it evidences present or potential unfitness of a person
17 holding a license, certificate or permit to perform the functions authorized by the
license, certificate or permit in a manner consistent with the public health, safety or
welfare. Such crimes or acts shall include but not be limited to the following:
18 Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
violation of, or conspiring to violate any provision of the Medical Practice Act."

19
20 8. Unprofessional conduct under Business and Professions Code section 2234 is conduct
21 which breaches the rules or ethical code of the medical profession, or conduct which is
22 unbecoming a member in good standing of the medical profession, and which demonstrates an
23 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
24 575.)

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent has subjected his Physician's and Surgeon's Certificate No. A 88590 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A,¹ as more particularly alleged hereinafter:

10. On or about March 1, 2012,² Patient A, a forty-six year-old male, presented to Respondent. Patient A's prior history included, but was not limited to, Chronic Hepatitis B,³ Allergic Rhinitis,⁴ and Erectile Dysfunction.⁵ Respondent's plans for treatment included lab work, abdominal ultrasound, Xyzal⁶ with Singulair,⁷ and initiation of Viagra.⁸

11. On or about October 15, 2014, Patient A returned to Respondent. Patient A's blood pressure was 156/91. Respondent failed to treat and/or failed to document having treated Patient A's elevated blood pressure.

12. On or about January 5, 2015, Patient A returned to Respondent. Patient A's blood pressure was 155/94. Respondent failed to treat and/or failed to document having treated Patient A's elevated blood pressure.

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¹ "Patient A" is used to refer to the patient whose care and treatment is described herein to protect patient privacy.

² Conduct occurring more than seven (7) years from the filing date of this Accusation is for informational purposes only and is not alleged as a basis for disciplinary action.

³ Hepatitis B is a serious liver infection caused by the hepatitis B virus.

⁴ Allergic Rhinitis, also known as hay fever, is an allergic response causing itchy, watery eyes, sneezing, and other similar symptoms.

⁵ Erectile Dysfunction occurs when a man is unable to maintain or keep an erection firm enough for sexual intercourse.

⁶ Xyzal (levocetirizine) is an antihistamine, which can be used to treat hay fever and hives.

⁷ Singulair (montelukast) is an anti-inflammatory medication, which can be used to treat allergies and prevent asthma attacks.

⁸ Viagra (sildenafil) can be used to treat erectile dysfunction.

1 13. On or about June 30, 2016, Patient A returned to Respondent. Patient A's blood
2 pressure was 164/100. Respondent failed to treat and/or failed to document having treated Patient
3 A's elevated blood pressure.

4 14. On or about March 23, 2017, Patient A returned to Respondent. Patient A's blood
5 pressure was 175/101. Respondent failed to treat and/or failed to document having treated Patient
6 A's elevated blood pressure.

7 15. On or about July 18, 2017, Patient A was at a laboratory with an incomplete
8 requisition from Respondent. Patient A repeatedly contacted Respondent for a telephonic
9 laboratory order and/or authorization. In response, Respondent threatened to place a phone call
10 that would result in a bullet to Patient A's head.

11 16. On or about November 18, 2018, Respondent participated in a subject interview with
12 personnel from the California Department of Consumer Affairs, Division of Investigation, Health
13 Quality Investigation Unit, Tustin Field Office. During this interview, Respondent admitted that
14 in or around 2013, he was convicted of driving under the influence of alcohol, but failed to report
15 the criminal conviction to the Medical Board of California.⁹ In addition, after providing
16 conflicting and/or evasive answers, Respondent admitted to driving to this interview without a
17 valid driver's license. Respondent also displayed possible signs of memory loss and/or inability
18 to handle stress in his inability to provide dates or details of significant past events such as
19 completion of medical school and/or completion of residency.

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24 ⁹ As in effect at all times relevant to Respondent's conviction, Business and Professions
Code section 802.1 stated, in pertinent part:

25 (a)(1) A physician and surgeon...shall report either of the following to the entity
26 that issued his or her license:

27 ...
 (B) The conviction of the licensee, including any verdict of guilty, or plea of guilty
or no contest, of any felony or misdemeanor.

28 (2) The report required by this subdivision shall be made in writing within 30 days
of the date of the bringing of the indictment or information or of the conviction.

1 17. 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 maintain appropriate professionalism in his interactions
4 with Patient A on July 18, 2017; and

5 (b) Respondent failed to provide required and/or accurate and/or honest
6 information to the Board and/or agency responsible for investigating complaints filed with
7 the Board.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Repeated Negligent Acts)**

10 18. Respondent has further subjected his Physician's and Surgeon's Certificate No.
11 A 88590 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
12 subdivision (c), of the Code, in that he committed repeated negligent acts in his care and
13 treatment of Patient A as more particularly alleged herein:

14 19. Paragraphs 9 through 17, above, are hereby incorporated by reference
15 and realleged as if fully set forth herein;

16 (a) Respondent failed to maintain appropriate professionalism in his interactions
17 with Patient A on July 18, 2017;

18 (b) Respondent failed to provide required and/or accurate and/or honest
19 information to the Board and/or agency responsible for investigating complaints filed with
20 the Board; and

21 (c) Respondent failed to adequately and/or appropriately treat Patient A's elevated
22 blood pressure.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Conviction of a Crime Substantially Related to the Qualifications,**
3 **Functions, or Duties of a Physician and Surgeon)**

4 20. Respondent has subjected his Physician's and Surgeon's Certificate No. A 88590 to
5 disciplinary action under sections 2227 and 2234, as defined by section 2236, subdivision (a), of
6 the Code, in that he has been convicted of a crime substantially related to the qualifications,
7 functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

8 21. On or about August 2, 2013, the Orange County District Attorney's Office filed a
9 criminal complaint against Respondent, in the case of the *People of the State of California vs. Tuoc*
10 *Khong Doung*, Case No. M251472. Count One charged Respondent with driving under the
11 influence of drugs and/or alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
12 misdemeanor. Count Two charged Respondent with driving with a blood alcohol content level of
13 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.

14 22. On or about October 30, 2014, after a jury trial, a jury found Respondent guilty of
15 Count 1, driving under the influence of drugs and/or alcohol, in violation of Vehicle Code section
16 23152, subdivision (a), a misdemeanor, and Count 2, driving with a blood alcohol content level of
17 0.08 percent or more, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor.
18 Respondent was sentenced to, among other things, five (5) years of probation, various fines and
19 fees, and completion of a 6 month, First [DUI] Offender Level 2 Alcohol program.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(General Unprofessional Conduct)**

22 23. Respondent has further subjected his Physician's and Surgeon's Certificate No.
23 A 88590 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged
24 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is
25 unbecoming of a member in good standing of the medical profession, and which demonstrates an
26 unfitness to practice medicine, as more particularly alleged in paragraphs 9 through 22, above,
27 which are hereby incorporated by reference as if fully set forth herein.

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1 PRAYER

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

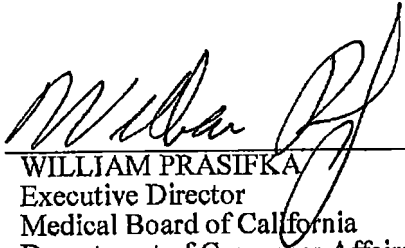
4 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 88590, issued
5 to Tuoc Khong Duong, M.D.;

6 2. Revoking, suspending or denying approval of Tuoc Khong Duong, M.D.'s authority
7 to supervise physician assistants and advanced practice nurses;

8 3. Ordering Tuoc Khong Duong, M.D., if placed on probation, to pay the Board the
9 costs of probation monitoring; and

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

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15 DATED: JUL 15 2020


16 WILLIAM PRASIFKA
17 Executive Director
18 Medical Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant
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